

# LEGISLATION HANDBOOK

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Department of the Prime Minister and Cabinet

Canberra

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## CHAPTER 1: INTRODUCTION

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### **Purpose of the handbook**

1.1 The purpose of this handbook is to provide a description of the procedures involved in making Commonwealth Acts, especially the procedures coordinated by the Department of the Prime Minister and Cabinet (PM&C). The handbook is intended as a guide for departmental officers and focuses on matters which require action by departmental officers. The chapters contain information on various aspects of the procedures involved; the appendices contain detailed information on certain procedures, samples of documents and forms used for certain procedures. At appendix A is a summary of the steps involved in the legislation process; appendix B outlines the responsibilities of a departmental Legislation Liaison Officer (LLO); and appendix C contains a list of contact addresses, and telephone and facsimile numbers. Appendices D to N provide samples of documentation and standard content while appendix O summarises the requirements for documentation. A glossary of terms used in the legislation process can be found after the appendices.

1.2 Cabinet procedures are set out in the *Cabinet Handbook*. Procedures for making subordinate legislation, such as regulations, are set out in the *Federal Executive Council Handbook*.

### **When is legislation required?**

1.3 Departments should give careful consideration to whether legislation is actually needed or whether administrative action would be sufficient.

1.4 Legislation should not be proposed simply to give a matter “visibility”. The limited drafting resources of the Office of Parliamentary Counsel (OPC) and the time available for government business in Parliament must be used for proposals which cannot proceed without legislation.

1.5 While it is not possible to list every situation where legislation is needed, the guidance at paragraphs 1.12 to 1.15 should assist departments. The Attorney-General’s Department is able to advise on the need for legislation in order to implement a proposal.

1.6 The *Cabinet Handbook* emphasises that the Attorney-General’s Department must be consulted on any proposal involving legislation being brought forward for Cabinet consideration and that sufficient time should be allowed for alternatives to be considered. The Attorney-General’s Department should also be consulted on minor policy proposals involving legislation submitted for the Prime Minister’s consideration unless it is absolutely clear that legislation is required.

## Consultation when developing legislation

1.7 Consistent with best practice in developing legislation, consultation on proposed legislation must occur with relevant parties within government and, where appropriate, with interested parties outside government (see limitations at paragraph 1.10). Consultation with OPC should also occur at an early stage to ensure that policy can be reflected in legislation.

1.8 The responsibility for undertaking consultation rests mainly with the minister/department/agency sponsoring the legislation (referred to throughout the handbook as the department). In considering options for consultation, departments should keep in mind the role that parliamentary committees, especially Senate committees, play in the legislation process, and the widespread consultation that committee consideration may entail. Departments may find the views expressed in the report of the House of Representatives Standing Committee on Legal and Constitutional Affairs *Clearer Commonwealth Law* of assistance<sup>1</sup>.

1.9 The appropriate timing of, extent of and need for consultation may vary and are matters for the judgement of the minister, or consideration by Cabinet. In some cases it may be desirable for consultation to take place on general principles at the time policy issues are being developed (see sub-paragraph 4.7(h) and paragraphs 4.11 to 4.15); in other cases consultation on the draft legislation may be more appropriate (see paragraphs 7.8 to 7.11 regarding security and advance disclosure/exposure of draft bills). There may be cases where the urgency attached to the legislation will prevent widespread consultation.

1.10 It would not normally be appropriate for public consultation to occur for proposed legislation:

- (a) which would alter fees or benefits only in accordance with the Budget;
- (b) which would contain only minor machinery provisions that would not fundamentally alter existing legislative arrangements; or
- (c) for which consultation would give a person or organisation consulted an advantage over others not consulted.

1.11 In considering the need and appropriate mechanisms for consultation, departments should keep in mind the fact that consultation will extend the lead time required for preparation of a bill for introduction. This should be taken into account for planning purposes so as to ensure that consultation does not unduly reduce the time allowed for drafting a bill.

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<sup>1</sup> House of Representatives Standing Committee on Legal and Constitutional Affairs Report of the Inquiry into Legislation Drafting by the Commonwealth *Clearer Commonwealth Law*, AGPS, Canberra, September 1993, chapter 2. See also the Government Response to that report which was presented to the President of the Senate on 26 May 1995 and tabled in the House of Representatives on 29 May 1995.

## Primary or subordinate legislation

1.12 While it is not possible or desirable to provide a prescriptive list of matters that should be included in primary legislation and matters that should be included in subordinate legislation, it is possible to provide some guidance. Matters of the following kinds should be implemented only through Acts of Parliament:

- (a) appropriations of money;
- (b) significant questions of policy including significant new policy or fundamental changes to existing policy;
- (c) rules which have a significant impact on individual rights and liberties;
- (d) provisions imposing obligations on citizens or organisations to undertake certain activities (for example, to provide information or submit documentation, noting that the detail of the information or documents required should be included in subordinate legislation) or desist from activities (for example, to prohibit an activity and impose penalties or sanctions for engaging in an activity);
- (e) provisions conferring enforceable rights on citizens or organisations;
- (f) provisions creating offences which impose significant criminal penalties (imprisonment or fines equal to more than 10 penalty units for individuals or more than 50 penalty units for corporations)<sup>2</sup>;
- (g) provisions imposing administrative penalties for regulatory offences (administrative penalties enable the executive to receive payment of a monetary sum without determination of the issues by a court);
- (h) provisions imposing taxes or levies;
- (i) provisions imposing significant fees and charges (equal to more than 10 penalty units consistent with (f) above);
- (j) provisions authorising the borrowing of funds;
- (k) procedural matters that go to the essence of the legislative scheme;
- (l) provisions creating statutory authorities (noting that some details of the operations of a statutory authority would be appropriately dealt with in subordinate legislation); and
- (m) amendments to Acts of Parliament (noting that the continued inclusion of a measure in an Act should be examined against these criteria when an amendment is required).

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<sup>2</sup> A penalty unit is defined in section 4AA of the *Crimes Act 1914*; at July 1999 a penalty unit was equivalent to \$110.

1.13 However it should be recognised that the decision as to whether a particular matter should be included in primary or subordinate legislation may well be influenced by the nature of the subject matter and a variety of other factors. Departments should consult OPC about the appropriateness of including particular matters in primary or subordinate legislation. (See also paragraphs 6.45 to 6.47.) The Office of Legislative Drafting in the Attorney-General's Department is available to provide advice about subordinate legislation (see paragraph 6.48).

1.14 Departments should be aware of the role and the powers of the Senate Standing Committee on Regulations and Ordinances which scrutinises subordinate or delegated legislation to ensure that it:

- (a) is in accordance with the statute;
- (b) does not trespass unduly on personal rights and liberties;
- (c) does not unduly make the rights and liberties of citizens dependent upon administrative decisions which are not subject to review of their merits by a judicial or other independent tribunal; and
- (d) does not contain matter more appropriate for parliamentary enactment.

1.15 Departments may also wish to refer to the report of the Administrative Review Council which considered the distinction between matters that should be dealt with in primary legislation and matters that can properly be delegated to a subordinate lawmaker<sup>3</sup>.

### **An overview of the legislation process**

1.16 The process of getting a Commonwealth Act onto the statute books is lengthy and requires a number of steps to be completed either simultaneously or sequentially. A chart of the overall process is at appendix A; this chart sets out only the main steps involved. Further details on each of the steps are contained in the following chapters.

### **Who has responsibility for which legislation?**

1.17 The Governor-General, on the advice of the Prime Minister, makes an Administrative Arrangements Order (AAO) which sets out the matters dealt with by each department and the legislation administered by the minister, or ministers, who are appointed to administer each department. Where a portfolio has more than one minister, all those ministers administer the department so all ministers are formally able to administer the legislation associated with the department. In practice the senior minister in each portfolio, subject to any intention indicated by the Prime Minister, determines which matters and which legislation will be dealt with by each minister.

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<sup>3</sup> Administrative Review Council, 1992, Report to the Attorney-General *Rule Making by Commonwealth Agencies, Report No 35*, AGPS, Canberra, pages 12 to 19

1.18 The latest consolidated AAO and any amendments to it are available from AusInfo and on the Internet at <http://www.dpmc.gov.au>. Any questions relating to amendment of the AAO should be referred to the Senior Adviser, Government Section, in PM&C on telephone 6271 5535.

#### BILLS IMPACTING ON OTHER MINISTERS' LEGISLATION

1.19 When a minister proposes to sponsor a bill that contains amendments to an Act that is administered by another minister, the sponsoring minister must seek the agreement of the minister who has responsibility for administration of the Act.

1.20 Where the measures proposed in a bill may impact on the responsibilities of another minister, that minister must be consulted in writing and give agreement to the proposal. (See paragraphs 4.11 to 4.16 for further details on consultation.)

#### **Participants in the legislation process**

1.21 The following persons, committees and agencies have a role in the legislation process. The terms and acronyms used to describe these participants in the process are used throughout the handbook -

- *Departmental Instructing Officer* - for each bill a senior officer from the instructing department is required to act as the main point of contact with OPC, to instruct on the bill and to clear drafts of the bill prepared by OPC. This officer is also required to ensure that policy approval is sought for all measures contained in the bill, drafting instructions are issued and all necessary support material for the bill is prepared (see paragraph 6.5).
- *Departmental Legislation Liaison Officer (LLO)* - each department is required to nominate one senior officer (preferably at the Executive Level 1 /Senior Officer Grade C level or higher) to be its Legislation Liaison Officer for all legislation. That person is the principal contact on all general matters concerning the processes of preparation, approval and passage of legislation for that department. The LLO is the primary departmental contact for the Legislation Section, and the Parliamentary Liaison Officers regarding programming of legislation in Parliament. An outline of the functions an LLO might undertake is at appendix B. The Legislation Section in PM&C maintains a list of all LLOs.
- *First Parliamentary Counsel (FPC)* - the head of the Office of Parliamentary Counsel.
- *Instructing Department* - the department responsible for coordinating and progressing proposed legislation or amendments to existing legislation, referred to throughout as “the department” (see definition of departmental instructing officer and paragraph 6.4).
- *Legislation Section* – see Parliamentary Affairs and Legislation Section.

- *Ministerial Legislation Contact Officer* - a nominated person in each minister's office who acts as the first point of contact for all legislation matters that require the minister's attention. The Legislation Section maintains a list of all Ministerial Legislation Contact Officers.
- *Office of Legislative Drafting (OLD)* – an office in the Attorney-General's Department responsible for drafting subordinate legislation.
- *Office of Parliamentary Counsel (OPC)* - a statutory authority within the Attorney-General's portfolio responsible for drafting bills for introduction into the Parliament and drafting government amendments to those bills.
- *Office of Parliamentary Counsel (OPC) Client Adviser* - a senior drafter nominated to advise each department on certain matters relating to legislation (see paragraph 5.12).
- *Office of Regulation Review (ORR)* - an office in the Productivity Commission which provides advice on the preparation of regulation impact statements (RISs).
- *Parliamentary Affairs and Legislation Section (the Legislation Section)* - the section in PM&C which coordinates the legislation programme, prepares papers for PBC on the legislation programme, prepares submissions to the Parliamentary Secretary to Cabinet for the legislation approval process and coordinates advice to the Prime Minister or Parliamentary Secretary to Cabinet on minor policy proposals.
- *Parliamentary Business Committee of Cabinet (PBC)* - the Cabinet coordinating committee which manages the government's legislation and parliamentary business programme and allocates priorities to legislation proposals. The Committee meets at the beginning of every sitting week, usually on a Monday morning, to consider issues relating to the legislation and parliamentary business programme, including requests for variations to the programme.
- *Parliamentary Counsel* - the title given to a drafter with the Office of Parliamentary Counsel.
- *Parliamentary Liaison Officer (PLO)* – the Leader of the House and, in the Senate, the Leader of Government and the Manager of Government Business are assisted in programming of government business in the Parliament by the House PLO and Senate PLO who are officers of PM&C. Once a bill has been introduced, departments should contact the PLO in each house for information about the programming of the bill for debate.
- *Prime Minister, or the Parliamentary Secretary to Cabinet* on behalf of the Prime Minister - consider requests for minor policy approval and approve legislation for introduction.
- *Table Office(s)* - the office in each chamber department responsible for coordinating the documentation to enable introduction and for ensuring the progress of all legislation to its next stage (see appendices C and O for Legislation Officer contacts in each Table Office).



## CHAPTER 2: DEVELOPING THE LEGISLATION PROGRAMME

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### What is the legislation programme?

2.1 Prior to each sitting period of Parliament, ministers are asked to advise the Prime Minister of their legislation requirements, noting the Prime Minister's request that ministers plan their legislation requirements well in advance so that legislation is generally drafted for introduction in one sitting period for debate and passage in the next. This approach enables compliance with Senate standing order 111 (see paragraph 3.1). Exceptions are made to this rolling programme approach only in the case of Budget and other unavoidable, urgent legislation.

2.2 After considering ministers' requests the Parliamentary Business Committee (PBC) determines the government's legislation programme (a list of bills proposed for introduction in the Parliament in that sitting period) and accords a drafting priority to each bill on the programme. PBC may agree to requests from ministers to vary the legislation programme during a sitting period.

### Legislation priorities

2.3 As bids are received for many more bills than there are resources to draft or time to debate in a sitting period, priorities must be accorded to bills. PBC has agreed that the following categories should be used to identify the priority accorded to legislation on the programme:

Category T	time critical bills for introduction and passage during the one sitting period;
Category A	bills assessed as having high priority for introduction in the sitting period;
Category B	bills assessed as having medium priority for introduction in the sitting period; and
Category C	bills assessed as having lower priority for introduction in the sitting period.

2.4 The status accorded each proposed bill will determine the priority for drafting by OPC. Departments are asked to be realistic in the priorities they recommend that ministers seek for their bills.

### Parliamentary Business Committee (PBC) Minutes

2.5 Cabinet Minutes setting out PBC decisions about the legislation programme are sent to all ministers and departments. Minutes of PBC do not normally require endorsement by Cabinet. The Chairperson of the Committee may also write to ministers about matters relating to the legislation programme.

2.6 A decision by PBC on a bill's priority does not give approval to the policy underlying that bill. Similarly an election commitment, a reference to proposed legislation in the Governor-General's speech at the opening of a Parliament or a ministerial media release does not give policy approval or confer any priority on the legislation for a particular sitting period. Policy approval is a separate process (see chapter 4).

### **Failure to meet deadlines**

2.7 Category T bills on the programme which do not meet deadlines set by PBC for seeking policy approval, lodging drafting instructions, and introduction may be downgraded in priority by PBC. Any decisions of the Committee involving downgrading of bills on the legislation programme will be recorded in Cabinet Minutes. Lack of action to submit drafting instructions and seek policy approval for bills will be taken into account when the bill is rebid for in a subsequent sitting period and may result in a bill being accorded a lower priority in the subsequent sitting period.

### **Deletions from the legislation programme**

2.8 If a proposal included on the programme is not to go ahead, the responsible minister should advise the Prime Minister, or the department should advise the Legislation Section and OPC by facsimile.

### **Impact of legislation on business**

2.9 The government's policy on best practice process for regulation announced in the Prime Minister's *More Time for Business* statement<sup>4</sup> requires a regulation impact statement (RIS) to be prepared for all proposed new or amending legislation which directly affects business or which has a significant indirect effect on business or restricts competition.

2.10 The Office of Regulation Review (ORR) in the Productivity Commission is responsible for advising departments and agencies of RIS requirements, and assessing and reporting on compliance with procedures. The ORR's report on compliance will be contained in the Productivity Commission's annual report.

2.11 Departments must consider the need for a RIS for each bill proposed to be included in the legislation programme, identify whether a RIS is required and, if so, specify a date of completion. Departments should consult ORR if the need for a RIS is not clear.

2.12 The Legislation Section will provide copies of bids and requests for variations to ORR.

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<sup>4</sup> Statement by the Prime Minister, the Hon John Howard, MP, *More Time for Business*, 24 March 1997, AGPS Canberra, pages 66 to 67

## PREPARING REGULATION IMPACT STATEMENTS

2.13 A RIS should be prepared in consultation with ORR. The purpose of the RIS is to ensure that departments and agencies fully consider the costs and benefits of all viable alternatives, with a view to choosing the alternative with the maximum positive impact. The RIS should be submitted with the request for policy approval (see paragraph 4.3) and included in the explanatory memorandum (see paragraph 8.16).

2.14 The ORR's *A Guide to Regulation*<sup>5</sup> is available to assist departments in the preparation of RISs and to provide guidance on the circumstances in which a RIS is to include a small business impact statement or trade impact assessment, or to address competition policy issues.

## Submitting a bid for a place on the legislation programme

### WHAT IS A BID?

2.15 A bid is a request from a minister for inclusion of a proposed bill on the legislation programme. Ministers write to the Prime Minister providing bids for the purpose of settling the government's legislation programme for each sitting period. Before submitting proposed bids to ministers for consideration, departments should be satisfied that amending or creating primary legislation is the only viable option (see paragraphs 1.3 to 1.6 and 1.12 to 1.14). Advice should be sought from the Attorney-General's Department if the need for legislation is not clear (see also paragraph 4.2 and sub-paragraph 4.7(a)).

### DEADLINES FOR SUBMISSION OF BIDS

2.16 The deadlines for submission of bids for the legislation programme of each sitting period are set by PBC. They are contained in minutes of PBC and are also advised to LLOs by Legislation Circular. Departments should commence at an early stage any internal processes necessary to develop their proposed bids, to ensure that they are able to meet the deadlines set by PBC.

2.17 Bids for legislation for the next sitting period are generally sought from ministers about four weeks before the end of each sitting period, eg. bids for the 1999 Winter sittings were sought by 25 February 1999 so that PBC could approve a legislation programme for Winter at its meeting on 29 March 1999, the final week of the Autumn sittings. This timing allows drafting of bills required for the next sitting period to commence as soon as the current sitting period is completed.

### SUMMARY OF INFORMATION REQUIRED FOR BIDS

2.18 A minister's letter to the Prime Minister should be accompanied by:

<sup>5</sup> Office of Regulation Review, Productivity Commission, *A Guide to Regulation*, 2<sup>nd</sup> Edition, December 1998, Internet: <http://www.pc.gov.au/orr>

- (a) the details of each proposed bill for the forthcoming sitting period, in the standard format, including an indication of whether a RIS is required, (see paragraphs 2.35 to 2.36 and appendix D); and
- (b) for each proposed category T bill, a statement of reasons (see chapter 3).

The details and any statements of reasons should be set out on the appropriate templates and sent to the Legislation Section (see paragraphs 2.35 to 2.39).

#### THE MINISTER'S COVERING LETTER FOR BIDS

2.19 The minister's bids letter should contain the basic information about the bids and should list bills in priority order. When read with the attached information (the bids in the standard format and, where applicable, the statements of reasons), it should provide all the necessary documentation in support of the bids and their place on the programme and address the requirements set by PBC.

2.20 The minister's letter must also indicate clearly whether policy approval is being sought and for which measures it is being sought, or whether approval will be sought by separate letter (see chapter 4 for details on seeking minor policy approval).

2.21 Where policy approval has already been obtained for particular measures in a bill, this should be clearly indicated under the heading "policy approval" in the accompanying details of the bid. In some cases, departments might usefully attach a table showing in relation to each measure, or group of measures, whether approval has been obtained or is yet to be sought; and whether the measure, or group of measures, is one for approval by Cabinet, the Prime Minister or the minister.

2.22 Where minor policy approval is being sought from the Prime Minister in the bids letter, the request should be clearly identified in the covering letter (ie policy approval is sought for amendments to the XYZ Act which will be included in the ABC Bill) and details of the request should be included, as an attachment if appropriate.

### **Submitting a request for a variation to the legislation programme**

#### WHAT IS A VARIATION?

2.23 After the legislation programme for a sitting period has been settled, a minister may write to the Prime Minister requesting that it be varied to:

- (a) add a new bill to the programme;
- (b) upgrade a bill, or part of a bill, already on the programme;
- (c) add new measures to a bill already on the programme; and/or
- (d) move substantial amendments, that require significant drafting resources, to a bill already in Parliament (see paragraph 10.10).

Requests for variations to the legislation programme are considered by PBC.

#### DEADLINE FOR SUBMISSION OF A REQUEST FOR A VARIATION

2.24 Departments should contact the Legislation Section and OPC as soon as they become aware of a potential request for a variation to the programme.

2.25 For a variation request to be included in the Cabinet memorandum for consideration by PBC on the Monday of a sitting week, the signed request should be received by the Legislation Section by COB Wednesday of the week before the PBC meeting. An advance copy of the information should be sent to the Legislation Section as soon as it is available, to enable the Section to consult relevant policy branches within PM&C.

#### SUMMARY OF INFORMATION REQUIRED FOR A VARIATION

2.26 A minister should submit a request for a variation to the current programme, in writing, to the Prime Minister.

2.27 A minister's letter should be accompanied by:

- (a) the details of the variation(s) sought in the standard format, including an indication of whether a RIS is required (see paragraphs 2.35 to 2.36 and appendix E); and
- (b) for any proposed category T bill, a statement of reasons (see chapter 3).

The details and any statement of reasons should be set out on the appropriate templates and sent to the Legislation Section (see paragraphs 2.35 to 2.39).

#### THE MINISTER'S COVERING LETTER FOR A VARIATION

2.28 The minister's variation letter should:

- (a) contain the basic information about the variation sought;
- (b) explain why the request is urgent and unforeseen;
- (c) confirm that all policy approvals necessary for the proposed legislation have been obtained, or are being sought with the request, and that final drafting instructions have been issued (an explanation should be included if these steps have not occurred as the lack of progress may influence PBC's decision on the request); and
- (d) for requests for category T bills, provide an indication of the non-government parties/senators' likely attitude in the Senate, and the extent of consultations with such parties.

2.29 When read with the attached information (the variation in the standard format and, where applicable, the statement of reasons), the letter should provide all the necessary documentation in support of a request to vary the programme.

2.30 Where policy approval has already been obtained for the proposed variation, this must be clearly indicated under the heading "policy approval" in the accompanying details of the variation by including the source and date of the approval.

2.31 Where minor policy approval is being sought from the Prime Minister in the variation request letter, the request should be clearly identified in the covering letter (eg. policy approval is sought for amendments to the XYZ Act which will be included in the ABC Bill) and details of the request should be included, as an attachment if appropriate (see chapter 4 for details on seeking policy approval).

### **Adding Budget bills to the legislation programme**

2.32 Budget bills are normally given priority over other bills. Budget bills include Appropriation and Loan Bills and any other bills required to implement decisions forming part of the annual Commonwealth Budget or an economic statement.

2.33 In the sitting period in which the Budget is delivered, PBC will set deadlines for submission of bids for Budget-related bills so that the legislation programme can be revised to incorporate Budget-related bills. Bids are normally requested by the Thursday after the Budget is delivered. LLOs should be ready to provide Budget-related bids at that time.

2.34 Any specific arrangements for bids for legislation arising from economic statements will be advised to LLOs by the Legislation Section.

### **Templates for bids and variation requests**

2.35 Details of bids and variation requests should be compiled on templates available on CABNET, under Frequently Asked Questions (see paragraphs 2.18 and 2.27, and Appendices D and E). For access to CABNET, either to download the templates or to send them when completed to the Legislation Section, LLOs should consult their departmental Cabinet Liaison Officers.

2.36 LLOs are asked to adhere strictly to the standard formats in order to ensure consistency in the final document which forms an attachment to the Cabinet Memorandum for consideration by PBC. The information included in a bid or variation request must be accurate; information should not be included in anticipation of the outcome of discussions which are yet to take place.

2.37 Information on the templates should be sent to the Legislation Section via CABNET e-mail or delivered by hand on floppy disk; it should not be sent via ordinary e-mail facilities. The CABNET address group is CABNET Recipients – I Legislation Secretariat. If a floppy disk is used, the disk should identify the portfolio, be IBM formatted, and provide details of the word processing system and the version used (the Legislation Section uses Microsoft Word 97).

2.38 Completed templates for any associated statements of reasons should be sent to the Legislation Section with the bids or variation requests (see Chapter 3).

2.39 Completed templates should be sent to the Legislation Section *in advance*, as soon as papers are ready to be submitted for signature by the minister. A hard copy of the templates should be attached to the minister's letter to the Prime Minister.

## CHAPTER 3: STATEMENTS OF REASONS FOR THE SENATE

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### Purpose

3.1 Senate standing order 111 provides that a bill will not be dealt with during a sitting period unless the bill:

- (a) was introduced in the Senate or the House of Representatives in the previous sitting period; and
- (b) in the case of a House-initiated bill, is received by the Senate before the expiration of two-thirds of the total number of Senate sitting days for the sitting period (ie by the Senate cut-off date).

3.2 The Senate may exempt a bill from the order provided that the government gives reasons for such exemption. The statement of reasons assists in the process of seeking exemption by providing an explanation to the Senate of the urgency of a bill. A statement of reasons is formally presented to the Senate when exemption from the cut-off order is sought, ie when the Senate's agreement is sought to introduce and debate a bill in the one sitting period.

### When is a statement of reasons required?

3.3 Statements are required for all proposed category T bills and should be submitted with the bid or request for a variation.

3.4 A statement is also required for the Senate when a bill introduced into the House of Representatives in an earlier sitting period is received by the Senate after the cut-off date and exemption from the order is being sought. The Legislation Section will contact LLOs in such situations to advise that a statement is required.

### Preparation and clearance

3.5 PBC has agreed that statements of reasons for presentation to the Senate should:

- (a) be prepared in a form suitable for circulation to non-government senators. (All the information in the statement must be suitable for public release. If there is to be any embargo on the release, eg. because policy approval has not yet been obtained, this should be noted on the bottom of the statement and in the minister's covering letter.);
- (b) set out:
  - (i) the title of the proposed bill;
  - (ii) the purpose of the proposed bill;

- (iii) the reasons for the urgency requiring introduction and passage in the same sitting period;
  - (iv) the effect if the bill is not dealt with in one sitting period; and
  - (v) if appropriate, why the need for the bill was not foreseen;
- (c) be cleared for circulation by the responsible minister and include an annotation that the statement is “circulated by authority of the Minister for XXX”;
- (d) be included with the minister’s letter to the Prime Minister seeking category T status (either when bidding for a place on the programme or seeking a variation to the approved programme).

3.6 Each statement of reasons should be on a separate page and headed

“STATEMENT OF REASONS FOR INTRODUCTION AND PASSAGE  
IN THE 199X XXX SITTINGS

XXXX BILL”

Statements should be created on the appropriate template available on CABNET under Frequently Asked Questions, and should be sent to the Legislation Section via CABNET e-mail or delivered by hand on floppy disk. Completed templates should be sent to the Legislation Section *in advance*, as soon as papers are ready to be submitted for signature by the minister (see paragraphs 2.35 to 2.39).

3.7 The term “category T” should not be used in the statement as this term has no meaning for senators and members. Instead reference should be made to a bill for which introduction and passage in the XX (eg. 1999 Winter) sittings is being sought.

3.8 Statements of reasons will be noted by PBC at the time a bid or variation request is considered but responsibility for the content rests with the department and the minister giving his or her authority to the circulation of the statement.



## CHAPTER 4: POLICY APPROVAL

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### Levels of approval

4.1 Every measure included in a bill must have policy approval at the appropriate level, as follows:

<u>Measures</u>	<u>Authority</u>	
measures with significant policy implications	Cabinet	see paragraph 4.5
measures with minor policy significance	Prime Minister	see paragraph 4.9
technical amendments within existing policy	relevant minister	see paragraph 4.22
technical corrections of the kind that would otherwise be suitable for inclusion in a Statute Law Revision Bill	First Parliamentary Counsel	see paragraph 4.23

### Commencing the process

4.2 The policy development process should include assessment of non-legislative options, and utilise the regulation impact statement (RIS) framework in consultation with ORR. As soon as a department becomes aware of a need for action that may involve legislation, it should commence work on the task of settling policy details, consulting other departments and agencies as necessary. If a legislative option is to be recommended, it is important at this stage to demonstrate (usually by consulting the Attorney-General's Department) that legislation is essential to achieve the policy objectives. The need for legislation should be established in every case, ie for all proposals being considered by Cabinet and for which the Prime Minister's approval is being sought. Where appropriate, the department should also discuss with the OPC Client Adviser (a senior drafter nominated to advise their department on certain matters relating to legislation) whether the preferred policy would require unduly complex legislation and whether there might be alternative approaches which would permit simpler legislation (see also paragraphs 6.10 to 6.12).

4.3 If legislation is required, the minister must seek policy approval for measures in the proposed bill as well as seeking a place for the bill on the legislation programme (see chapter 2). The RIS prepared earlier as part of the policy development process should be refined at this policy approval stage. The RIS includes an assessment of the costs and benefits of alternative means of addressing the policy objective (see paragraph 2.13 to 2.14). Seeking policy approval will involve preparing a Cabinet submission or a letter requesting the Prime Minister's approval (in accordance with paragraph 4.1) and the RIS should be included in the submission or with the letter. (The RIS is subsequently tabled as part of the explanatory memorandum, see paragraphs 8.5 and 8.16 to 8.17.)

4.4 Work on obtaining policy approval should proceed in conjunction with finalisation of drafting instructions. It may be necessary for further policy approvals to be sought during the drafting process if policy issues essential to the legislation arise as drafting proceeds. It is the responsibility of the instructing officer to ensure during the course of the drafting of a bill that no matter in the bill remains without policy approval. The Parliamentary Secretary to Cabinet will not approve a bill for introduction into the Parliament unless there is clear authority for all matters contained in the bill.

### **Cabinet approval**

4.5 Cabinet approval must be obtained for all significant policy proposals involving legislation, including any such proposal which:

- (a) represents a significant or strategically important policy initiative or commitment;
- (b) involves new expenditure or will have a significant impact on revenue;
- (c) is sensitive or controversial (whether from the perspective of Parliament or interest groups or Commonwealth/state relations); or
- (d) has significant implications for other portfolios or is not agreed to by all interested portfolios (see also the *Cabinet Handbook*).

4.6 If the instructing officer is in doubt as to whether Cabinet consideration will be required, he or she may consult the relevant policy area in PM&C.

4.7 Some points to note regarding Cabinet consideration of matters requiring legislation are listed below. Reference should be made to the *Cabinet Handbook* which gives detailed instructions about Cabinet procedures and the preparation of Cabinet documents.

- (a) *Show whether the Attorney-General's Department regards legislation as necessary.* A submission or memorandum proposing legislation should indicate the view of the Attorney-General's Department about whether legislation is necessary or the only way to implement the policy. Consultation with the Attorney-General's Department should occur early so that alternatives to legislation can be considered (see paragraph 4.2) and the view of the Attorney-General's Department can be shown on the draft circulated for coordination comments. Any submission or memorandum proposing legislation which the Attorney-General's Department considers unnecessary must canvass alternative means of implementing the policy.
- (b) *Prepare a regulation impact statement (RIS).* Any legislation proposal which has a direct, or significant indirect, effect on business, or which restricts competition, must be accompanied by a RIS (see paragraphs 2.13 to 2.14).
- (c) *Ensure that all measures requiring Cabinet authority are spelt out clearly.* The wording of Cabinet Minutes is often based on the wording of the recommendations contained in Cabinet submissions. Care should be taken when drafting Cabinet submission recommendations to ensure that they are

not excessively detailed, do not use technical terms with unduly narrow meanings, and are expressed in a way that can accommodate developments in micro-policy that are likely to occur during the drafting process. On the other hand if the Cabinet Minute is expressed in terms that are too general, the authority for particular matters may be unclear. In such a situation, the minister may need to write to the Prime Minister seeking clarification of the minute, or approval if authority for a matter is lacking.

- (d) *Do not seek Cabinet's endorsement of the form or wording of proposed legislation.* A submission or memorandum should focus on the policy to be implemented but should not prescribe the way in which policy details are to be legislated. It will be the role of the drafter, in consultation with the instructing officer, to advise on the exact form and wording of the bill as it is being drafted.
- (e) *Do not attach drafting instructions to a Cabinet submission or memorandum unless Cabinet or a Cabinet Committee specifically requires the instructions.* If possible, preliminary instructions should be circulated to departments and authorities consulted in the preparation of the submission or memorandum to help them understand the nature of the proposal.
- (f) *Do not ask Cabinet to give priority to the legislation.* PBC decides which bills to include on the legislation programme and assigns a drafting priority to each of them; any timing imperatives should be raised in the bids ministers submit for consideration by PBC (see chapter 2). Cabinet submissions or memoranda should not pre-empt the role of PBC by seeking from Cabinet any specific priority for proposed legislation.
- (g) *Allow sufficient time for passage of legislation by Parliament if asking Cabinet to endorse a date of effect.* In proposing dates of effect regard must be had to the policy that bills are generally introduced in one sitting period for debate in the next sitting period, and to the fact that the dynamics of parliamentary proceedings, especially in the Senate, allow no certainty about timing, unless passage has been negotiated with all non-government parties and senators. Any proposal for a retrospective date of effect, especially a proposal adversely affecting rights or imposing liabilities, must be justified in the submission. (Any such legislative measures would be subject to scrutiny by the Senate Standing Committee for the Scrutiny of Bills, see paragraphs 8.19 and 14.53 to 14.55.)
- (h) *Undertake other consultation as follows in preparing the submission:*
  - (i) with the Treasurer where an exception to the provisions of s51 the *Trade Practices Act 1974/Competition Code* is proposed (a submission must be supported by the Treasurer's approval before the proposal can be considered by Cabinet);
  - (ii) with the Attorney-General's Department if the legislation would affect the jurisdiction of federal courts or tribunals;
  - (iii) with the Office of Regulation Review (ORR) if the legislation is likely to have a direct, or significant indirect, effect on business or if it may restrict competition (see paragraphs 2.9 to 2.14);

- (iv) with the Department of Transport and Regional Services if the legislation would apply to, or have a significant indirect effect on, any of the following external territories: Christmas Island, the Cocos (Keeling) Islands, Ashmore and Cartier Islands, Norfolk Island, or the Coral Sea Islands;
- (v) with the Antarctic Division in the Department of the Environment and Heritage if the legislation would apply to, or have a significant indirect effect on, the external territories of Heard Island and McDonald Islands, or the Australian Antarctic Territory;
- (vi) with the Privacy Commission if the legislation has implications for the privacy of individuals; and
- (vii) with the Administrative Review Council via the Attorney-General's Department if the legislation has implications for administrative review (see paragraphs 6.30 to 6.33).

(Refer also to other issues for consideration at paragraphs 6.13 to 6.44.)

- (i) *Seek Cabinet endorsement of any proposal for exposure of draft legislation to enact measures endorsed by Cabinet.* The text of a bill is first made public when the bill is introduced into Parliament. In cases where the proposed measures will have a significant impact on groups in the community, it may be desirable for the public to be given an opportunity to comment on a draft of a bill before the bill is finalised for introduction. If exposure is desired, the minister should seek Cabinet's agreement to release an exposure draft when seeking Cabinet's agreement to the policy content (see also paragraphs 7.8 to 7.11).

4.8 The requirements regarding public announcement of legislation in advance of introduction are set out at paragraphs 4.24 to 4.27. A proposed media statement attached to a Cabinet submission must satisfy these requirements.

## **Minor policy approval**

### HOW AND WHEN TO SEEK MINOR POLICY APPROVAL

4.9 If a minister believes that a proposal involving legislation does not warrant consideration by Cabinet, he or she should write seeking the Prime Minister's approval of the proposal. The minister should also write to the Prime Minister if it is proposed to vary the implementation of a Cabinet Minute in a manner which does not warrant reconsideration of the matter by Cabinet. Amendments not involving a change of policy, eg. correcting a technical defect to ensure that legislation operates as intended, can be approved by the responsible minister (see paragraph 4.22). Amendments of a minor technical nature, eg. correcting typographical errors, can be approved by First Parliamentary Counsel (see paragraph 4.23).

4.10 If not previously sought, minor policy approval should be sought at the time the minister submits a bid to have the legislation included on the programme or as soon as possible after that. If it becomes apparent during the drafting of a bill that

further approval is required for minor policy matters, the minister should write to the Prime Minister as soon as possible (see paragraph 4.4). Replies to requests for minor policy are signed by the Prime Minister, or the Parliamentary Secretary to Cabinet on behalf of the Prime Minister.

#### CONSULTATION ON POLICY ASPECTS

4.11 If a minister's proposal significantly affects the portfolio interests of other ministers, the proposal will normally be subject to consideration by Cabinet. Minor policy matters, not requiring Cabinet consideration, may also affect other ministers' portfolio interests or may involve amending legislation for which other ministers have responsibility. In any such case the minister sponsoring the proposal will need to write to other ministers with an interest seeking their agreement, preferably prior to requesting the Prime Minister's approval.

4.12 It may also be necessary for the minister's department to consult other departments and agencies, in line with the consultation requirements outlined in paragraph 4.7(h) above and about other matters mentioned at paragraphs 6.13 to 6.44.

4.13 Consultation letters should be sent out as early as possible. If the minister does not indicate in the letter seeking approval of the Prime Minister that consultation has taken place and advise the outcome of that consultation, approval may be given subject to the agreement of other ministers.

4.14 While minor policy approval can be given subject to the agreement of other ministers, it is preferable that consultation occur before the minister writes to the Prime Minister. This enables the Prime Minister or Parliamentary Secretary to Cabinet to take account of all relevant views when considering the request for minor policy approval.

4.15 If there is disagreement between ministers regarding the proposal, or if for any other reason the proposal warrants collective consideration, the Prime Minister or the Parliamentary Secretary to Cabinet on his behalf may require the matter to be submitted to Cabinet.

#### APPROVAL OF THE TEXT OF AMENDMENTS BY OTHER MINISTERS

4.16 Approval by the responsible minister(s) of the text of the relevant schedule(s) of the bill must be obtained before the bill can be introduced in the Parliament (see paragraph 9.5).

#### INFORMATION TO BE INCLUDED IN REQUESTS FOR MINOR POLICY APPROVAL

4.17 The following **contents checklist** is designed to assist departments in preparing such letters for their ministers. Each letter should provide a clear and self-contained description of the proposal and should be appropriately classified if it contains sensitive or confidential material. Points to be covered in the letter (if applicable) include the following:

- (a) the background to the proposal - including any previous Cabinet consideration and the relevant Cabinet Minute number(s);
- (b) an explanation of why legislation is necessary - attach a copy of any advice from the Attorney-General's Department;
- (c) the nature of the proposal, including:
  - (i) the objective;
  - (ii) the title of any Act(s) to be amended; and
  - (iii) the legislative measures proposed;
  - (iv) justification for any proposed retrospective dates of effect and an explanation of any adverse impact;
- (d) the reason why the minister regards Cabinet consideration as unnecessary;
- (e) the outcome of any consultation with other ministers or agencies;
- (f) ORR's advice as to compliance with the RIS requirements and the adequacy of the level of analysis (where a RIS is required, it should be attached);
- (g) the Treasurer's approval for proposed exceptions to the *Trade Practices Act 1974/Competition Code*;
- (h) any timing considerations, including deadlines for introduction or passage;
- (i) the way in which the proposal is to be effected: eg. inclusion in the XYZ Bill already on the approved legislation programme; addition of a new bill to the programme; inclusion of a bill on the programme for the next sitting period;
  - (i) a request for a variation to the programme may be required and if so should accompany the request for minor policy approval (see paragraphs 2.23 to 2.31);
  - (ii) if inclusion of the proposal in a portfolio bill is envisaged, OPC should be consulted before the letter is sent; and
- (j) the name and telephone number of a departmental contact officer.

4.18 When approval is sought for a number of proposals, information about these should be set out in an attachment to the minister's letter. If information under any of the requirements listed above would be the same for all proposals, undue repetition should be avoided by providing that information once only, in the covering letter.

4.19 Before finalising the letter from a minister to the Prime Minister, departments should consider whether they may be able to expedite the approval process by giving advance notice to the Legislation Section and discussing the proposal with the relevant policy area in PM&C. These steps are essential if minor policy approval is being sought urgently.

4.20 Departments are requested to fax to the Legislation Section (by secure fax or on 6271 5664 depending on the sensitivity of the content <sup>6</sup>) an advance copy of the

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<sup>6</sup> Information should not be e-mailed to the Legislation Section via Internet or other non-secure links as this does not provide a safe means for transmitting legislative proposals.

minister's letter to the Prime Minister requesting minor policy approval. A copy of the signed letter should be faxed to the Section as soon as possible. The Legislation Section cannot submit a proposed reply for signature until it has received a copy of the letter signed by the minister.

4.21 A sample of a letter seeking minor policy approval is at appendix F.

### **Ministerial approval**

4.22 If the proposal does not involve any change in policy and is essentially a technical or drafting amendment to remedy errors or defects in existing legislation, the minister may approve the proposed legislation changes without seeking approval from Cabinet or the Prime Minister.

### **First Parliamentary Counsel approval**

4.23 PBC has agreed that First Parliamentary Counsel can approve technical amendments of the kind that would otherwise be suitable for inclusion in a Statute Law Revision Bill. This would include corrections of typographical errors such as incorrect spelling, incorrect numbering of paragraphs, incorrect references to sections or titles of other Acts, updating (including modernisation of style) and repeal of spent legislation.

### **Announcement of legislation in advance of introduction**

4.24 Media releases should not be issued until approval of a proposal has been given. They should not specify when legislation will be introduced. Statements should indicate only that a bill will be introduced as soon as possible consistent with the government's legislation priorities.

4.25 The practice of announcing an intention to introduce legislation to operate with effect from the date of the announcement should be adopted only where there is some special justification; for example, where there is a need to correct a deficiency in revenue laws. Media releases announcing legislation that is to operate with immediate effect should:

- (a) indicate the essential features of the proposed legislation;
- (b) commit the government to introduction of the legislation as soon as possible consistent with the government's legislation priorities; and
- (c) be approved by Cabinet (as attachment to the relevant submission) or by the Prime Minister and other ministers concerned.

4.26 Once a media release announcing amendments to the taxation law has been issued, regard should be had to Senate order of continuing effect No. 23 which requires introduction of the bill within six months of the announcement of the measure.

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4.27 The requirement to indicate the essential features of the proposed legislation means that the legislation should not be announced until the policy development process is well advanced and policy approval has been obtained. A premature announcement of a new policy can lock the government into a legislative scheme that may turn out to be unduly complex or ineffective.



## CHAPTER 5: TYPES OF BILLS

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5.1 In preparing bids or requests for variations, departments should give careful consideration to the appropriate type of bill to implement a proposal. The appropriate choice of bill can assist in minimising the volume of legislation in a sitting period.

### The options

#### PORTFOLIO BILLS

5.2 Portfolio bills may include amendments to several Acts within a portfolio or to certain related legislation within the portfolio and are appropriate for:

- (a) minor and relatively non-controversial amendments to a range of legislation within the portfolio;
- (b) non-urgent amendments of an administrative or housekeeping nature (these should be stock-piled until a convenient opportunity arises to include them in a bill).

5.3 The extent of the portfolio legislation being amended would normally be reflected by the title of the bill, eg. an Agriculture, Fisheries and Forestry Legislation Amendment Bill could contain amendments to a range of legislation within the Agriculture, Fisheries and Forestry portfolio, while a Fisheries Legislation Amendment Bill would contain amendments to legislation relating to fisheries matters.

5.4 Departments should try to limit their use of portfolio bills to one per sitting period.

#### BILLS SPECIFIC TO ONE SUBJECT OR AMENDMENT OF ONE ACT

5.5 A separate bill is appropriate for:

- (a) major new policy proposals not previously included in any legislation;
- (b) sensitive policy issues which are likely to raise major political considerations or lengthy debates in one or both houses of Parliament;
- (c) the imposition of a tax (see section 55 of the Constitution);
- (d) the imposition of a customs duty (see section 55 of the Constitution); and
- (e) the imposition of an excise duty (see section 55 of the Constitution).

5.6 These separate bills would normally be titled to reflect the Acts that they are amending, eg. the Aboriginal and Torres Strait Islander Commission Amendment Bill to amend the *Aboriginal and Torres Strait Islander Commission Act 1989*, or the

major policy initiative they are implementing, eg. the Telstra (Dilution of Public Ownership) Bill.

#### ANNUAL APPROPRIATION BILLS

5.7 These bills appropriate funds for straightforward expenditure schemes where a specially tailored legislative scheme is not needed.

#### STATUTE LAW REVISION BILL

5.8 A Statute Law Revision Bill makes technical amendments to a number of Commonwealth Acts. The amendments included in such a bill deal only with tidying up, correction of errors, updating (including modernisation of style) and repeal of spent legislation. No proposals involving changes of policy will be included in a Statute Law Revision Bill. The Office of Parliamentary Counsel will prepare a Statute Law Revision Bill when time permits (usually only during an election period). As compilation of these bills is infrequent, these technical amendments should be made on an ongoing basis in portfolio or separate bills.

5.9 Where OPC considers that a matter is purely formal (for example, correction of errors, repeal of spent legislation, modernisation of style or a standard provision) and thus suitable for inclusion in a Statute Law Revision Bill, First Parliamentary Counsel may approve the amendment and its inclusion in a portfolio bill.

#### **Closing off portfolio bills for introduction**

5.10 First Parliamentary Counsel has a discretion to “close off” a portfolio bill when it becomes too lengthy or is required for introduction.

#### **Cognate debate of several bills**

5.11 Related bills within a portfolio or across portfolios should be bid for as a package and brought forward at the same time for the legislation approval process and introduction to enable the bills to be taken together or for a cognate debate (see paragraphs 13.27 to 13.28, 14.22 to 14.23).

#### **Office of Parliamentary Counsel (OPC) Client Advisers**

5.12 Departments can seek advice on matters in this chapter from their OPC Client Adviser (a senior drafter nominated to advise their department on certain matters relating to legislation). Lists of Client Advisers are regularly circulated to LLOs. First Parliamentary Counsel’s Executive Assistant (phone 6270 1404) can give up-to-date information on the Client Adviser for each department.

## CHAPTER 6: PREPARATION OF DRAFTING INSTRUCTIONS

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### **Preliminary drafting instructions**

6.1 Preliminary drafting instructions should be prepared and circulated to interested departments and authorities at the time of preparation of a Cabinet submission which proposes measures involving legislation. This ensures that the precise nature of the proposal is understood when it is put to Cabinet and that all the major issues are raised. Drafting instructions should not be attached to the submission (see paragraph 4.7(e)).

6.2 Departments and authorities receiving copies of the preliminary drafting instructions should provide comments to the instructing department in sufficient time to enable either the submission to be amended or the comments to be included in the coordination section of the submission. Any comments provided should be copied to all other departments and authorities consulted on the submission.

### **Final drafting instructions to be provided within 5 working days**

6.3 If the minister's recommendations in a submission are wholly or substantially accepted by Cabinet, final drafting instructions are to be approved by the minister responsible and lodged with OPC within 5 working days after receipt by the instructing department of the Cabinet Minute. Where the Cabinet decision requires major changes to the original proposal in the submission, the instructions are to be provided to Parliamentary Counsel within **10** working days of the Minute being received by the instructing department. If these deadlines cannot be met, the department should consider giving provisional instructions (identified as such) to OPC.

### **Responsibility for instructions and consultations**

6.4 Only the instructing department may instruct Parliamentary Counsel (see paragraphs 1.17 to 1.21 for an explanation of the instructing department). Where consequential amendments to other minister(s) legislation are proposed, the instructing department should consult the department(s) of the other minister(s) about the drafting instructions. This may involve seeking the clearance of other departments for relevant parts of drafting instructions. Any disagreement about who is to issue instructions should be resolved before the policy is approved by Cabinet. If the matter cannot be resolved at officer level, ministers should be consulted as soon as possible and the matter referred to the Prime Minister for resolution if necessary.

### **Departmental instructing officers**

6.5 A senior officer familiar with the policy aspects of the proposal should be nominated as the instructing officer to whom inquiries may be addressed. That officer must be of sufficient seniority to speak on behalf of the department and to take decisions on details arising in the course of drafting without further reference to the department, unless a major issue of policy is involved. Where a department has a legal or legislation area, officers from that area should also be involved in both the preparation of initial drafting instructions and the processes of working with OPC to develop and finalise the bill.

### **Drafting instructions**

6.6 The Office of Parliamentary Counsel accepts drafting instructions in different forms depending on the nature of the drafting task and the availability of resources. In ordinary circumstances, First Parliamentary Counsel will not allocate a bill to a drafter until written instructions for the bill are received (see paragraph 6.7). In certain cases, however, a drafter may be assigned to deal with instructing officers before written instructions are available (see paragraphs 6.8 to 6.9).

### **Written drafting instructions**

6.7 The purpose of written drafting instructions is to ask OPC to prepare legislation to achieve specified objectives. Written instructions also indicate a genuine commitment by instructors to progress the legislative project. Instructions must:

- (a) *be complete, accurate and comprehensive* - instructions should not just paraphrase a Cabinet Minute. Instructions must provide accurate information on all relevant matters of detail intended to be covered by the legislation;
- (b) *be written in ordinary, non-legal language. Do not attempt to draft the bill yourself - that is the function of Parliamentary Counsel.* In all cases:
  - (i) avoid technical jargon - if specialised terms and technical language are necessary, explain the meaning;
  - (ii) be consistent - for one concept, use the same word or phrase throughout the instructions;
  - (iii) explain the object or purpose of the provision or amendment requested - Parliamentary Counsel may be able to suggest a better way of drafting the legislation to achieve that purpose; and
  - (iv) use gender neutral language;
- (c) *refer to the Cabinet authority for the legislation* - copies of Cabinet Minutes requiring legislation are sent to OPC by the Cabinet Secretariat; departments should not send copies of Cabinet Minutes to OPC;

- (d) *be supported by authority* - if there are additional matters proposed for inclusion in a bill which are not covered by the Cabinet authority, approval must be obtained from either the Prime Minister or the minister to include these amendments (see chapter 4). Details of these approvals must also be provided to Parliamentary Counsel;
- (e) *refer to all relevant consultation processes* - identify any necessary consultations (with other agencies or outside government), and specify whether these have taken place or are planned (see also paragraphs 1.7 to 1.11 and 4.11 to 4.16);
- (f) *refer to all relevant statutory provisions and to any related legislative proposals* - it is particularly important to identify any other proposed changes to the relevant legislation that are currently in the Parliament, being drafted or being considered by the department;
- (g) *if appropriate, identify any relevant target audience for the bill* - advice on identifying target audiences (ie those groups affected by or using the legislation) can be sought from the OPC Client Adviser; and
- (h) *be accompanied by any useful supporting or background material which would help Parliamentary Counsel draft the requested legislation.* Background information must be clearly distinguished from the instructions. If the Law Reform Commission or a similar body has produced a draft of the proposed bill, it should be attached to the instructions. Attaching somebody else's draft bill is not an adequate substitute for proper instructions. If the legislation arises from a legal opinion or a court judgement, a copy of the opinion should be included or a reference made to the judgement.

### **Early access to drafters**

6.8 In certain cases, First Parliamentary Counsel may agree to assign a drafter to a drafting project before written instructions are received. This might happen for a large and complex drafting project, especially one that needs to be completed to tight deadlines, or for a small but urgent and politically significant task. In some of these cases, the drafter may then accept all instructions orally. In the case of a large and complex task, the drafter may be able to advise on the legislative consequences of particular policy approaches, and help instructors refine their policies before these are set out in written instructions. In such cases, the drafter may still require written instructions on particular aspects of the project, or may require the instructors to participate in the development of a drafting outline or blueprint, before any draft provisions are produced.

6.9 If a departmental instructing officer considers that a project is suitable to be allocated to a drafter before written instructions are available, he or she should discuss this with First Parliamentary Counsel early. First Parliamentary Counsel will assess the request having regard to the nature and timeframe of the project, the importance of the project within the government's legislation programme as a whole, and the availability of drafting resources. An instructing officer should never assume that they will be able to bypass the preparation of written instructions.

### **General principles drafting**

6.10 Instructors should consider whether their policy could be implemented by legislation drafted in general principles rather than “black-letter” provisions. In some cases, legislation drafted in general principles might be easier for the majority of affected people to comply with, although those who wish to test the limits of the legislation would need to ask the courts to interpret it. However, it is obviously much harder to predict how general principles legislation will be applied by the courts.

6.11 In considering whether general principles drafting would be suitable for a particular legislative project, instructors should think about:

- (a) how important it is to have certainty in the operation of the legislation;
- (b) whether it is appropriate to expect those using the law to seek interpretations from the courts; and
- (c) whether the benefits of general principles drafting to some users outweigh the costs of increased reliance on the court system to deal with more difficult cases.

6.12 These matters should be discussed with the OPC Client Adviser before a final decision is made (and certainly before a proposal for general principles drafting is included in a Cabinet submission).

### **Specific matters which may need consideration**

6.13 The following paragraphs provide information on a number of specific matters which departmental instructing officers will need to consider and on which they may need to consult the Attorney-General’s Department, the Department of the Environment and Heritage, the Department of Finance and Administration or the Department of Transport and Regional Services before finalising drafting instructions.

#### COMMENCEMENT

6.14 Section 5 of the *Acts Interpretation Act 1901* provides that an Act commences on the twenty-eighth day after the day on which the Act receives the royal assent unless other provisions are made in the Act. Other options for commencement are:

- (a) the date of royal assent;
- (b) a specified date;
- (c) a date which is dependent upon some other specified event (such as the commencement of another Act);
- (d) a date to be proclaimed (generally used if preparatory work is required before the Act commences, such as preparation of regulations or other legislative instruments or setting up administrative arrangements - see paragraph 6.17);  
or
- (e) bringing parts of an Act into operation on different dates using any or a combination of the above methods.

6.15 In determining the appropriate commencement arrangements for Acts or sections of Acts, departments need to consider the time that will be required for the preparation, signing and gazettal of proclamations, regulations and other legislative instruments, instruments of appointment or other matters after royal assent and before commencement.

*Use of a specified date*

6.16 Departments should be aware of the problems that will arise if a bill does not pass through the Parliament before a specified date. For example where it becomes apparent that a specified date will pass before the bill has been passed by the Parliament, it would be necessary to draft a government amendment (and seek policy approval) to postpone the specified date or change the commencement provision to another option. In cases where a bill is passed shortly before the specified date, it may be difficult to achieve assent before the date.

*Use of proclamation provisions*

6.17 As the government is required to report to the Senate on unproclaimed legislation at regular intervals (in response to the “Macklin motion”<sup>7</sup>), proclamation provisions in bills are generally drafted with a deadline placed on the time within which an Act should be proclaimed, eg. that the Act should commence on a specific date or within six months of royal assent, or with an automatic repeal provision if the Act remains unproclaimed. This practice avoids legislation with an open-ended commencement date which tends to attract adverse comment from the Senate Standing Committee for the Scrutiny of Bills (see paragraphs 8.19 and 14.53 to 14.55).

RETROSPECTIVE LEGISLATION

6.18 Provisions that have a retrospective operation adversely affecting rights or imposing liabilities are to be included only in exceptional circumstances and on explicit policy authority (see sub-paragraphs 4.7(g) and 4.17(c), and paragraph 8.19). (See also paragraphs 4.24 to 4.27 concerning announcement of legislation to operate from the date of announcement.)

OPERATION OF COMMONWEALTH ACTS IN EXTERNAL TERRITORIES

6.19 The Acts constituting Australia’s various external territories provide either that Commonwealth Acts do extend to the territory concerned, or that they do not extend to the territory concerned. In each case the general rule can be displaced by a contrary intention expressed in relation to particular Commonwealth Acts. The current position is set out below.

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<sup>7</sup> On 29 November 1988, the Senate agreed to a motion moved by Senator Macklin. This order of the Senate was modified on 22 November 1999. Senate standing order 139(2) requires that “There shall be laid on the table, on or before 31 August each year, details of all provisions of Acts which come into effect on proclamation and which have not been proclaimed, together with a statement of reasons for their non-proclamation and a timetable for their operation”.

<b>External territories to which Commonwealth Acts do extend</b>	<b>External territories to which Commonwealth Acts do not extend</b>
Christmas Island	Norfolk Island
Cocos (Keeling) Islands	Coral Sea Islands
Ashmore and Cartier Islands	Heard Island and McDonald Islands
	Australian Antarctic Territory

6.20 Proposals to amend an Act which extends to the external territories, or to introduce a new Act extending to any of the external territories, must be referred at an early stage to:

- (a) the Department of Transport and Regional Services if the impact is on the Christmas Island, Cocos (Keeling) Islands, Ashmore and Cartier Islands, Norfolk Island, or Coral Sea Islands); and
- (b) the Antarctic Division in the Department of the Environment and Heritage if the impact is on Heard Island and McDonald Islands, or the Australian Antarctic Territory.

Consultation is essential as the proposed legislation may have unintended or undesirable consequences in external territories.

### ***Norfolk Island***

6.21 In addition, the Commonwealth is committed to consulting the Norfolk Island Government on all legislative proposals affecting that territory. Consultation, via the Department of Transport and Regional Services, should occur at an early stage for all proposals which have the potential to affect the territory either directly or indirectly.

6.22 Norfolk Island is an integral part of Australia and has no international status separate from Australia. It has been granted a measure of internal self-government by the Federal Parliament under the *Norfolk Island Act 1979*. While the powers of the Norfolk Island Assembly are broadly similar to those of the ACT and Northern Territory Assemblies, the Norfolk Island Government also exercises some powers normally reserved to the Commonwealth (eg immigration, customs and quarantine) as well as local government and many state powers.

### LEGISLATION BINDING THE CROWN

6.23 An Act normally will not bind the Commonwealth Government, a state government or the Northern Territory or Norfolk Island Governments unless there is a specific provision or it is necessarily implied that it binds the Crown. If it is proposed that an Act bind the Crown in right of Norfolk Island, the Department of Transport and Regional Services must be consulted as the Norfolk Island Government must, in turn be consulted.



## SAVING AND TRANSITIONAL PROVISIONS

6.24 Where the law on a particular subject matter is to be altered, Parliamentary Counsel needs to be instructed on the relationship between the new law and the old law. In particular, departmental instructing officers should address:

- (a) the application of the new legislation to cases that arose before the alteration;
- (b) any requirement for a transitional period during which the new law needs modification or special provisions are required; and
- (c) to what extent, if any, things done under the old legislation are to have effect under the new legislation.

## JURISDICTION OF COURTS

6.25 Special provisions are required to confer new jurisdiction on the Federal Court of Australia and, in many cases, on territory courts. The Attorney-General's Department must be consulted on any proposal to confer jurisdiction on courts or tribunals or to exclude matters from the jurisdiction of courts or tribunals which would otherwise have jurisdiction (see paragraph 6.26).

## BURDEN OF PROOF, CONCLUSIVE CERTIFICATES, OFFENCES AND PENALTIES

6.26 The Attorney-General's Department must be consulted on provisions which:

- (a) reverse the burden of proof in criminal proceedings (to put the onus on the defendant);  
this should be used only when the matters concerned are within the exclusive knowledge of the defendant or proof of the matters by the Crown would be difficult;
- (b) empower a person to certify conclusively that certain facts exist;
- (c) create criminal offences and impose pecuniary or imprisonment penalties; or
- (d) empower officials to enter premises or examine property or documents.

## SECURITY PROVISIONS

6.27 The Attorney-General's Department must be consulted at an early stage on the scope of any new security provisions and on changes to existing security provisions. Security provisions in legislation are to be no broader than is required for the purposes for which they are enacted, particularly bearing in mind the policy underlying the *Freedom of Information Act 1982*.

## ADMINISTRATIVE DISCRETIONS

6.28 Provisions conferring administrative discretions must be discussed with the Attorney-General's Department. The following issues need to be considered:

- (a) who should exercise administrative discretions: the Governor-General, a minister, a statutory body or office holder, or a departmental officer?

- (b) should the legislation include statutory criteria according to which discretions are to be exercised; if not, should provision be made for the minister to table principles or guidelines in Parliament? This is particularly relevant if there is to be external review of decisions.

6.29 Legislation that confers open-ended discretions is likely to attract criticism in Parliament, particularly from the Senate Standing Committee for the Scrutiny of Bills (see paragraphs 8.19 and 14.53 to 14.55).

#### REVIEW OF ADMINISTRATIVE DECISIONS

6.30 Where legislation contains provisions conferring discretionary powers (for example, the giving of approvals, the granting of licences or permits, or the imposition of some penalty or obligation) the exercise of these powers should normally be subject to some form of external review on the merits.

6.31 In most cases the appropriate review body will be the Administrative Appeals Tribunal. Strong reasons need to be advanced to create a specialist review tribunal. Where legislation confers power to give directions or to make determinations of a legislative nature then it may be preferable to require the decision, direction or determination to be tabled in the Parliament and possibly to be subject to parliamentary disallowance. The *Administrative Decisions (Judicial Review) Act 1977* (the AD(JR) Act) automatically applies in relation to new legislation unless explicitly excluded. The AD(JR) Act enables the Federal Court to review the lawfulness of a decision made under legislation or conduct leading up to or delays in the making of such a decision, and also provides an entitlement for a person to obtain a statement of reasons for a decision which is made under legislation. Very strong reasons need to be advanced to support proposed exclusion.

6.32 The Attorney-General's Department must be consulted on the review procedures to be incorporated in proposed legislation (Acts or Regulations) which confer discretionary powers upon ministers or officials, and in particular proposals affecting the operation of administrative review tribunals, judicial review or review by the Ombudsman, the Inspector-General of Intelligence and Security or the Public Service and Merit Protection Commission. In the latter three cases, PM&C should also be consulted. These matters should be raised at an early stage in the preparation of legislative proposals as part of the development of the Cabinet submission.

6.33 Particular note should be taken of the Administrative Review Council's (the ARC's) role when Cabinet submissions and proposed legislation (Acts or Regulations) with administrative review implications are being prepared. The Attorney-General's Department will consult the ARC (which has been created to advise the Government on the review system) on issues with substantial review implications.

## INTERNATIONAL OBLIGATIONS UNDER HUMAN RIGHTS INSTRUMENTS

6.34 The Attorney-General's Department should be consulted on proposed provisions that may be inconsistent with, or contrary to, an international instrument relating to human rights, in particular:

- (a) the International Covenant on Civil and Political Rights, set out in Schedule 2 of the *Human Rights and Equal Opportunity Commission Act 1986*;
- (b) instruments dealing with discrimination on the ground of sex, race or national or ethnic origin as set out in Schedules to the *Sex Discrimination Act 1984* and the *Racial Discrimination Act 1975* and discrimination in the area of employment and occupation as set out in Schedule 1 of the *Human Rights and Equal Opportunity Commission Act 1986*.

## FINANCIAL ASSISTANCE FOR LITIGATION

6.35 The Attorney-General's Department should be consulted before a proposal to provide Commonwealth funded legal or financial assistance for parties to litigation or tribunal hearings is submitted to Cabinet.

## MENTION OF SPECIFIC MINISTERS AND DEPARTMENTS

6.36 Particular ministers or departments generally should not be specified in legislation. The minister or department administering the legislation is sufficiently identified by the Administrative Arrangements Order (AAO) and Part V of the *Acts Interpretation Act 1901* (see paragraphs 1.17 to 1.19). There will be exceptions to this rule, for example, to preserve the responsibilities of the Attorney-General in legal processes and the Treasurer for borrowings. If it is necessary that a particular minister be identified by the legislation, it is preferable to refer either to the minister responsible for administering a key piece of portfolio legislation related to the proposal (eg. the minister responsible for administering the *Seat of Government (Administration) Act 1910* for ACT matters) or to the minister responsible for a particular matter (eg. the minister responsible for constitutional development of the ACT (taken from matters listed in the AAO)).

6.37 It is generally not appropriate to put statutory obligations on the minister or department administering an Act to consult with other ministers or departments. Any proposals to include such statutory obligations should have the specific approval of Cabinet or the Prime Minister.

## DELEGATIONS

6.38 The class of potential delegates should be as limited as practicable. Important powers (for example, a power vested in a minister to give a conclusive certificate) should be capable of delegation only to very senior officials such as the secretary to the department or the chief executive officer of the authority concerned. The class of delegates should be defined - delegation to "any person" is not an appropriate delegation of power.

## CREATION OF STATUTORY AUTHORITIES OR COMMONWEALTH OWNED COMPANIES

6.39 The government's general position is that administration by a department (or, where relevant, a company structure or executive agency) is preferable to the creation of a statutory authority. Only where it is clear that there is a need for statutory powers to be exercised and where it is clear that those powers need to be exercised by a body that is to some degree independent of government should consideration be given to the establishment of a statutory authority.

## FINANCIAL PROVISIONS

6.40 All provisions which are in any way related to the allocation, use or control of Commonwealth moneys should be determined in consultation with the Department of Finance and Administration.

6.41 Standing or special appropriations should be included in legislation only when it is necessary or desirable to:

- (a) create a legal entitlement to a benefit, and to provide that benefit to everyone who satisfies the criteria set out in the legislation without any limit on the funds available (eg. the age pension);
- (b) demonstrate the independence of an office from Parliament and the Executive by providing for the automatic payment of the remuneration of holders of the office (eg. the salaries of judges);
- (c) demonstrate Australia's ability to meet its financial obligations independently of parliamentary approval of funds (eg. the repayment of loans);
- (d) pay money urgently in advance of the next annual appropriation bill where, because of the nature or amount of the payment, the Advance to the Minister for Finance and Administration is not suitable (eg. urgent payment of large amounts for natural disaster relief); or
- (e) provide for calendar year funding arrangements and other special circumstances which would be difficult to accommodate in annual appropriation bills or where there may be substantial drawing on the Advance to the Minister for Finance and Administration.

6.42 As a general principle, any legislation authorising expenditure programmes should require that decision-makers administer the programme within the funds approved in the Budget, and provide an appropriate means by which funds available can be rationed if necessary (eg. by adjustments to eligibility criteria, the levels of grant, or deferment of payment).

## ACCOUNTING AND AUDIT ARRANGEMENTS

6.43 Departments should consult the Department of Finance and Administration and the Australian National Audit Office on appropriate accounting and audit provisions.

## INTERNATIONAL CONVENTIONS AND TREATIES

6.44 Bills relating to international conventions and treaties should not include clauses providing for parliamentary approval of the treaty or convention. The Office of Parliamentary Counsel will advise on the form of such bills.

### **Subordinate legislation: regulations, ministerial or agency declarations, principles and guidelines**

6.45 Matters of detail and matters liable to frequent change should be dealt with by subordinate legislation, for example:

- (a) fees to be paid for various services;
- (b) forms for use in connection with legislation;
- (c) addresses where applications should be lodged; and
- (d) times within which certain steps should be taken.

6.46 A variety of other matters may be included in subordinate legislation in order to streamline the primary legislation. However, the desirability of simplifying primary legislation is only one consideration in this area, and others (such as parliamentary control of certain matters) may be more important in particular cases (see also paragraphs 1.12 to 1.15). OPC Client Advisers can advise on this issue when instructions are being prepared. The drafter may also wish to discuss the location of certain provisions during the drafting process.

6.47 The Office of Parliamentary Counsel needs to be aware of the general scope of any intended regulations and other legislative instruments so that a sufficiently wide regulation-making power or authorising provision is included in the legislation. For example, where regulations are to confer judicial power, impose penalties, require the charging of fees or require the furnishing of a statutory declaration, express provision conferring power for these purposes must be included in the Act. Legislative instruments for which there is no clear authorising provision in the relevant Act may become a focus of the Senate Standing Committee on Regulations and Ordinances (see paragraph 1.14) and may be disallowed as part of the parliamentary process.

6.48 The Office of Legislative Drafting in the Attorney-General's Department is available to provide advice on issues connected with legislative and non-legislative instruments, including:

- (a) the drafting of instruments;
- (b) legislative and non-legislative options for achieving and implementing policy objectives;
- (c) the power to make instruments; and
- (d) the making, publication, disallowance and interpretation of instruments.

**Form of draft bill - use of improved drafting style**

6.49 Instructors should be aware of section 15AC of the *Acts Interpretation Act 1901*, which provides:

Where:

- (a) an Act has expressed an idea in a particular form of words; and
- (b) a later Act appears to have expressed the same idea in a different form of words for the purpose of using a clearer style;

the ideas shall not be taken to be different merely because different forms of words were used.

6.50 This frees the drafter to improve on existing legislative forms where appropriate. Instructors who are unsure how the provision might apply to their bill should raise this matter with the drafter.

## CHAPTER 7: DRAFTING A BILL

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### Developing a draft bill

7.1 Written drafting instructions, if prepared, provide the starting point for discussions with OPC. However, clarifications of those instructions, further instructions, and comments on draft provisions may be provided orally, by telephone or in meetings, if this is convenient. On occasions, a drafter will request that a potentially controversial instruction be confirmed in writing.

7.2 After appropriate discussions with instructing officers (which may first lead to the development of a drafting outline or blueprint), OPC will prepare a draft bill.

### Responsibilities of the Office of Parliamentary Counsel (OPC) and the instructing department

7.3 The instructing department is to arrange with OPC to have copies of the draft bill sent to appropriate departments and authorities for comment. The Office of Parliamentary Counsel may also send copies to any department or authority considered to have an interest. Copies of the draft bill are automatically provided by OPC to PM&C, the Department of Finance and Administration and the Public Service and Merit Protection Commission just prior to the legislation approval process.

### Comments to be provided within 5 working days

7.4 Departments and authorities consulted on a bill are to provide their comments in writing to the instructing department within 5 working days after receipt of the draft bill. Comments are to be copied, by the department providing the comments, to OPC and to other departments and authorities which receive copies of the bill. The instructing department must also provide its comments to OPC within 5 working days if other departments or authorities are not being consulted, or within 10 working days if there is such consultation.

### Disagreement on the terms of a bill

7.5 If departments, agencies and relevant ministers cannot agree upon the terms of a bill, the matter may need to be referred to Cabinet or, for minor matters, to the Prime Minister.

### Ministerial clearance of a bill

7.6 When the department and OPC have agreed on the terms of a draft bill, the department must submit it (and the explanatory memorandum) to the minister for approval and for his or her authority to advise OPC that the bill is satisfactory. See also paragraph 8.6 and chapter 9.

7.7 When a bill has been cleared by the minister, OPC arranges for copies to be sent to the Legislation Section, PM&C for preparation of a Legislation Approval Submission. Parliamentary Counsel also provides a memorandum identifying the policy authority for the bill. If the drafter is not satisfied that the contents of the bill have appropriate policy authority, this will be set out in the memorandum. Usually, the drafter will raise any gaps in authority with instructors in time for the necessary authority to be sought before the Parliamentary Counsel memorandum is finalised.

### **Security and advance disclosure/exposure of draft bills**

7.8 Draft bills and all associated material, including related correspondence, drafting instructions and typed or manuscript versions of a bill, are confidential to the government. Access should be on a “need to know” basis.

7.9 Details of bills are not to be made public before their introduction into the Parliament unless disclosure is authorised by Cabinet or the Prime Minister. Ministers who wish to release the draft of a bill must write to the Prime Minister seeking approval to do so if Cabinet approval has not previously been given (see paragraph 4.7(i)).

7.10 Copies of bills sometimes need to be provided to state ministers or officials, particularly where complementary legislation has to be prepared. Ministers should write to the Prime Minister seeking approval to make copies available. Drafts are provided on a confidential basis in the expectation that the recipient will not breach the confidence.

7.11 In seeking approval from the Prime Minister for a draft bill to be exposed, ministers should indicate whether all measures in the bill have policy authority and, if not, explain why exposure should proceed in advance of policy authority. Where necessary policy authority should be sought in the same letter.



## CHAPTER 8: PREPARING THE SUPPORT MATERIAL: THE EXPLANATORY MEMORANDUM AND SECOND READING SPEECH

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### EXPLANATORY MEMORANDUM

#### The purpose of an explanatory memorandum

8.1 An explanatory memorandum is a companion document to a bill, to assist members of Parliament, officials and the public to understand the objectives and detailed operation of the clauses of the bill.

8.2 The *Acts Interpretation Act 1901* (section 15AB) allows an explanatory memorandum (and also a second reading speech – see paragraph 8.28) to be used by a court to interpret legislation to:

- (a) confirm that the meaning of a provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act; or
- (b) determine the meaning of a provision when:
  - (i) the provision is ambiguous or obscure; or
  - (ii) the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act leads to a result that is manifestly absurd or unreasonable.

#### When an explanatory memorandum is required

8.3 An explanatory memorandum is usually provided for every bill introduced in Parliament except for the annual appropriations bills (see paragraph 8.27 for other exceptions). The minister presents the memorandum during the process of introducing the bill. To meet the requirements of the *Acts Interpretation Act 1901* (paragraph 15AB(2)(e)), the explanatory memorandum, and any supplementary, revised or replacement explanatory memorandum or correction to an explanatory memorandum must be presented to the House or the Senate. Explanatory memoranda should be printed by your print provider.

8.4 Preparation and printing of the explanatory memorandum are the responsibility of the instructing department. Departments should commence preparation of the explanatory memorandum as soon as an early draft of the bill is received from OPC. The memorandum must be available for consideration by the

Parliamentary Secretary to Cabinet as part of the legislation approval process at the same time as the finalised bill; printing of the explanatory memorandum usually occurs after the approval process. (See chapter 9 on the legislation approval process and appendix O on the copies of documents required.)

### **The form and content of an explanatory memorandum**

8.5 An explanatory memorandum must have:

- (a) a cover sheet (see paragraphs 8.9 and 8.10);
- (b) a general outline (see paragraphs 8.11 to 8.17) including:
  - (i) a financial impact statement;
  - (ii) a regulation impact statement, where required; and
- (c) notes on clauses or on amendments (see paragraphs 8.18 to 8.20).

8.6 An explanatory memorandum is circulated by authority of the responsible minister (either the portfolio minister or another minister in the portfolio), irrespective of whether he or she is a minister in the house in which the bill is to be introduced. The memorandum should be submitted to the minister for approval at the same time as the bill prior to the legislation approval process (see paragraph 7.6 and chapter 9).

8.7 As the explanatory memorandum is available publicly once a bill is introduced, it should not contain any confidential material.

8.8 In its report of June 1995, the House of Representatives Standing Committee on Procedure expressed disappointment at the general standard of explanatory memoranda<sup>8</sup>. An explanatory memorandum must be written in plain English and should focus on explaining the effect and intent of the bill, or the amendments, rather than repeating the provisions. Information contained in the explanatory memorandum must be accurate and not misleading, and must reflect the final form of the bill to be introduced or the amendments to be moved (see chapter 10 for requirements where a bill is amended during passage).

#### COVER SHEET

8.9 The cover sheet should indicate:

- (a) the year(s) of the current Parliament (as shown on the bill), eg. 1998 or 1998-99;
- (b) a heading “The Parliament of the Commonwealth of Australia”;
- (c) the name of the house in which the bill is first to be introduced (see paragraph 12.4);

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<sup>8</sup> The House of Representatives Standing Committee on Procedure *Time for Review: Bills Questions and Working Hours - Report of the review of procedural changes operating since 21 February 1994*, June 1995, p6

- (d) the exact title of the bill;
- (e) a heading “Explanatory Memorandum”; and
- (f) a statement that the bill is circulated by authority of the Hon Yyy, Minister for Xxx.

8.10 Different information is required on the cover sheet of an explanatory memorandum depending on whether the memorandum is:

- (a) for a bill being introduced for the first time (appendix G);
- (b) a supplement to a memorandum (paragraphs 10.13 to 10.15 and appendix H);
- (c) a replacement for a memorandum (appendix I);
- (d) a correction to a memorandum (appendix J);
- (e) for use in the second house where the bill has been amended in the first house (appendix K); or
- (f) for more than one bill (paragraph 8.27 and appendix L).

#### GENERAL OUTLINE

8.11 The general outline should have:

- (a) the exact title of the bill across the top of the page (or, in the case of a supplementary explanatory memorandum, “Amendments to the XYZ Bill”);
- (b) a brief but clear statement of the purpose/objective of the bill;
- (c) an outline of why the bill is required, the effect of the principal provisions, and an explanation of the policy background;
- (d) a financial impact statement (see paragraphs 8.14 to 8.15); and
- (e) a full version of the regulation impact statement (RIS), where a RIS is required (see paragraphs 8.16 to 8.17).

8.12 The general outline commences on page 1 of an explanatory memorandum and should be sequentially numbered where the outline is more than one page. The statement of purpose/objective, the outline of the bill and financial impact statement should be kept to one page if possible. A sample general outline is at appendix M.

8.13 Additional copies of the general outline, including the financial impact statement, must be provided to the Legislation Section separate from the copies of the explanatory memorandum for use in the legislation approval process (see paragraph 9.12, and appendix O for the number of copies required). These general outlines are circulated to non-government parties in the Senate at the time of a bill’s introduction.

#### *Financial impact statement*

8.14 A financial impact statement follows immediately on from, and forms part of, the outline. It describes both the direct and indirect financial impact for the Commonwealth of the proposed bill including any savings, expenses, revenue losses or gains, or changes in net asset position or the fiscal balance resulting from the

proposal(s) (see appendix M). The financial impact of legislative proposals is to be shown to one decimal place in \$million, eg \$18.2m, \$0.5m. If it is not possible to provide precise figures, an estimate of savings, expenses, revenue losses or gains, impact on net assets or the fiscal balance or a statement of the variable factors and difficulties in estimating the impacts must be included. If it is not possible to provide even an estimate of the impacts, the statement should give a broad outline of the expected financial impacts and reasons why it is not possible to provide figures. If there is no financial impact, this should be indicated.

8.15 Where the bill provides for taxation concessions, the explanatory memorandum should explain why the taxation system is preferred to direct outlays for giving assistance. Any impact of the bill on industry and other sections of the community should be addressed in the regulation impact statement.

#### ***Regulation impact statement***

8.16 Responsibility for preparing a RIS lies with the department and the content of the RIS should be cleared by the minister. Nevertheless, a RIS should be prepared in consultation with ORR and in accordance with its *Guide to Regulation*<sup>9</sup>. See also paragraphs 2.9 to 2.14. The RIS follows the financial impact statement and forms part of the outline. A consultation statement should be incorporated into the RIS where consultation has been undertaken with those affected by the proposed legislation, in accordance with ORR's *Guide to Regulation*. The statement should explain the consultation process and state the views of the main interested parties.

8.17 Where ORR has advised that a RIS is not required in the explanatory memorandum, there should be no reference to the absence of a RIS. Neither should an explanation of why a RIS is not required or the advice from ORR to the department be included. If the RIS relates to particular schedules and not to the whole bill, this should be indicated at the beginning of the RIS. An explanation of why the RIS does not cover the whole bill should not be included.

#### NOTES ON CLAUSES

8.18 Notes on clauses are intended to be a companion explanation to the clauses of a bill. They should not simply repeat the words of the bill or restate them in simpler language. The notes should explain the purpose of the clause and relate it to other provisions in the bill, particularly where related clauses do not appear consecutively in a bill. Examples of the intended effect of the clause, or the problem it is intended to overcome, may assist in its explanation.

8.19 The House of Representatives Standing Committee on Procedure, in commenting on the standard of explanatory memoranda, quoted the following criticism by a member on one explanatory memorandum: "a prose rendering of each provision of this bill, a mere jargonistic paraphrase, (which) gives little understanding

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<sup>9</sup> Office of Regulation Review, Productivity Commission, *A Guide to Regulation*, 2<sup>nd</sup> Edition, December 1998, Internet: <http://www.pc.gov.au/orr>

of the operation of these provisions”<sup>10</sup>. Officers drafting explanatory memoranda should ensure that notes on clauses clearly and adequately explain their operation and purpose. Where a measure in a bill is likely to be the subject of comment by the Senate Standing Committee for the Scrutiny of Bills, the reasons for proceeding in the manner proposed in the bill should be explained in the explanatory memorandum (see paragraphs 6.17, 6.29 and 14.53 to 14.55).

8.20 Notes on clauses should commence on a new page, be serially numbered, and immediately follow the general outline, financial impact statement and, where required, the RIS. The notes should have internal paragraph numbers and a centered or shoulder heading for each clause or group of clauses. The heading should be the same as the heading in the bill for that clause or group of clauses. The pages should be numbered in series following on from the general outline. Sample notes on clauses are at appendix N.

### **Printing an explanatory memorandum**

8.21 An explanatory memorandum must be printed on international B5 size paper for presentation to Parliament. For the legislation approval process the explanatory memorandum should be on A4 paper.

8.22 The instructing department is responsible for arranging printing of the memorandum. This generally occurs after the memorandum has been approved by the ministers and cleared through the legislation approval process. The printer should be supplied with an original “camera ready” copy of the memorandum for printing. The department funds the setting up cost of printing, introduction copies and any additional copies required for their own purposes; AusInfo will bear the cost of any run-on copies it requires for sale. Departments should advise AusInfo of any anticipated large demand for particular legislation to ensure sufficient sale copies are printed. The text of the explanatory memorandum on disk should be supplied to the Table Offices and AusInfo for electronic conversion for the parliamentary network. See appendix O for information on technical requirements for the disk.

8.23 If it is necessary to arrange printing of the explanatory memorandum in advance of the legislation approval process, departments should contact the Legislation Section before arranging printing.

### **Distributing an explanatory memorandum**

8.24 The department is responsible for delivering copies of the explanatory memorandum to the Legislation Section for the legislation approval process, and to the Parliament and the PLOs prior to introduction. Copies should be delivered to both Table Offices before introduction in the first house. See appendix O for details of the number of copies required and their distribution.

<sup>10</sup> The House of Representatives Standing Committee on Procedure *Time for Review: Bills Questions and Working Hours - Report of the review of procedural changes operating since 21 February 1994*, June 1995, p6

### **Replacement explanatory memorandum/correction to a memorandum**

8.25 Where, before the passage of a bill, an explanatory memorandum is found to contain a mistake which needs correcting, it may be necessary to issue a replacement explanatory memorandum or a correction to the explanatory memorandum. A correction to an explanatory memorandum would normally be used where a minor correction is being made which could be contained on one or two pages. If the correction is more substantial or involves correction to several areas of the explanatory memorandum, then a replacement explanatory memorandum should be issued.<sup>11</sup> In any event, the department must alert the PLOs and the relevant Table Office to arrange for the minister to present the correction to the explanatory memorandum or the replacement explanatory memorandum to the Parliament without delay.

8.26 A sample cover sheet for a replacement explanatory memorandum and an example of a correction to a memorandum are at appendices I and J. See chapter 10 for information about supplementary explanatory memoranda.

### **Cognate bills and a combined explanatory memorandum**

8.27 A separate explanatory memorandum is normally required for every bill, including cases where two or more related bills are to be debated cognately. However, in those rare cases where a number of very closely related bills are introduced at the same time, a single document incorporating explanatory memoranda for all the bills may be used if this is the most convenient way to present the information. A combined explanatory memorandum is appropriate only where all the bills are short and simple and closely related and where a single outline and financial impact statement will adequately explain the operation and effect of all bills in the package. A sample cover sheet for a combined explanatory memorandum is at appendix L.

## **SECOND READING SPEECH**

### **The purpose of a second reading speech**

8.28 A second reading speech, explaining the purpose/policy objectives of a bill, is made or incorporated into Hansard by a minister on the second reading of a bill in both houses, ie when the bill is introduced into the first house and when it passes to the second house. In the House of Representatives the second reading speech is read immediately after the first reading of the bill. In the Senate the speech is normally incorporated in Hansard. As for the explanatory memorandum, the *Acts Interpretation Act 1901* (section 15AB) provides that the second reading speech may be considered by a court interpreting the legislation to which it relates (see paragraph 8.2).

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<sup>11</sup> A revised explanatory memorandum is prepared for the second house if the bill has been amended in the first house (see paragraphs 8.37 and 10.21).

### **A second reading speech is required for every bill**

8.29 A second reading speech is required for every bill, whether or not it is a companion or complementary measure to other bills being introduced at the same time. Where a number of related bills are introduced together, the purpose of the whole package may be outlined in the second reading speech for the principal bill, which is introduced first. The speeches relating to the complementary bills may be brief and simply outline how each fits into the package.

### **The content of a second reading speech**

8.30 The speech should explain the bill's background and its key policy objectives. The minister's objectives in relation to the bill, political considerations and intentions, and broader policy strategies which may span areas beyond the specifics of the bill, are appropriately spelt out in the second reading speech. A second reading speech should not provide detailed explanations of the bill or contain details of the financial impact; these are contained in the explanatory memorandum to be presented by the minister (see paragraphs 8.1 to 8.27).

8.31 Officers involved in drafting second reading speeches should bear in mind that speeches are read out by ministers in the House of Representatives. It is therefore important to ensure readability by avoiding such pitfalls as legalese, complicated sentence structure, information in tabulated form and detailed references to clauses of the bill or financial impact statements. LLOs are asked to double check the citations in second reading speeches to ensure that the titles of Acts and bills are accurate.

### **The length of a second reading speech**

8.32 The pressures on parliamentary business time are such that it is critical that second reading speeches be kept as brief as possible with a focus on the key policy objectives of the legislation. With the exception of the Budget speech, the maximum time allowed is 30 minutes in the House of Representatives (standing order 91) and 20 minutes in the Senate (standing order 189). Having regard to the pressures on programming of government business, it is expected that a speech of up to 10 minutes would normally be sufficient to explain the bill and its key policy objectives.

### **Non-inclusion of formal words at the beginning and end of a second reading speech**

8.33 The procedural wording for moving the second reading and presenting the explanatory memorandum will be provided to ministers by the Table Office of the relevant parliamentary department. Do not include any such procedural wording in the second reading speech. Where a combined explanatory memorandum has been prepared for several bills, this should be drawn to the attention of the Table Office so the procedural wording for each speech can be adjusted accordingly.

### **References to ministers, Speaker, President, House or Senate and procedures in speeches**

8.34 The headings on speeches for bills introduced in the Senate should not name a particular minister as the speech may be delivered by the duty minister (see paragraph 14.8). References to house specific terms such as the Speaker, President, House, Senate, members or senators should be avoided so that the speech can be used in the second house if the bill is not amended by the first house (see paragraph 8.36).

### **Printing and distribution of second reading speeches**

8.35 Departments are responsible for arranging the printing and distribution of the speech. Copies should be delivered to both Table Offices before introduction in the first house. See appendix O for details of the number of copies required and their distribution.

<b>SUPPORT MATERIAL FOR THE SECOND HOUSE</b>
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### **Support material where a bill is not amended in the first house**

8.36 For a bill which has not been amended in the first house, the versions of the second reading speech and the explanatory memorandum used in the first house may be used in the second house, ie there is no need for the department to lodge new versions, unless (in the case of the second reading speech) the first version contains house-specific terms (see paragraph 8.34).

### **Support material where a bill is amended in the first house**

8.37 Where a bill has been amended in the first house, the second reading speech and the explanatory memorandum must be revised accordingly. The reprinted explanatory memorandum is known as the revised explanatory memorandum (not the replacement explanatory memorandum – see paragraph 8.25). The revised explanatory memorandum must match the revised version of the bill (the third reading print) which incorporates all amendments agreed to by the first house (see paragraphs 10.19 to 10.21 and appendix K).

8.38 The explanatory memorandum does not need to be reprinted:

- (a) when a schedule of amendments agreed (or requested) by the second house is transmitted to the first house for consideration; or
- (b) when a bill is presented for royal assent.

8.39 See also paragraphs 13.33 to 13.43, 14.35 to 14.51 for further details of requirements in the House of Representatives and the Senate.



## **CHAPTER 9: THE LEGISLATION APPROVAL PROCESS FOR BILLS PRIOR TO INTRODUCTION IN PARLIAMENT**

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### **All bills to be approved for introduction**

9.1 Every government bill, and government amendments where time permits, must be approved by the Parliamentary Secretary to Cabinet, on behalf of the Prime Minister, before they can be introduced in Parliament.

9.2 The legislation approval process ensures that policy approval has been obtained for all government bills and amendments, that the bill or set of amendments is consistent with policy approvals obtained from Cabinet, the Prime Minister and/or the relevant minister and that all relevant ministers have been consulted.

### **The legislation approval process (LAP)**

9.3 The Parliamentary Secretary to Cabinet meets with First Parliamentary Counsel and staff of the Legislation Section at the beginning of each sitting week (usually on Monday morning) to consider bills and government amendments that are ready for introduction in the forthcoming week.

9.4 For each bill, or package of bills, and each set of government amendments considered by the Parliamentary Secretary to Cabinet, the Legislation Section prepares a submission, comprising:

- (a) a minute indicating the status of policy approvals, including any late requests for minor policy approval and progress in obtaining the agreement of other ministers, if required;
- (b) a memorandum for the legislation approval process, prepared by Parliamentary Counsel, which cites the Cabinet or other authority under which the bill is drafted and draws attention to any aspects of the bill which are outside the ambit of, or contrary to, that authority, and to any other matters Parliamentary Counsel considers should be brought to the attention of the Parliamentary Secretary to Cabinet;
- (c) the draft bill; and
- (d) the explanatory memorandum.

9.5 It is desirable that all policy approvals and all consultations with other ministers, about either the policy aspects of measures in the bill or the wording of the bill itself, be completed before the legislation approval process. However in considering bills for approval for introduction, the Parliamentary Secretary to Cabinet may approve the bill for introduction subject to:

- (a) party clearance processes;

- (b) minor policy approval;
- (c) agreement of other relevant ministers to policy measures in the bill; and/or
- (d) approval of other relevant ministers to the text of the whole or part of a bill.

9.6 Where approval is conditional, a bill cannot be introduced, or government amendments cannot be moved, until the stipulated conditions are met. Copies of agreement by ministers to measures contained in a bill or, where appropriate, to the text of the bill itself, should be faxed to the Legislation Section as soon as they are available. The responsible minister's agreement to the text of a bill and explanatory memorandum can be in the form of a letter signed by the minister or a copy of a departmental submission which has been signed or initialled by the minister. For urgent government amendments, if another relevant minister is not available to personally clear the text of amendments and introduction cannot be delayed, a letter from a senior member of the minister's personal staff confirming that the minister has given agreement will suffice. The process for clearance by the government parties is at chapter 11.

9.7 Once the Parliamentary Secretary to Cabinet approves a bill for introduction, a copy of the minute indicating approval is sent to the Senior Adviser of the relevant minister by the Legislation Section.

### **Papers to be lodged for the legislation approval process**

9.8 To enable a bill or a set of amendments to be approved for introduction, departments must provide the Legislation Section with:

- (a) a covering letter advising of a minister's approval of the explanatory memorandum and the bill or the supplementary explanatory memorandum and the amendments;
- (b) copies of letters from other ministers who have been consulted, indicating their agreement or approval (noting that where a bill amends another minister's legislation, the responsible minister must approve the relevant text);
- (c) the explanatory memorandum or supplementary explanatory memorandum;
- (d) outlines; and
- (e) Legislation Profile forms.

These papers should be provided before 11.00 am on the Wednesday of the week before the bill is to be introduced or government amendments are to be moved. See appendix O for details of the numbers of copies of documents required.

9.9 Departments are requested to meet the Wednesday deadline for all bills and amendments. If there is a requirement for a bill or amendment to be introduced in a particular week and a department anticipates difficulty in meeting the Wednesday deadline, the LLO should contact the Legislation Section well before the deadline.

9.10 The Office of Parliamentary Counsel provides copies of draft bills and amendments to the Legislation Section for the legislation approval process.

9.11 If necessary, documents may be lodged with the Legislation Section in advance of ministerial approval. The minister's approval must be notified to the Legislation Section no later than 11.00 am on the Friday of the week before the bill is to be introduced or government amendments are to be moved.

#### OUTLINES - ADDITIONAL COPIES

9.12 The outlines provided to the Legislation Section for distribution to non-government parties should include the initial elements of the general outline, ie:

- (a) the exact title of the bill across the top of the first page (or, in the case of a supplementary explanatory memorandum, "Amendments to the XYZ Bill");
- (b) a brief but clear statement of the purpose/objective of the bill;
- (c) an outline of why the bill is required, the effect of the principal provisions, and an explanation of the policy background; and
- (d) a financial impact statement.

These additional copies of the general outline:

- (a) should not have a cover sheet;
- (b) should not be page numbered unless the outline is more than one page.

#### LEGISLATION PROFILE FORM

9.13 Departments must complete a Legislation Profile form for every bill or package of bills or amendments, as part of the documentation required for the legislation approval process.

9.14 A Legislation Profile form (appendix P) provides information on sponsoring ministers, the urgency of a bill and its financial implications, to assist the PLOs in programming bills for debate. Departments should ensure that any critical dates for implementation of measures contained in the bill or amendments, any commencement dates that are specified in the bill or amendments, and any special timing requirements for a bill or for amendments are clearly indicated on the Legislation Profile form against the heading "Timing Considerations". Information should focus on the timing by which passage is required, not the timing of introduction or likely debate.

9.15 The Profiles must be sent to the Legislation Section when the explanatory memorandum for the bill or the supplementary explanatory memorandum for the amendments is provided. A revised Legislation Profile form should be submitted to the Legislation Section if any of the information (eg contact officers or timing considerations) requires updating.

#### **Corrections and other late changes to bills/amendments**

9.16 If minor changes are made to a bill or amendments after the legislation approval process and before introduction, OPC may prepare a supplementary brief for the Parliamentary Secretary to Cabinet identifying the changes made. However, if such changes are more than minor or technical, the revised bill or amendments and the

revised explanatory memorandum will need to be approved by the relevant minister and go through the legislation approval process again.

### **Consideration by Joint Party**

9.17 In addition to the above legislation approval processes all government bills and amendments must be considered by the relevant backbench committee and Joint Party (see chapter 11).

## CHAPTER 10: AMENDMENTS DURING PASSAGE OF A BILL AND SUPPLEMENTARY SUPPORT MATERIAL

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### Introduction

#### GOVERNMENT AMENDMENTS

10.1 Amendments arise when the government decides that it is desirable to amend a bill that is currently before the Parliament. This may occur for a number of reasons but, as a matter of principle, government amendments should not be considered unless they are critical in nature, ie to correct a serious defect in a bill, or to address issues arising out of negotiations with non-government parties or parliamentary inquiries for the purposes of securing passage of the legislation, or to provide a vehicle for further urgent measures that have arisen where amendment of the bill is considered a preferable course of action to introduction of a separate urgent bill.

10.2 The test for proceeding with government amendments is one of essentiality not one of convenience. If the proposed amendments are not essential they should be included in a bid for a bill on the next legislation programme.

10.3 In cases where a large number of government amendments are being considered, the option of withdrawing the bill and reintroducing it in a consolidated form should be considered. Ultimately, this may save time and cause less inconvenience.

10.4 In considering the need for government amendments, departments should be aware, and should brief their ministers as appropriate, that government amendments are likely to delay passage of a bill.

10.5 The need for government amendments in order to correct errors or defects in bills should be minimised by departments undertaking a thorough check of each bill prior to introduction.

10.6 Government amendments are moved during the consideration in detail stage in the House of Representatives or the committee of the whole stage in the Senate. It should be noted that if the amendments are agreed by the second house, the bill will need to be returned to the first house for agreement. It should also be noted that if the amendments are agreed by the first house, the bill and explanatory memorandum will need to be reprinted before transmission to the second house (see paragraphs 10.19 to 10.22).

#### FORMAL AMENDMENTS

10.7 During passage through either house, amendments of a formal nature, eg adding an explanatory note, may be made and clerical or typographical errors may be corrected in any part of a bill. In the House of Representatives such amendments or

corrections are made by the Clerk of the House acting with the authority of the Deputy Speaker. In the Senate, the Chairman of Committees is empowered to make the amendments. The advice of First Parliamentary Counsel is sought about these amendments.

10.8 Departmental instructing officers should contact OPC (which sends a note to the Clerk or the Chairman of Committees) and the relevant Table Office when they become aware of the need for such amendments during the passage of a bill.

### **PBC consideration of government amendments**

10.9 Departments should advise the Legislation Section, OPC and the relevant PLO of proposed government amendments as soon as the need for them becomes apparent.

10.10 Where proposed government amendments are, in the opinion of First Parliamentary Counsel, likely to require significant drafting resources, a request for a variation to the legislation programme should be prepared for consideration by PBC (see paragraphs 2.23 to 2.31).

### **Drafting government amendments**

10.11 Government amendments are drafted by OPC. Departments should discuss proposed amendments with OPC and issue drafting instructions in the usual manner.

### **Requests for amendments**

10.12 When a bill is to be amended in the Senate, any proposed amendments which are beyond the Senate's powers (as limited by section 53 of the Constitution) must be drafted as requests for amendments. The Senate may request the House of Representatives to make the amendments. The request is transmitted to the House, which then decides whether or not to make the requested amendments. Advice on the procedural and other implications of Senate requests can be given by the drafter.

### **Supplementary explanatory memorandum**

10.13 A supplementary explanatory memorandum should be prepared for all government amendments regardless of whether the amendments are being moved in the first or the second house. The supplementary explanatory memorandum should follow the same form as an explanatory memorandum (see chapter 8 and appendix H). Where proposed amendments have been drafted as requests for amendments, the financial impacts of the requests must be included in the financial impact statement in the supplementary explanatory memorandum. Even a negligible financial impact may require amendments to be formulated as Senate requests for amendments. To avoid confusion in the Senate, a financial impact statement describing a requested amendment as having a negligible financial impact should note that the financial impact may nevertheless have constitutional significance. Advice about the constitutional significance of requested amendments should be sought from the drafter.

10.14 A single page supplementary explanatory memorandum, without a separate cover sheet, may be used where:

- (a) the notes on clauses are brief and less than one page;
- (b) the amendments are so simple that an outline is unnecessary; and
- (c) the amendments have no separate financial impact (see above in relation to requests for amendments).

Where both amendments and requests for amendments are proposed for a bill in the Senate, a single supplementary explanatory memorandum can be prepared.

10.15 To meet the requirements of the *Acts Interpretation Act 1901*, the supplementary explanatory memorandum must be presented by the minister at the time the amendments are moved. Supplementary explanatory memoranda should be printed by your print provider.

### **Distributing and printing a supplementary explanatory memorandum**

10.16 The department is responsible for arranging the printing of a supplementary explanatory memorandum and distributing copies to the Legislation Section for the legislation approval process, and to the Table Offices and the PLOs prior to introduction. See paragraphs 8.21 to 8.24 and appendix O for details of the number of copies required and their distribution. See also paragraphs 13.31 and 14.32 regarding speech notes for the minister.

### **Approval of government amendments**

10.17 Government amendments require all the same approvals as a bill that is being introduced, ie:

- (a) policy approval for all proposals contained in the amendments;
- (b) approval of the responsible minister for the amendments and the supplementary explanatory memorandum;
- (c) approval or agreement of other ministers, where appropriate;
- (d) consideration by the relevant backbench committee and Joint Party; and
- (e) approval from the Parliamentary Secretary to Cabinet for the amendments to be moved.

10.18 In the Senate, there will be situations where government amendments are negotiated and agreed during debate on a bill, or prepared in anticipation of their likely need during debate to ensure passage, and there will not be time for the formal approvals to be sought. In such situations it is up to the relevant minister to clear any amendments with the Prime Minister, other ministers, and the relevant government members' policy committee, as appropriate and as time permits. In such situations a supplementary explanatory memorandum should be prepared if time permits.

### **Reprinting a bill to take account of amendments to a bill by the first house**

10.19 When either government or non-government amendments are made to a bill in the first house, the amendments are incorporated into the bill by the relevant Table Office prior to the transmission of the bill to the second house. This print of the bill is called the “third reading print”. Reprinting takes a minimum of 24 hours and can take much longer if there are extensive or complex amendments. See also paragraphs 13.34, 13.41, 14.36 and 14.44.

10.20 Departments can order additional copies of the third reading print through the Legislation Officer in the Table Office of the house in which the bill is first introduced, provided the order is placed within a short period of the passage of the bill. The cost of additional copies is charged to the department.

### **Revising an explanatory memorandum to take account of amendments to a bill by the first house**

10.21 If either government or non-government amendments to a bill are agreed in the first house, departments must revise the explanatory memorandum to reflect the agreed amendments. Departments must ensure that in the revised explanatory memorandum, the notes on clauses match the clauses of the third reading print of the bill (which can be ordered from the Table Office immediately after passage of the bill), and must arrange for the revised explanatory memorandum to be reprinted and for copies to be lodged before the bill is introduced in the second house (see appendix K). Departments should therefore commence work on the revised explanatory memorandum as soon as amendments are agreed by the first house. It is necessary to print only the number of copies normally provided for the second house (see appendix O). See also paragraphs 8.22, 13.35 to 13.38, 14.35 to 14.40 and 14.44.

10.22 It is necessary to prepare a supplementary explanatory memorandum if further government amendments are to be moved in the second house (see paragraph 10.13).

### **Revising a second reading speech where a bill has been amended by the first house**

10.23 Depending on the nature of the amendments made by the first house, it may be necessary to revise the second reading speech for introduction of the bill in the second house. Departments must ensure that where a second reading speech is revised, copies are lodged at the same time as copies of the revised explanatory memorandum (see appendix O).

### **Amendments to a bill by the second house**

10.24 Where a bill is amended in the second house, the bill is sent back to the first house with a schedule of agreed amendments (and/or, in some cases, a schedule of requested amendments - see paragraph 10.12). These schedules are prepared by the relevant Table Office. The bill is not reprinted, so there is no requirement for further revisions of the explanatory memorandum or the second reading speech in such cases.



## CHAPTER 11: PARTY CLEARANCE

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### **Consultation with the government parties**

#### ALL BILLS AND AMENDMENTS TO BE CLEARED BY JOINT PARTY

11.1 The government requires that all government bills and amendments be cleared by its party mechanism, Joint Party, before being introduced. Special arrangements may be made in respect of Budget and other sensitive legislation.

#### THE PROCESS

##### *Government members' policy committees (backbench committees)*

11.2 Before being considered by Joint Party, all bills and amendments are to be considered by the relevant government members' policy committee. Each minister is responsible for consulting the committee about his or her bills and the necessary arrangements are made by the minister's office. Departments need to ensure there is time for this consultation when they consider the timetable for a bill. In the week or so before a bill is to be introduced, the departmental instructing officer should remind his or her minister's office of the need for the office to make arrangements to have the bill considered by the relevant committee before it is considered by Joint Party. Committees do not normally meet during non-sitting weeks. If a bill is to be introduced in a week following a non-sitting week, the minister's office should contact the committee chair to discuss arrangements for consideration of the bill.

##### *Joint Party*

11.3 Bills and amendments for introduction in a sitting week are considered at Joint Party meeting held on Tuesday morning of that week, if they have not been considered at an earlier meeting. PBC has decided that draft bills and amendments should not be provided for Joint Party clearance processes. As with the policy committee process, each minister is responsible for attending Joint Party to explain his or her bill or amendments, or for ensuring another minister or parliamentary secretary attends for that purpose if the minister is unable to attend. Each minister's office is responsible for preparing briefing notes on their minister's legislation for the Joint Party room. All papers are coordinated through the office of the Parliamentary Secretary to Cabinet.

#### THE ROLE OF DEPARTMENTAL STAFF

11.4 Departmental officers may be asked to attend policy committee meetings to provide factual briefing and background material. Officers attending policy committee meetings should be aware that it is not appropriate for them to enter into discussions on matters of policy; this is the preserve of the minister. Reference should

be made to the appropriate parts of the *Guidelines for Official Witnesses before Parliamentary Committees*<sup>12</sup>.

11.5 Ministers may ask their departments to provide briefing for use by the minister in consultations with the policy committee and at Joint Party. Any briefing of a political nature should be prepared by the minister's personal staff.

### **Consultation with non-government parties**

11.6 Draft bills are not normally made available to the non-government parties before their introduction into Parliament. The period between the second reading speech on a bill and the resumption of the second reading debate (normally about a week for category T bills and the period until the next sittings for other bills) enables consideration of the bill by the non-government parties.

11.7 The minister may need to outline the bill to the non-government parties and independent members in order to secure their co-operation, especially for category T bills where exemption will be sought from the cut-off order in the Senate (see chapter 3 and paragraphs 14.12 to 14.13).

11.8 Consultation with the opposition and other non-government parties and independent members about the content of legislation once introduced is a matter for the minister responsible for the bill(s). The relevant PLO must be kept informed of any developments that may affect the timing of debate.

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<sup>12</sup> See the Guidelines reproduced as part of the MAB/MIAC Publication No 11, *Accountability in the Commonwealth Public Service*, AGPS, Canberra, June 1993

## CHAPTER 12: PASSAGE OF A BILL THROUGH PARLIAMENT

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### Introduction

12.1 For a bill to become an Act it must be passed in the same form by each house and assented to by the Governor-General.

12.2 A bill which has been approved for introduction by the Parliamentary Secretary to Cabinet, on behalf of the Prime Minister, and cleared by the government Joint Party clearance process, is available for introduction and debate. The questions to be considered while a bill is being finalised are:

- (a) in which house is the bill to be introduced; and
- (b) when is it to be introduced?

### Bills which cannot be introduced in the Senate, eg. money bills

12.3 Section 53 of the Constitution provides that “proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate”. These are known as money bills. OPC will advise during the drafting process whether a bill can be introduced into the House of Representatives only.

### Which house?

12.4 If a bill can be introduced into either house, consideration should be given to whether there are programming or political advantages in introducing the bill in one house or the other. If there are no special considerations involved, it is customary for the bill to be introduced in the house in which the minister responsible for the bill is a member.

### Double dissolution bills

12.5 Section 57 of the Constitution, which sets out the procedure for a double dissolution of the houses of Parliament when the Senate rejects or fails to pass government legislation, can operate only with respect to bills which have been first introduced in the House of Representatives.

### Timing of introduction

12.6 Bills are usually introduced on Wednesday or Thursday in a sitting week, following the legislation approval process on Monday and clearance of the bill by Joint Party on Tuesday. To enable introduction of a bill to take place, the department must have arranged for delivery to Parliament House of the required copies of the explanatory memorandum and the second reading speech (see appendix O).

### **Timing of debate on bills**

12.7 The PLOs will advise the department of the timing of debate of a bill (see paragraphs 13.16 to 13.23, 14.14 to 14.20). Departments must advise of any special timing requirements, or other factors impacting on the timing of debate of a bill, in the Legislation Profile form which is provided to the Legislation Section for the legislation approval process (see paragraphs 9.13 to 9.15).

### **Passage of a bill through both houses**

12.8 Broadly speaking, the process in both houses for passing a bill is the same and involves the following steps:

- (a) giving notice of intention to present a bill (not always required - see paragraph 13.8);
- (b) presentation and first reading;
- (c) second reading – the minister moves that the bill be read a second time, reads or incorporates the second reading speech and presents the explanatory memorandum;
- (d) resumption of second reading debate and consideration of a bill in detail (in the House) or by the committee of the whole (in the Senate);
- (e) in the Senate, report of the committee of the whole and adoption of that report; and
- (f) third reading, ie passage by that house.

12.9 Details of the procedure for the House are at chapter 13 and for the Senate at chapter 14.

### **Appropriation bills**

12.10 Section 56 of the Constitution provides that an appropriation bill shall not be passed unless the purpose of the appropriation has been recommended, in the same session, to the House of Representatives by a message from the Governor-General. This section ensures that the control of all appropriations of public money is in the hands of the government, which is responsible for the use made of that money (known as “the financial initiative of the Crown”).

12.11 Messages from the Governor-General are prepared by OPC which arranges for the responsible minister to advise the Governor-General to sign the required message. The signed message is transmitted to the Clerk of the House of Representatives.

12.12 Where the Senate cannot amend a bill, it may request the House to make the desired amendment (see paragraph 14.50).

12.13 An amendment to a bill which would increase the amount or extend the objects and purposes or alter the destination of an appropriation recommended by the

Governor-General can be moved only if a further message is received. Accordingly, private members of the House cannot move amendments which would have this effect.

APPROPRIATION BILLS NOS. 1 AND 2; AND THE APPROPRIATION  
(PARLIAMENTARY DEPARTMENTS) BILL

12.14 These bills are introduced on Budget night by the Treasurer. The second reading speech on the No. 1 Bill is the “Budget Speech”. A message from the Governor-General under section 56 of the Constitution is required for each of these bills.

12.15 The effect of sections 53 and 54 of the Constitution is that the Appropriation Bill (No. 1) can appropriate revenue only for the ordinary annual services of government (departmental expenses and administered expenses incurred on continuing programmes for which there are no standing or special appropriations). The Senate cannot amend the bill.

12.16 Appropriation Bill (No. 2) appropriates revenue for the current financial year for equity injections and loans to agencies, as well as administered capital funding, expenses in relation to grants to the states and administered expenses on new outcomes for which no standing or special appropriation is planned. The Senate may amend the No. 2 Bill provided the amendment does not “increase any proposed charge or burden on the people”.

12.17 The Parliamentary Departments Bill appropriates revenue for the current financial year for the expenses of the Parliament. The Senate may amend the bill provided the amendment does not “increase any proposed charge or burden on the people”.

BILLS CONTAINING STANDING OR SPECIAL APPROPRIATIONS

12.18 A standing appropriation is included in a bill when it is desired to provide for an automatic payment of funds when an entitlement exists. A special appropriation is included in a bill when it is desired to provide for the payment of a specified amount separately identified from an annual appropriation bill (see also paragraphs 6.40 to 6.40). A message from the Governor-General is required for bills containing standing or special appropriations.

**Private members’ and senators’ bills**

12.19 Bills introduced by private members or senators have little prospect of being passed unless they have the support of the government. They are generally handled by each house in the same manner as government bills, except that they are debated during times set aside for general/private members’ business.

12.20 The drafting of a private members’ or senators’ bill is the responsibility of the member or senator concerned, often with the assistance of parliamentary officers or, occasionally, OPC.

## CHAPTER 13: PASSAGE OF A BILL THROUGH THE HOUSE OF REPRESENTATIVES

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### Introduction

13.1 This chapter provides an overview of the stages of consideration of a bill by the House of Representatives. It is limited to the normal procedures. Further details on the procedures mentioned in this chapter can be found in the *House of Representatives Standing and Sessional Orders*<sup>13</sup> and *House of Representatives Practice*<sup>14</sup>.

13.2 In this chapter references to ministers include references to parliamentary secretaries.

### House-initiated bills

#### PREPARATION FOR INTRODUCTION

13.3 The Office of Parliamentary Counsel will order the required copies of a bill from the printer and arrange delivery to the House of Representatives Table Office. Copies are not provided to the department unless special arrangements are made in advance with OPC. The department will be required to meet the costs of printing any additional copies it requires of a bill.

13.4 Extra copies of the introduction print of the bill do not have the confidential block on them. Additional copies ordered by departments will not be released until after the bill is introduced.

13.5 The department must arrange for delivery of the required copies of the explanatory memorandum and the second reading speech in accordance with the requirements set out in appendix O.

13.6 Once a bill is introduced it is the property of the relevant house, not the minister. Copies are printed on the authority of the relevant house on instruction from parliamentary officers, not OPC.

13.7 AusInfo is responsible for making available for sale copies of bills which have been introduced and explanatory memoranda which have been presented. Departments should advise AusInfo of any anticipated large demand for particular legislation to ensure sufficient sale copies are printed.

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<sup>13</sup> *House of Representatives Standing and Sessional Orders*  
Internet: <http://www.aph.gov.au/house/pubs>

<sup>14</sup> *House of Representatives Practice*, 3<sup>rd</sup> Edition, AGPS, Canberra, 1997  
Internet: <http://www.aph.gov.au/house/pubs>

## NOTICE OF INTRODUCTION

13.8 For most bills, ministers are required to give written notice prior to introduction. Only appropriation or supply bills or bills dealing with taxation may be introduced without notice. The notices of motion for bills are prepared by OPC and delivered to the PLO who arranges for them to be signed by the relevant ministers for lodgement with the Clerk of the House on the sitting day before introduction. The notice will appear on the Notice Paper for the next sitting day as a Government Business notice of motion.

13.9 A bill which requires notice for introduction may be introduced by leave of the House (ie with the consent of all members present) if notice has not been given. In the event that leave is not granted, the only way the bill may be introduced is by suspension of standing orders which has to be carried by an absolute majority of members. This course of action is considered only in exceptional circumstances.

## MINISTER'S PAPERS FOR PRESENTING A BILL

13.10 The Table Office will provide to the minister who is to present a bill:

- (a) the formal words to be used when presenting the bill; and
- (b) one copy of the bill to be signed on the cover by the minister beforehand for handing to the Clerk in the chamber when the bill is presented.

13.11 The department must provide to the minister:

- (a) the second reading speech to be read by the minister on moving the second reading of the bill;
- (b) the explanatory memorandum to be signed on the cover by the minister in advance of presentation to the House at the conclusion of the second reading speech; and
- (c) an extra copy of the second reading speech which the minister may provide to the opposition if desired.

## PRESENTING A BILL - FIRST READING

13.12 Bills to be introduced are listed as items of government business in the *Daily Program*<sup>15</sup>. The Clerk will call on each item at the appropriate time in the day's proceedings and read the short title of the bill, whereupon a minister rises to present the bill using the procedural wording provided by the Table Office and hands the signed copy of the bill to the Clerk. The bill is then read a first time, by the Clerk standing and reading out the long title of the bill. Copies of the bill, which until this time have been treated as confidential by parliamentary staff, are then circulated to members in the chamber.

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<sup>15</sup>

*Daily Program* of the House of Representatives, Internet: <http://www.aph.gov.au/house/pubs>

13.13 Immediately after the first reading, the minister moves the second reading using the procedural wording provided by the Table Office, and reads the second reading speech.

13.14 At the conclusion of the second reading speech the minister is required to present a signed copy of the explanatory memorandum for the bill by handing it to the Clerk. (This procedure does not apply in the case of an appropriation or supply bill, which does not normally have an explanatory memorandum.) The minister may also give a copy of the second reading speech to the opposition shadow minister at the table.

13.15 Debate on the bill is then adjourned and set down as an item of government business for a future sitting.

#### PREPARATION FOR SECOND READING DEBATE AND CONSIDERATION IN DETAIL

13.16 The PLO programmes bills for second reading debate in consultation with ministers' offices and departments, having regard to the priority status of the bills.

13.17 Generally only urgent bills (ie category T bills) are programmed for second reading debate in the same sitting period as introduction. To allow time for consideration of urgent bills by the opposition and members generally, the normal practice is not to resume the second reading debate any earlier than the later half of the week following introduction. Programming is also dependent on the number of urgent bills awaiting debate and on government priorities at the time.

13.18 Bills other than urgent bills are to form the debate programme for the next sitting period and are therefore not normally programmed for debate until then. However, non-urgent bills which are not controversial could be debated earlier in the Main Committee (see paragraphs 13.44 to 13.48).

13.19 It is the responsibility of the department to alert the PLO as early as possible to any urgency (eg. critical deadlines for implementation) or other factors (eg. the need for time to prepare government amendments to address community concerns or respond to issues raised by parliamentary committee inquiries) which may affect the timing for resumption of the second reading debate. These factors should be indicated on the Legislation Profile form (see paragraphs 9.13 to 9.15).

13.20 If government amendments are to be moved during debate on a bill, the requirements set out in chapter 10 should be followed. The required copies of the government amendments and supplementary explanatory memorandum (see appendix O) must be lodged with the Table Office and the PLO in time for the resumption of the second reading debate, to enable the minister to move the amendments and present the supplementary explanatory memorandum during the consideration in detail stage of the bill which follows immediately upon conclusion of the second reading stage. It is customary for the government amendments to be circulated at least several hours before they are moved by the minister in the chamber. To this end the PLO will seek clearance from the minister's office to circulate the amendments when the required copies are lodged with the Table Office and the LAP



process has been completed (see chapters 9 and 10). The PLO will also advise the minister's office to provide copies to the shadow minister's office at the same time.

13.21 Moving government amendments can delay passage of a bill and preparation for assent, because of the additional time taken to debate the amendments and the need to reprint the bill before it can be transmitted to the Senate or presented to the Governor-General for royal assent. Where there is a need to move a large number of government amendments, consideration should be given to withdrawing the bill and reintroducing it in a consolidated form. Ultimately, this may save time and cause less inconvenience.

13.22 Although there is usually a time gap between introduction of a bill and resumption of the second reading debate, priorities in the use of parliamentary time can change very quickly. As soon as a bill is introduced the department and the minister should be prepared for the resumption of the second reading debate.

13.23 Departments must ensure that the minister is fully briefed for the second reading debate and, where applicable, has a copy of the supplementary explanatory memorandum for any government amendments to be moved.

#### RESUMPTION OF SECOND READING DEBATE

13.24 On the resumption of debate an opposition member (usually the shadow minister) delivers the main opposition speech in response. Government and non-government members then usually speak in turn. The list of proposed speakers for the second reading debate is drawn up by the whips; the total time for the debate is not restricted by the standing orders. When the last speaker has concluded, it is customary for the minister to sum up and respond as appropriate to any comments or issues raised during the debate.

13.25 An opposition or independent member may move a second reading amendment during debate on the question "That the bill be now read a second time". Any such proposed amendment is dealt with following the conclusion of debate.

13.26 At the end of the second reading stage a decision is taken on the question "That this bill be now read a second time". If this is agreed to, the Clerk stands and reads out the long title of the bill. By its decision at this stage the House has agreed to the bill in principle.

#### COGNATE DEBATE

13.27 When there are two or more related bills before the House, if no member objects, a cognate second reading debate may take place, during which the bills are debated together. Essentially, a cognate debate allows members to address all measures in a package of bills while technically engaged in the second reading debate on the main bill. On the conclusion of the debate separate questions are put as required on each of the bills. The cognate debate process is useful in saving valuable government business time in the House. As the bills are presented (introduced) separately before the cognate debate, separate second reading speeches are required

for the respective bills, but the second reading speeches for bills other than the principal bill may be very brief (see paragraph 8.29).

#### CONSIDERATION IN DETAIL

13.28 The purpose of this stage is to consider the text of a bill in detail and to enable amendments to the bill to be proposed. However, if there are no proposed amendments and if all members agree, the House may dispense with this stage and proceed immediately to the third reading.

13.29 During consideration in detail, clauses and schedules of the bill are taken in their numerical order according to the standing and sessional orders, but if no member objects a number of clauses may be taken together. It is not uncommon in the House for members to give leave to consider the bill as a whole.

13.30 Amendments may be moved during the consideration in detail stage in the order in which the clauses affected occur in the bill. The amendments may, by leave, be moved together.

13.31 If government amendments are to be moved, the minister must have available a copy of the accompanying supplementary explanatory memorandum, signed beforehand on the cover, for presentation in the chamber at the time of moving the amendments in the consideration in detail stage (see chapter 10). When moving the amendments, the minister is expected to explain briefly their purpose and scope. The department must therefore ensure that the minister has brief speech notes on all amendments.

#### THIRD READING

13.32 The third reading stage is usually a formality. Although the standing orders provide for the third reading to take place on a future day, in practice the House allows the minister to move the third reading immediately. Debate at this stage is relatively rare and is restricted to the contents of the bill. When the motion has been agreed to, the Clerk again reads out the long title of the bill. This signifies that the bill has finally passed the House.

#### TRANSMISSION OF A BILL TO THE SENATE - REPRINTING THE AMENDED BILL AND EXPLANATORY MEMORANDUM/SECOND READING SPEECH

13.33 If a bill has not been amended in the House, it is immediately sent to the Senate with a message requesting the Senate's concurrence (see paragraph 8.36).

13.34 If a bill has been amended in the House it must be reprinted to include the amendments before it can be introduced in the Senate. The reprinting is arranged by officers of the House. Reprinting can take some time if there are extensive amendments. The reprint is referred to as the third reading print. Departments should contact the Table Office immediately after a bill passes the House, if they wish to order copies of the third reading print of a bill.

13.35 It is the responsibility of the department to revise the explanatory memorandum to reflect the amendments incorporated in the third reading print, and to arrange for its reprinting (see chapter 10).

13.36 The cover page for the revised explanatory memorandum should be identical to that used for introduction in the House with the exception that:

- (a) the words “HOUSE OF REPRESENTATIVES” should be replaced with the word “SENATE”;
- (b) it should be entitled “REVISED EXPLANATORY MEMORANDUM”; and
- (c) a statement should be included at the bottom of the page as follows:  
 “THIS EXPLANATORY MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE HOUSE OF REPRESENTATIVES TO THE BILL AS INTRODUCED”.

See appendix K.

13.37 As necessary, the department should also arrange for the revision and reprinting of the second reading speech to reflect the amended bill (see paragraph 10.23).

13.38 Copies of any revised documentation must be delivered in accordance with the requirements set out in appendix O, before the bill can be introduced in the Senate. The revised documentation must therefore be produced as quickly as possible after the bill has passed the House with amendments.

#### BILLS RETURNED FROM THE SENATE WITH AMENDMENTS

13.39 If the Senate amends, or requests the amendment of, a House-initiated bill, it sends a message seeking the House’s agreement to the amendments or requesting the House to make the amendments. Neither the bill nor the explanatory memorandum is reprinted. The House considers only the amendments or requests for amendments and does not reconsider the content of the bill. The House may agree to, disagree or modify the amendments made or requested by the Senate. If the government disagrees with amendments (as opposed to requests) made by the Senate, the Minister must present to the House a written statement of reasons why the House (not the government) does not agree to the amendments. Departments should liaise with the PLO in preparing the statement.

#### **Senate-initiated bills**

13.40 When a Senate-initiated bill has passed all stages in the Senate, it is transmitted to the House under cover of a message and introduced in the House by the Speaker reading the terms of the message to the House. The bill is immediately read a first time. As the bill is introduced by message from the Senate the minister does not need to present copies of the bill and is not involved in the first reading stage.

13.41 In the case of a bill which has been amended by the Senate, officers of the Senate will arrange for the bill to be reprinted (the third reading print) before

transmission to the House. The department should arrange for the revision and reprinting of the explanatory memorandum, and, as necessary, the second reading speech. The same arrangements as those set out in paragraphs 13.33 to 13.38 should be followed, except that the cover page of the revised explanatory memorandum should indicate the “HOUSE OF REPRESENTATIVES” rather than the “SENATE” (see also paragraph 10.19 to 10.22 and appendix K).

13.42 Following first reading, the bill proceeds through the second reading, consideration in detail and third reading in the same manner as a House-initiated bill. The only difference is that the second reading speech, second reading debate and the remaining stages are usually programmed together, and usually take place sooner than in the case of a House-initiated bill and, on occasion, may occur immediately after introduction. This is because documentation on a Senate-initiated bill would have been available from the Table Office from the day of introduction in the Senate or shortly afterwards, thus allowing opportunity for members to consider the bill before it was received in the House. In the case of a bill which has not been amended in the Senate, the Senate version of the second reading speech and explanatory memorandum may be used for the House proceedings, ie there is no need for the department to lodge new versions for the House.

13.43 If the bill is passed by the House without amendment, a message is sent to the Senate informing it that the bill has been agreed to without amendment. If the bill is amended in the House, it is read a third time and then returned to the Senate with a schedule of amendments to which the Senate is asked to agree. Neither the bill nor the explanatory memorandum is reprinted. If the Senate agrees to the schedule of amendments the bill is reprinted by the Senate Table Office, incorporating the amendments, for presentation to the Governor-General for royal assent (see chapter 15).

### **The Main Committee**

13.44 The Main Committee is established to operate in parallel with the chamber of the House to deal with, among other things, the second reading and consideration in detail of any bills referred to it from the House. As bills can only be referred by agreement, usually only non-controversial bills can be debated in the Main Committee.

13.45 All members of the House are members of the Main Committee.

13.46 The Main Committee normally sits on Wednesday and Thursday mornings of a sitting week. The business and sitting times of the Main Committee are determined following consultation between the Chief Government Whip and the Chief Opposition Whip and independent members.

13.47 The Main Committee deals with the second reading and consideration in detail of bills, including any proposed amendments, in the same manner as the House. However, as the Main Committee is a subordinate body, any decision it makes on business referred to it must be reported to and be confirmed by a decision of the House. Decisions of the Main Committee are taken on the voices; dissent by one member would result in a

question being unresolved, but proceedings on a bill may be continued regardless of unresolved questions, unless the nature of the unresolved question makes this impractical. Any unresolved question, eg. a proposed amendment, is reported back to the House for resolution.

13.48 The third reading of a bill must take place in the House.

### **Presence of departmental advisers**

13.49 It is customary for one or more departmental advisers to be present in the House or Main Committee during:

- (a) the second reading debate (as resumed, not the presentation of the second reading speech by the minister); and
- (b) the consideration in detail stage (see paragraphs 13.16 to 13.31).

13.50 As there is only limited seating for officials in the House chamber and Main Committee room the number of advisers should be kept to a minimum, consistent with the wishes of the minister. The department should confirm arrangements with the minister's office before resumption of the second reading debate. The adviser(s) must have sufficient knowledge and authority to advise the minister without reference back to the department.

13.51 In the House departmental advisers sit in the officials' box to the right of the Speaker's chair. This area is close to the ministerial bench but is separated from and does not form part of the House. In the Main Committee departmental advisers sit in the public gallery to the right of the Deputy Speaker's chair. Under no circumstances may a departmental officer encroach on the floor of the House or the Main Committee. Technically, passing notes to or speaking to a minister who is on the floor (ie on the front bench) constitutes an encroachment. The minister may seek advice by going personally to the departmental adviser. Advice may also be given to the minister by a note conveyed by a chamber attendant. Departmental officers may not leave or enter the House when the doors are locked for a division requiring a vote on a particular matter. When the Main Committee is interrupted or suspended by a division in the House, advisers should remain in the Main Committee room for resumption of proceedings unless otherwise advised by the PLO.

13.52 Dress standards for advisers are similar to those for members. Men are required to wear a jacket and tie. Women may wear slacks, but not jeans or very casual or sports wear. Advisers should limit conversation in the House and in the Main Committee room to advising the minister.

13.53 Advisers carrying mobile phones must ensure they are switched off before entering the House or the Main Committee room.

13.54 Parliamentary Counsel do not attend debates unless special arrangements are made. These arrangements should be made only in cases where it is likely that urgent amendments will be required to be drafted during the course of the debate on the bill.

## CHAPTER 14: PASSAGE OF A BILL THROUGH THE SENATE

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### Introduction

14.1 This chapter provides an overview of the stages of consideration of a bill by the Senate. Where the procedures are the same as those of the House of Representatives, a cross-reference to the previous chapter is provided.

14.2 In this chapter references to ministers include references to parliamentary secretaries. It should be noted that where a procedure in this chapter refers to action in the Senate by the minister, as a matter of routine, many of these procedures are undertaken by the duty minister or duty parliamentary secretary.

14.3 As with the previous chapter on House of Representatives procedure, this chapter deals only with normal Senate procedures. In particular, the descriptions below are based on the expeditious procedures now usually used in the Senate, rather than the traditional, “deliberative” procedures. Under the expeditious procedures, a motion may be moved “that this bill (or these bills) may proceed without formalities”. If this motion is agreed to, it has the effect of suspending the requirements, otherwise imposed by the standing orders, for stages of the bill or bills to take place on different days, for notice of motions for such stages, and for the printing and certification of the bill or bills during passage. Further details may be found in the *Senate Standing Orders and Other Orders of the Senate*<sup>16</sup> and *Odgers’ Australian Senate Practice*<sup>17</sup>.

### Senate-initiated bills

#### PREPARATION FOR INTRODUCTION

14.4 The arrangements set out at paragraphs 13.3 to 13.7 for the printing of bills for introduction are substantially the same in the Senate as in the House.

#### NOTICE OF MOTION TO INTRODUCE A BILL

14.5 All bills originating in the Senate are introduced pursuant to notice of motion. Written notices of motion for bills are prepared by OPC and delivered to the PLO, who arranges for them to be presented to the Table Office for signature by the relevant ministers and lodged as notices of motion on the day prior to introduction. Alternatively the minister reads out the notice at the appropriate time during the

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<sup>16</sup> *Senate Standing Orders and Other Orders of the Senate*  
Internet: <http://www.aph.gov.au/senate/pubs>

<sup>17</sup> *Odgers’ Australian Senate Practice*, 9<sup>th</sup> Edition, AGPS, Canberra, 1999  
- see chapters 12 and 14. Internet: <http://www.aph.gov.au/senate/pubs>

business of the Chamber. The notice will appear on the Notice Paper for the following day as a Government Business Notice of Motion.

14.6 A bill cannot be introduced until the required copies of the explanatory memorandum and second reading speech are provided to the Table Office by the department. If these are not provided in a timely way, notice of motion to introduce the bill will probably be delayed.

#### MINISTER'S PAPERS FOR PRESENTING A BILL

- 14.7 The Senate Table Office prepares a folder for the minister containing:
- (a) the procedures and wording to be used in presenting the bill;
  - (b) three copies of the bill to be signed by the minister and handed to the Clerk;
  - (c) the explanatory memorandum which the minister tables; and
  - (d) a copy of the second reading speech.

#### PRESENTING (INTRODUCING) A BILL

14.8 At the appropriate time in the Senate's programme on the day of introduction, usually at "discovery of formal business", the minister will rise to present the bill, using the procedural wording provided by the Table Office. A bill need not be presented by the minister who gave notice; it may be presented by the duty minister.

14.9 When the motion to introduce a bill is agreed to, the minister presents it by handing the three signed copies of the bill to the Clerk.

#### FIRST READING

14.10 After presenting the bill, the minister moves that the bill be taken without formalities and be read a first time. This motion is normally put without amendment or debate. Once the motion is agreed to, the Clerk rises and reads out the long title of the bill - this is the first reading of the bill. Copies of the bill which until this time have been held under embargo, are then distributed to senators in the chamber.

#### SECOND READING SPEECH AND ADJOURNMENT OF DEBATE

14.11 After the bill has been read a first time, the minister tables the explanatory memorandum (and hands it to a chamber attendant) and moves that the bill be read a second time, again using the wording provided by the Table Office. The minister also seeks leave to have the second reading speech incorporated in Hansard. (The second reading speech prepared for the Senate therefore should not include any reference to moving the second reading or tabling the explanatory memorandum - see paragraph 8.34.)

14.12 At this point, the usual practice is for the opposition to move to adjourn the debate. If that motion is agreed to, the resumption of the debate is set down as an

order of the day (item of business) on the Notice Paper. This procedure is subject, however, to the Senate standing order 111. That order requires that where a bill:

- (a) is first introduced in the Senate in a sitting period; or
- (b) is received from the House of Representatives and was first introduced in the House in the same sitting period; or
- (c) is received from the House of Representatives after the expiration of two-thirds of the total number of Senate sittings days for that sitting period;

the second reading debate is automatically adjourned and resumption of the debate is an order of the day for the first sitting day in the next sitting period.

14.13 If the government desires an exemption from the above order (ie, to allow introduction and debate of a bill during the same sitting period, or to allow debate of a bill received in the Senate from the House of Representatives after two-thirds of a Senate sitting period), it must give reasons to justify the exemption and the Senate must agree to a motion for the exemption. To facilitate the Senate's consideration of such a motion, the minister usually tables, at the time of giving notice of the motion, a statement of reasons setting out the reasons for the urgency of the bill. It is the responsibility of the department to prepare such a statement, submit it to the minister for clearance and provide copies to the Legislation Section (see chapter 3).

#### PREPARATION FOR SECOND READING DEBATE AND COMMITTEE OF THE WHOLE

14.14 The PLO programmes bills for second reading debate in consultation with departments, ministers' offices and the non-government whips and independent senators.

14.15 Only urgent bills (ie category T bills), for which an exemption has been agreed to by the Senate, are considered in the sitting period in which they are introduced. Bills which are not granted an exemption, or for which no exemption is sought, are listed for debate in the next sitting period.

14.16 It is the responsibility of the instructing department to alert the PLO as early as possible as to any urgency or other factor which may affect the timing for resumption of the second reading debate. These factors should be indicated on the Legislation Profile form (see paragraphs 9.13 to 9.15).

14.17 If government amendments are to be moved to a bill, the requirements set out in chapter 10 should be followed. OPC provides the required number of copies of the amendments. Departments must provide the required number of copies of the related supplementary explanatory memorandum to the Table Office and PLO as soon as possible after the amendments have been approved for introduction (see appendix O). This is to ensure that the amendments are circulated to give non-government senators sufficient time to consider them before they are moved in the Chamber. It is customary to circulate government amendments at the earliest possible opportunity. To this end, the Table Office seeks clearance in writing to circulate the amendments from the minister (or the minister representing). The amendments and any related supplementary explanatory memorandum remain under embargo until that clearance is received.



14.18 The moving of government amendments may delay passage of, and assent to, a bill originating in the Senate, as it may for a bill originating in the House (see paragraphs 10.1 to 10.6 and 13.21 for further discussion of the issues involved).

14.19 Although generally there will be a reasonable period of time between the introduction of a bill and resumption of the second reading debate, government priorities can change quickly and the non-government senators may agree to debate the bill and, if required, exempt the bill from the requirements of the Senate standing order 111 (see paragraph 14.12). Thus, as soon as a bill is introduced in the Senate, the department and the minister should be prepared for the possible resumption of the second reading debate at short notice.

14.20 Departments must ensure that the minister (or minister representing) is fully briefed for the second reading debate and is also briefed on any proposed government amendments.

#### RESUMPTION OF THE SECOND READING DEBATE

14.21 The procedures are generally the same as the procedures in the House, with the exceptions of the form and consequences of certain second reading amendments (see paragraphs 13.24 to 13.26).

#### BILLS TAKEN TOGETHER AND COGNATE DEBATES

14.22 It is common practice in the Senate for related bills to be introduced together and to be taken as a single order of the day. The Journals of the Senate, the Notice Paper or the *Order of Business* (the “Red”)<sup>18</sup> will indicate whether bills are being taken as a single order of the day. When bills are taken together only one question is put in relation to the bills at the conclusion of debate. However, any senator may ask that the question be divided in respect of any or all of the bills in a “package”. If so, the question(s) on that bill or those bills will be put separately.

14.23 Debate on the second reading of bills may be cognated in the Senate provided the procedure is adopted, by leave, at the commencement of the second reading debate on one of the bills. The question for the second reading of each bill is put separately at the end of the debate. This procedure is rarely used.

#### NON-CONTROVERSIAL BILLS, THURSDAY LUNCHTIME

14.24 The Senate parties have agreed that from 12.45 pm to 2.00 pm on sitting Thursdays no business involving the calling of divisions will be considered. A practice has evolved of programming for consideration only those bills to which all the parties have agreed. A list of bills for consideration is submitted to the non-government parties and independent senators for their confirmation to the government at the Whips’ meeting on Wednesday evening.

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<sup>18</sup>

*Order of Business* of the Senate, Internet: <http://www.aph.gov.au/senate/work>

14.25 If the instructing officer or the relevant ministerial adviser considers that a bill is non-controversial and may be able to be programmed in this time slot, they should inform the Senate PLO who will include the bill in the next available list of proposed bills. The minister's office is responsible for offering briefings, etc to all the non-government parties and independents in the Senate to gain their agreement to programming at this time. Bills can only be considered in this time slot with the agreement of all the parties and all the independents.

#### SELECTION OF BILLS COMMITTEE AND REFERRAL OF BILLS

14.26 The Selection of Bills Committee is appointed pursuant to Senate standing order 24. All bills introduced into the Parliament (except those which contain no provisions other than provisions appropriating revenue or moneys) are considered by the committee. The Committee recommends to the Senate whether a bill should be referred to a committee (select or standing) and, if so, to which committee and the reporting date. A bill may be referred at any stage before it is read a third time. If a bill has not yet been received from the House of Representatives, its provisions may be referred, rather than the bill itself. To have effect, the Committee's recommendations must be adopted by the Senate.

14.27 Bills may be referred to a committee by way of amendment to the motion that the bill be read a second time, on a motion moved without notice after the bill has been read a second time or by motion after notice.

14.28 Committees have a range of powers to conduct inquiries into legislation that is referred. They may hold public or private hearings to take evidence and seek information from ministers and their departments. Departments should be aware when their minister's bill has been referred to committee and should be available to provide background briefing and factual information to the minister or the committee. Departments should also be ready to advise the minister on any possible amendments to the bill and to progress preparation of amendments when required (see chapter 10).

#### COMMITTEE OF THE WHOLE STAGE

14.29 After the second reading of a bill the Senate forms itself immediately into a committee of the whole for the detailed consideration of the bill and any amendments proposed to the bill.

14.30 If there are no amendments proposed to a bill, the committee of the whole stage is usually dealt with speedily. If there are proposed amendments, the Committee usually considers the bill as a whole, by leave. Amendments may then be moved to any part of the bill. This is the usual procedure, particularly when dealing with large numbers of amendments.

14.31 Alternatively, the committee of the whole may agree to consider a bill clause by clause. In such instances any proposed amendments are moved and considered in the order in which the affected clauses occur in the bill. Clauses or items may be considered together, by leave, and amendments may be moved together, by leave, whether the bill is taken as a whole or considered clause by clause.

14.32 If government amendments are to be moved, the relevant department is required to prepare a supplementary explanatory memorandum and provide copies to the Legislation Section and the Table Office (see chapter 10 and paragraph 14.17). The Table Office prepares the procedures and wording to be used by the minister when presenting the supplementary explanatory memorandum. This usually occurs at the beginning of the committee stage before the minister moves the government amendments. When moving amendments, the minister should explain their purpose and scope. The department must ensure that the minister (or minister representing) has brief speech notes on all amendments (including any non-government amendments that have been circulated).

14.33 When the Committee has considered the bill, the question is put “That this bill (or this bill as amended) be reported”. If this question is agreed to, the President resumes the chair and the Chairman of committees reports the resolution of the committee, viz. “That the committee has considered the bill and has agreed to it with (or without) amendments”. The minister then moves “That the report of the committee be adopted”.

#### THIRD READING

14.34 When the report from the committee of the whole has been adopted, the minister moves “That this bill be now read a third time”. Although the third reading stage is usually a formality, the motion for the third reading may be debated. If the motion is agreed to, the Clerk again rises and reads out the long title of the bill. No further questions can be put on the bill.

#### TRANSMISSION TO THE HOUSE OF REPRESENTATIVES

14.35 When a bill originating in the Senate has been passed by the Senate unamended, the Clerk certifies that the bill is ready for presentation to the House of Representatives for its concurrence. A message signed by the President is sent to the House of Representatives transmitting the bill for the concurrence of that House.

14.36 If a bill originating in the Senate is amended, it must be reprinted to incorporate the amendments agreed to before it can be introduced in the House. The Senate Table Office will arrange for the reprinting of the bill; the reprint is referred to as the third reading print. Reprinting takes a minimum of 24 hours and will take longer if the bill has been extensively amended. Departments should contact the Table Office immediately after a bill passes the Senate, if they wish to order copies of the third reading print of a bill.

14.37 It is the responsibility of the department to revise the explanatory memorandum to reflect the amendments incorporated in the third reading print, and to arrange for its reprinting (see chapter 10).

14.38 The cover page for the revised explanatory memorandum should be identical to that used for the initial introduction in the Senate with the following exceptions:

- (a) the word “SENATE” should be replaced with the words “HOUSE OF REPRESENTATIVES”;
- (b) it should be entitled “REVISED EXPLANATORY MEMORANDUM”; and
- (c) a statement should be included at the bottom of the page as follows:  
“THIS EXPLANATORY MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE SENATE TO THE BILL AS INTRODUCED” (See appendix K.)

14.39 If necessary, the department should also arrange for the revision and reprinting of the second reading speech to reflect the amended bill (see paragraph 10.23).

14.40 The Senate Table Office will arrange for the required copies of the third reading print to be provided to the House of Representatives Table Office. The department must arrange for the delivery to the House Table Office and the House PLO of any revised explanatory memorandum or second reading speech (see requirements set out in appendix O). If the bill is to be further amended in the House, the supplementary explanatory memorandum should be delivered at the same time.

#### BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES WITH AMENDMENTS

14.41 If the House amends a Senate-initiated bill, it sends a message seeking the Senate’s agreement to the amendments made. The House also sends a schedule of the amendments to which it has agreed, listed in the order in which they would occur in the bill. The bill itself is not reprinted, nor is the explanatory memorandum. However, copies of any supplementary explanatory memorandum prepared for the House should be supplied to the Senate Table Office for distribution to Senators to provide them with an explanation of the amendments (see appendix O).

14.42 When considering the message from the House, the Senate may consider only the amendments made by the House and matters relevant to those amendments, unless standing orders are suspended. The Senate may:

- (a) agree to the House amendments;
- (b) not agree to the House amendments;
- (c) agree to the House amendments with amendments;
- (d) postpone consideration of the House amendments; or
- (e) order the bill to be laid aside.

#### **House-initiated bills**

14.43 When a bill originating in the House has passed all stages in the House, it is certified by the Clerk of the House and transmitted to the Senate under cover of a message, signed by the Speaker, requesting the Senate’s concurrence.

14.44 If the bill is unamended, it can be transmitted immediately to the Senate. If the bill has been amended, it must be reprinted and the explanatory memorandum

revised (see paragraphs 13.33 to 13.38 for further information). In the latter case, the bill cannot be introduced into the Senate or programmed for debate until the requisite copies of the third reading print of the bill, revised explanatory memorandum and Senate version of the second reading speech are received in the Senate Table Office (see appendix O). These are distributed in the Senate chamber on the day on which the bill is scheduled for introduction.

14.45 No motion is required in order to introduce a House-initiated bill in the Senate; the President merely reports the message received from the House. The minister (or minister representing) then rises and, using the procedures and wording provided by Senate Table Office, moves that the bill proceed without formalities and be read a first time. Related bills may be introduced and considered together (see paragraph 14.22).

14.46 Although the motion for the first reading is not usually debated, in the case of bills that appropriate revenue or moneys or impose taxation the motion may be adjourned and the debate resumed at a later time. When the debate is resumed, any matter may be discussed.

14.47 In either case, after the bill has been read a first time, the minister moves the second reading and seeks leave to have the second reading speech incorporated in Hansard. Only revised explanatory memoranda are tabled at this point. If the bill was not amended in the House, there is no need to table in the Senate the explanatory memorandum which was tabled in the House. The procedures for the second reading stage of bills originating in the House are the same as those used for Senate bills (see paragraphs 14.11 to 14.21 for more detailed information).

14.48 House-initiated bills may be referred to a Senate standing or select committee for inquiry and report (see paragraphs 14.26 to 14.27 for further information).

14.49 If a bill is an amendable bill, the committee of the whole stage is the same as for Senate bills (see paragraphs 14.29 to 14.33).

14.50 If a bill cannot be amended by the Senate, requests for amendments may be moved during the committee stage. After the report from the committee of the whole (which takes the form “that the Committee has agreed to the bill (as amended), subject to requests”) is adopted, but before the third reading of the bill, a message is sent to the House, requesting the House to make the amendments. The bill is not read a third time until the House and the Senate have finished dealing with the requested amendments.

14.51 If there are no requests for amendments, the committee of the whole stage is usually dealt with speedily and is the same as for Senate-initiated bills (paragraph 14.29 to 14.33). At the conclusion of the committee stage, the Chairman of Committees reports that the Committee has considered the bill and has agreed to it without requests. After the report is adopted, the bill is read a third time and returned to the House.

### **Presence of departmental advisers**

14.52 Similar rules apply as in the House (see paragraphs 13.49 to 13.54).

### **Senate Standing Committee for the Scrutiny of Bills**

14.53 The Senate Standing Committee for the Scrutiny of Bills reports to the Senate on all bills presented to Parliament. Pursuant to its terms of reference, the Committee reports to the Senate on bills which:

- (a) trespass unduly on personal rights and liberties;
- (b) make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers;
- (c) make rights, liberties or obligations unduly dependent upon non-reviewable decisions;
- (d) inappropriately delegate legislative powers; or
- (e) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

14.54 A *Scrutiny of Bills Alert Digest* is produced by the Committee and tabled in the Senate every sitting Wednesday. The Digest notes the Committee's preliminary findings on bills. The Digest invites any senator to draw matters to the attention of the Committee under its terms of reference. The views of members of the public are also welcomed. The relevant minister is advised if the Committee has concerns about a bill. If the minister responds to these concerns, the response is included in a subsequent report of the Committee; these reports are tabled every sitting Wednesday. The Committee does not recommend that the Senate take particular action on bills but draws the Senate's attention to bills that fall within its terms of reference.

14.55 Ministers may respond to the committee by:

- (a) proposing government amendments to bills (see chapter 10); or
- (b) writing to the Committee explaining why the bill is in the form it is (in response to preliminary comments in the Digest).

(Also see paragraph 8.19)

## **CHAPTER 15: PROCEDURES AFTER PASSAGE OF A BILL**

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### **Royal assent**

15.1 When a bill has been passed by both houses of Parliament, it is presented to the Governor-General for the Queen's assent (Constitution, section 58). The Governor-General may assent to the bill in the Queen's name, withhold assent or reserve the proposed law for the Queen's pleasure. The Queen may disallow any law within one year of the Governor-General's assent (Constitution, section 59). Disallowance has never occurred.

15.2 A proposed law reserved for the Queen's pleasure does not have any force unless and until, within two years from the day on which it was presented to the Governor-General for the Queen's assent, the Governor-General makes known to each of the houses of Parliament, or issues a Proclamation, that the bill has received the Queen's assent (Constitution, section 60). This procedure has been used only very rarely for bills affecting the sovereign personally.

15.3 The Governor-General may return to the house in which it originated any proposed law presented for royal assent, with amendments recommended by him, to be dealt with by the two houses (Constitution, section 58). This procedure is used, but rarely, to recommend amendments of a formal nature or to correct important errors that may be discovered after passage of a bill through the Parliament. In practice, it is done only on the recommendation of the Attorney-General (see paragraphs 15.6 to 15.7).

### **Normal assent procedures**

15.4 A bill is reprinted and a check and certification of the reprinted bill is made by officers of the house in which the bill originated, and by OPC, after passage by both houses and before presentation for assent. This process can be quite time consuming, particularly if the bill has been amended by either house. Any consequential arrangements for commencement of the Act (eg. public announcements or launches, or any implementation of any action under the provisions of the bill) must allow for the time involved in preparing a bill for assent.

15.5 The Presiding Officer of the house in which the bill originated writes to the Governor-General submitting four handmade copies of the bill and requesting the Governor-General's assent to the bill. The Presiding Officer also sends one copy of the bill to the Attorney-General with advice that the bill is ready for presentation to the Governor-General and that it is proposed to present it immediately.

15.6 In accordance with a standing request, the Governor-General is advised by the Attorney-General in respect of each bill whether, in accordance with section 58 of

the Constitution, the Governor-General should recommend any amendments and whether the bill should be reserved for the Queen's pleasure. The Attorney-General's letter is referred to as the "Attorney-General's certificate" and is prepared by OPC.

15.7 First Parliamentary Counsel informs the Attorney-General before the certificate is signed whether the bill was amended in either house and whether there are any amendments the Attorney-General might wish to advise the Governor-General to recommend to the Parliament. The Attorney-General's certificate, with the copy of the bill attached, is delivered to the Governor-General by OPC.

15.8 Royal assent is given by the Governor-General signing two copies of the bill. One signed copy is returned to the Clerk of the house in which the bill originated, the other is sent to OPC. One "stamp signed" copy is sent to the Clerk of the other house and one is retained by Government House.

15.9 In appropriate cases, the processes for preparing bills for royal assent can be hurried up. However, apart from the most exceptional cases, it would be improper for anyone involved in the processes of preparing a bill for royal assent to delay the presentation of the bill to the Governor-General. If it appears that exceptional circumstances might make a delay appropriate, advice should be sought from the Attorney-General's Department.

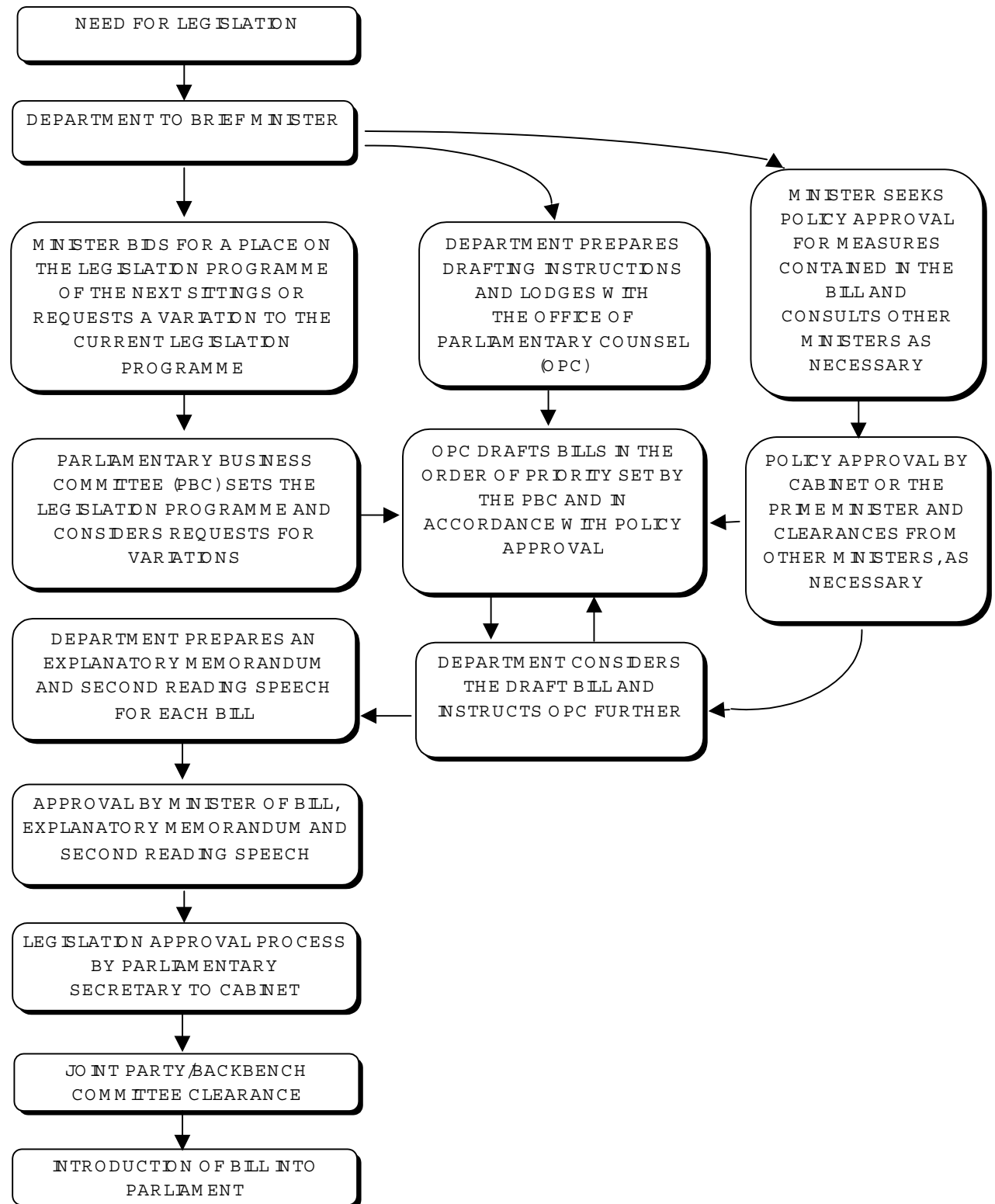
### **Commencement of Acts by proclamation**

15.10 In the case of an Act expressed to operate from a date to be proclaimed (see paragraphs 6.14 to 6.17) departments must ensure that, after royal assent, there is adequate time to have an Executive Council Minute, which is prepared by the responsible department, signed by the minister and approved by the Executive Council, and the *Gazette* notice published (if necessary in a *Special Gazette*) on or before the date fixed by the proclamation.

15.11 Proclamations fixing commencement dates for Acts or sections of Acts are drafted by the Office of Legislative Drafting in the Attorney-General's Department on instructions from the department responsible. The department will also need to prepare an Executive Council Minute and explanatory memorandum and make arrangements for the publication of the Proclamation in the *Gazette*. Further details on these procedures can be obtained from the Secretary to the Federal Executive Council in PM&C, phone 6271 5333.



## APPENDIX A: A SUMMARY OF THE LEGISLATION PROCESS PRIOR TO INTRODUCTION OF A BILL IN PARLIAMENT



## **APPENDIX B: RESPONSIBILITIES OF A DEPARTMENTAL LEGISLATION LIAISON OFFICER**

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A Departmental Legislation Liaison Officer (LLO) should act as the single point of contact in a department or agency for PM&C and the Parliamentary Liaison Officers (PLOs) on all general matters concerning the process of preparation, approval and passage of legislation for that portfolio. Responsibilities of a Legislation Liaison Officer would include:

- (a) providing advice to policy branches in the department on procedures relating to the legislation process;
- (b) coordinating bids for legislation for the department, ensuring that bids are in the standard format;
- (c) coordinating requests for variations for the department, ensuring that all requests are in the standard format;
- (d) monitoring (and assisting in) the preparation of drafting instructions for departmental bills that have a place on the legislation programme to ensure that all drafting instructions are lodged with OPC as soon as possible;
- (e) monitoring (and assisting in) the seeking of policy approval for departmental bills that have a place on the legislation programme to ensure that all policy approvals are sought as soon as possible and that other ministers are consulted as appropriate;
- (f) ensuring that explanatory memoranda and supplementary, revised, corrected and replacement explanatory memoranda are prepared as appropriate;
- (g) providing documentation and advice of ministerial approvals to the Legislation Section for bills that are ready for introduction;
- (h) ensuring that all required documentation is lodged with the House of Representatives Table Office, Senate Table Office and PLOs;
- (i) monitoring the progress of bills in the Parliament and keeping abreast of developments, eg potential government amendments;
- (j) ensuring that the PLOs and Legislation Section are advised of any proposed government amendments and that policy approval is sought;
- (k) ensuring that the PLOs are advised of any changes to timing considerations for a bill or any other factor that changes the availability or the urgency of a bill for debate; and
- (l) ensuring that the PLOs are advised of any changes to the contact officers for a bill that is to be debated.

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## APPENDIX C: CONTACT NUMBERS AND ADDRESSES

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	<u>phone:</u>	<u>fax:</u>
<b>ATTORNEY-GENERAL'S DEPARTMENT</b>		
Robert Garran Offices, National Circuit, Barton, ACT 2600	6250 6666	6250 5900
<b>OFFICE OF LEGISLATIVE DRAFTING</b>		
Principal Legislative Counsel (John Leahy)	6250 6263	6250 5930
<b>AUSINFO</b>		
Level 2 East, 111 Alinga St, Canberra, ACT 2600		
Legislation Officer	6275 3586	6275 3694
<b>DEPARTMENT OF THE PRIME MINISTER AND CABINET</b>		
3-5 National Circuit, Barton, ACT, 2600	6271 5111	
FAS, Government Division	6271 5786	6271 5776
AS, Parliamentary and Government Branch	6271 5761	6271 5776
Senior Adviser, Parliamentary Affairs and Legislation	6271 5787	6271 5664
Parliamentary Liaison Officer (House of Representatives) (Parl House)	6277 7377 6271 5784	6277 7988
Parliamentary Liaison Officer (Senate) (Room SG 120) (Parl House)	6277 7597 6271 5781	6273 2085
Secretary, Executive Council	6271 5250	6271 5537
<b>OFFICE OF PARLIAMENTARY COUNSEL</b>		
MTA House, 39 Brisbane Ave, Barton, ACT 2600	6270 1400	6270 1403
First Parliamentary Counsel (Hilary Penfold)	6270 1405	
Assistant Executive Officer (Peter Edsor)	6270 1467	
Legislation Officer (Tom Manwaring)	6270 1465	
<b>PARLIAMENT HOUSE</b>	6277 7111	
<b>HOUSE OF REPRESENTATIVES</b>		
<b>Table Office</b> e-mail: <a href="mailto:Bills.Manager.Reps@aph.gov.au">Bills.Manager.Reps@aph.gov.au</a>		6277 4517
Director, Programming (Room RG 89) (Peter Mason)	6277 4801	
Director, Legislation and Records (Room RG 89) (Joanne Towner)	6277 4788	
Bills Manager (Room RG 89) (Jason Sherd)	6277 4802	
<b>SENATE</b>		
<b>Table Office</b> e-mail: <a href="mailto:table.legislation.sen@aph.gov.au">table.legislation.sen@aph.gov.au</a>		6277 3448
Parliamentary Executive (Legislation and Documents) (Room SG 25)	6277 3455	
Legislation Officer (Room SG 25)	6277 3033	
Assistant Legislation Officer (Room SG 25)	6277 3035	
<b>OFFICE OF REGULATION REVIEW</b>		
Level 3, Nature Conservation House, Cnr Emu Bank and Benjamin Way, BELCONNEN, ACT, 2617		6240 3355
Administrative Officer (Michelle Colburn)	6240 3290	
Assistant Commissioner (Dr Robyn Sheen)	6240 3291	

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## APPENDIX D: STANDARD FORMAT FOR A BID FOR THE LEGISLATION PROGRAMME

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### PORTFOLIO

**XYZ Bill** (ie the name of the proposed bill)

ABC Act 19XX (Act(s) to be amended. If the bill is amending one Act only then the name of the bill should be enough to indicate the name of the Act being amended):

- describe all measures in a series of dash points (in a portfolio bill describe each measure proposed for the relevant Act under “amend the ABC Act”)
- use no punctuation at the end of a measure
- commence each dash point of the description with a verb and explain the measure clearly and concisely, eg. “extend the pharmacy agreement beyond 31 March 1997”
- provide sufficient information to make clear what amendments are to be included in the bill; the description should not be a broad one-line entry such as “amend the XYZ Act” or “clarify the meaning of the Act”

Provide information on the bill under each of the headings below. If necessary, comment separately on particular measures groups of measures. But if possible show all measures for a bill in one list and give financial/political information (etc) for all measures in that bill together (ie don’t split the measures for one bill into batches and give information separately for each batch of measures). If it seems necessary to treat the measures in batches, don’t complete the short description cell for each batch; give one short description covering the whole bill.

category sought:                      indicate the category sought for the whole bill (not for each set of measures), ie:

category T                      )  
category A                      ) refer to paragraph 2.3  
category B                      )  
category C                      )

critical date:                      indicate the critical implementation date/date of effect (if any) for measures in the bill, and the basis on which that date was selected (eg. expiry of current legislation); don’t include arbitrary dates and don’t select and impose a date if that date is not essential

financial impact:                      indicate whether financial significance is:  
none low medium high very high,  
the impact on the budget, eg a saving, expense,  
revenue loss or gain, and provide an estimate of the  
financial impact of the proposal (to be shown to one  
decimal place in \$million, eg \$18.2m; \$0.5m); add  
additional comment if required

political impact:	<p>indicate whether political significance is: none low medium high very high; add additional comment if required, eg. the impact on the government and likely reactions from industry or the public to the proposed bill or if the proposed bill does not progress</p>
impact on business:	<p>a regulation impact statement (RIS) will/will not be required; ORR has/has not been consulted. Any RIS should be completed for consideration at the policy approval stage</p>
policy approval:	<p>details of the policy approval, ie by Cabinet Minute (number and date); or Prime Minister (date); or Parliamentary Secretary to Cabinet (date); or Minister (date). If no approvals have been obtained, show the type of approval to be/being sought and expected timing. Please note that <u>a public announcement or press release is not policy approval</u>. See the additional requirement for rebids set out below</p>
drafting instructions:	<p>indicate the date drafting instructions were issued or are expected to be issued, the estimated size of the bill (small/medium/large/very large) and drafting complexity (simple/moderate/complex/very complex). Please note the additional requirement for rebids set out below</p>
other:	<p>if necessary, a brief description of any other relevant factors including any consultation (where consultation has occurred or is to occur)</p>
short description:	<p>a <u>short description</u> of the content of the proposed bill for <u>public release</u> to senators and members prior to the sittings in which the bill is to be introduced. <u>There should be one short description for the whole bill</u>, not a short description for each set of measures. The short description should consist of 1 to 4 dash points - do not include lengthy background information and do not simply refer to the more detailed description at the beginning of the bid unless this is short.</p> <p>The short description will be provided to senators and members well in advance of the introduction of the legislation and, in some cases, before finalisation of policy, and therefore care should be taken to ensure that it is in a form suitable for public release. <u>Sensitive and private information must not be</u></p>

included in the short description. If the information should not be released until policy approval is obtained then this should be indicated at the end of the description - **in bold please**

contacts: contact officers' names with work, home, mobile and fax numbers, including the Legislation Liaison Officer and the SES officer most directly responsible for the bill/measure

rebid: indicate whether the bid is a rebid (yes/no) and, if yes, indicate the category granted by PBC last time and report on progress in policy development and the issuing of drafting instructions, with a realistic indication of the likelihood of the legislation being settled for the next sittings

### **Use of the Bids Template**

- (a) Information about bids should be compiled on the template available on CABNET, under Frequently Asked Questions. For access to CABNET, either to download the template or to send it when completed to the Legislation Section, LLOs should consult their departmental Cabinet Liaison Officers.
- (b) Text is to be keyed into shaded areas on the template. Formatting is built into those shaded areas. The template is intended to help departments and agencies provide information under standard headings and in standard format, so that it can be incorporated in a Cabinet memorandum without the need for extensive processing. Please do not make changes to the template that would defeat this purpose.
- (c) Information on the template should be sent to the Legislation Section via CABNET e-mail or delivered by hand on floppy disk; it should not be sent via ordinary email facilities. The CABNET address group is CABNET Recipients – I Legislation Secretariat. If a floppy disk is used, the disk should identify the portfolio, be IBM formatted, and provide details of the word processing system and the version used (the Legislation Section uses Microsoft Word 97).
- (d) A completed template should be sent to the Legislation Section *in advance*, as soon as papers are ready to be submitted for signature by the minister. A hard copy of the template should be attached to the minister's letter to the Prime Minister.

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## APPENDIX E: STANDARD FORMAT FOR A REQUEST FOR A VARIATION TO THE LEGISLATION PROGRAMME

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### PORTFOLIO

**XYZ Bill** (ie the name of the proposed bill)

ABC Act 19XX (Act(s) to be amended. If the bill is amending one Act only then the name of the bill should be enough to indicate the name of the Act being amended):

- describe all new/additional/varied measures to be included in the proposed new or existing bill in a series of dash points (in a portfolio bill describe each measure proposed for the relevant Act under “amend the ABC Act”)
- use no punctuation at the end of a measure
- commence each dash point of the description with a verb and explain the measure clearly and concisely, eg. “extend the pharmacy agreement beyond 31 March 1997”
- provide sufficient information to make clear what amendments are to be included in the bill; the description should not be a broad, one line entry such as “amend the XYZ Act” or “clarify the meaning of the Act”

Provide information on the bill under each of the headings below. If necessary, comment separately on particular measures or groups of measures. But if possible show all measures for a bill in one list and give financial/political information (etc) for all measures in that bill together (ie don’t split the measures for one bill into batches and give information separately for each batch of measures).

proposal:	indicate whether the proposal is that a new bill be added to the programme, that a bill already on the programme be upgraded or have new measures added to it, or that a bill in the Parliament be amended												
category sought:	indicate the category sought <u>for the whole bill (not for each set of measures)</u> , ie: <table style="margin-left: 20px; border-collapse: collapse;"> <tr> <td>category T</td> <td>)</td> <td></td> </tr> <tr> <td>category A</td> <td>)</td> <td>refer to paragraph 2.3</td> </tr> <tr> <td>category B</td> <td>)</td> <td></td> </tr> <tr> <td>category C</td> <td>)</td> <td></td> </tr> </table>	category T	)		category A	)	refer to paragraph 2.3	category B	)		category C	)	
category T	)												
category A	)	refer to paragraph 2.3											
category B	)												
category C	)												
reasons for variation:	explain why a variation is being sought rather than including the measures on the legislation programme for the next sitting period												

critical date:	indicate the critical implementation date/date of effect (if any) for measures in the bill and the basis on which that date was selected (eg. expiry of current legislation); don't include arbitrary dates and don't select and impose a date if that date is not essential
financial impact:	indicate whether financial significance is: none low medium high very high, the impact on the budget, eg a saving, expense, revenue loss or gain, <u>and</u> provide an estimate of the financial impact of the proposal (to be shown to one decimal place in \$million, eg \$18.2m; \$0.5m); include additional comment if required
political impact:	indicate whether political significance is: none low medium high very high add additional comment if required, eg. the impact on the government and likely reactions from industry or the public to the proposed bill or if the proposed bill is not given priority as requested
impact on business:	a regulation impact statement (RIS) will/will not be required; ORR has/has not been consulted. Any RIS should be completed for consideration at the policy approval stage
policy approval:	details of the policy approval, ie by Cabinet Minute (number and date); or Prime Minister (date); or Parliamentary Secretary to Cabinet (date); or Minister (date). If no approvals have been obtained, show the type of approval to be/being sought and expected timing. If minor policy approval is required it should be sought in the minister's covering letter to the Prime Minister. Please note that <u>a public announcement or press release is not policy approval.</u>
drafting instructions:	indicate the date drafting instructions were issued or are expected to be issued, the estimated size of the bill (small/medium/large/very large) and drafting complexity (simple/moderate/complex/very complex)
other:	where category T status is sought, indicate the outcome of any consultations with non-government parties, and indicate any other relevant factors
First Parliamentary Counsel:	indicate that consultations have taken place (but only after FPC has been consulted) and the outcome of those consultations



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contacts:	contact officers names with work, home, mobile and fax numbers, including the Legislation Liaison Officer and the SES officer most directly responsible for the measure
rebid:	indicate whether the variation is a rebid (yes/no) and, if yes, <u>indicate category granted by PBC for the current programme and <i>report on progress on policy development and the issuing of drafting instructions</i></u> , with a realistic indication of the likelihood and timing of the legislation being settled for the current sittings

### Use of the Variations Template

- (a) Information about requested variations to the legislation programme should be compiled on the template available on CABNET, under Frequently Asked Questions. For access to CABNET, either to download the template or to send it when completed to the Legislation Section, LLOs should consult their departmental Cabinet Liaison Officers.
- (b) Text is to be keyed into shaded areas on the template. Formatting is built into those shaded areas. The template is intended to help departments and agencies provide information under standard headings and in standard format, so that it can be incorporated in a Cabinet memorandum without the need for extensive processing. Please do not make changes to the template that would defeat this purpose.
- (c) Information on the template should be sent to the Legislation Section via CABNET e-mail or delivered by hand on floppy disk; it should not be sent via ordinary email facilities. The CABNET address group is CABNET Recipients – I Legislation Secretariat. If a floppy disk is used, the disk should identify the portfolio, be IBM formatted, and provide details of the word processing system and the version used (the Legislation Section uses Microsoft Word 97).
- (d) A completed template should be sent to the Legislation Section *in advance*, as soon as papers are ready to be submitted for signature by the minister. A hard copy of the template should be attached to the minister's letter to the Prime Minister.

## APPENDIX F: LETTER SEEKING MINOR POLICY APPROVAL

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The Hon John Howard, MP  
Prime Minister  
Parliament House  
CANBERRA ACT 2600

Dear Prime Minister

I am writing to seek your approval of a proposal which will require legislation but which does not in my view require consideration by Cabinet. *[Attach any legal advice supporting the need for legislation and refer to any previous related correspondence.]*

The proposal is to amend the XYZ Act (and the GHI Act, etc) by means of amendments to be included in the PQR Bill, which has a place as a category B bill on the legislation programme for the 199X *Spring/Autumn/Winter* sitting period.

The XYZ Act *[include a brief description of the Act if appropriate]...*

The effect of the amendments I propose would be to .....

*[If there are only a few amendments these can be included in the letter. If there are a number of amendments for which approval is sought, the amendments should be set out in an attachment to the minister's letter. The attachment could be set out as follows:*

***Amendments to the XYZ Act:***

***Proposed amendment/measure:*** describe the outcome/intent/change to be achieved - do not just list sections of the Act that are proposed to be amended.

***Background:*** explain, in a short paragraph, how the need for the amendment(s) arose (eg. difficulties in implementation, unintended consequence of previous amendment, etc) or why there is considered to be a need to amend the Act or add new provisions, etc and also explain the need for the amendments to be introduced or passed before a particular date ].

I have consulted the Minister for ??? *[consultation should occur where the proposal significantly affects the portfolio interests of other ministers]* and attach copies of his/her/their agreement to the proposal. **OR** I have written to the Minister for ??? about his/her views on the proposal. A copy of the correspondence is attached. *[Note: it is preferable to obtain the views of other ministers before writing to the Prime Minister].*

I believe the measures do not warrant consideration by Cabinet, because *the financial impact will be small [an estimated (saving, expense, revenue loss or gain) of \$0.x m p.a.]; because they are not politically sensitive; and because other ministers with an interest have been/are being consulted (?and have given their agreement).*

A regulation impact statement is attached/is not required. (The ORR's advice as to compliance with the regulation impact statement requirements and on whether the level of analysis is adequate should also be included.)

The contact officer in my department in relation to these proposals is .....  
*[include the name and phone number of the relevant policy officer (s)].*

Yours sincerely

.....

**APPENDIX G: COVER SHEET FOR AN  
EXPLANATORY MEMORANDUM  
FOR A BILL INTRODUCED FOR THE  
FIRST TIME IN THE HOUSE OF  
REPRESENTATIVES OR THE SENATE**

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1996 \*

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES/SENATE †

**NATIONAL FIREARMS PROGRAM IMPLEMENTATION BILL 1996**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General,  
the Honourable Daryl Williams, AM QC MP)

(\* Show the year(s) of the current Parliament, eg. 1996 or 1996-97 or 1996-97-98,  
as shown on the bill)

(† Depending on which house the bill is to be first introduced in)

**APPENDIX H: COVER SHEET FOR A  
SUPPLEMENTARY EXPLANATORY  
MEMORANDUM  
FOR GOVERNMENT AMENDMENTS  
TO A BILL ALREADY BEFORE  
THE HOUSE OF REPRESENTATIVES  
OR THE SENATE**

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1998 \*

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES/SENATE †

**CUSTOMS AND EXCISE LEGISLATION  
AMENDMENT BILL (NO. 1) 1998**

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments / and Requests for Amendments / and  
New Clauses to be Moved on Behalf of the Government

(Circulated by authority of the  
Minister for Justice and Customs,  
the Senator the Honourable Amanda Vanstone)

(\* Show the year(s) of the current Parliament, eg. 1998 or 1998-99, as shown on the bill)

(† Depending on which house the amendments are to be moved in)

**APPENDIX I: COVER SHEET FOR A REPLACEMENT  
EXPLANATORY MEMORANDUM**

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1998-99 \*

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES/SENATE †

**HUMAN RIGHTS LEGISLATION AMENDMENT BILL (NO. 1) 1999**

REPLACEMENT EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General,  
the Honourable Daryl Williams, AM QC MP)

THIS MEMORANDUM REPLACES THE EXPLANATORY MEMORANDUM  
PRESENTED TO THE HOUSE OF REPRESENTATIVES  
ON 17 FEBRUARY 1999

(\* Show the year(s) of the current Parliament, eg. 1998 or 1998-99, as shown on the bill)

(† Depending on which house the replacement is to be tabled in)

**[A replacement explanatory memorandum corrects errors in the original version.  
On revised explanatory memorandums, see paragraphs 10.21, 13.36 and 14.38.]**

**APPENDIX J: CORRECTION OF AN EXPLANATORY  
MEMORANDUM**

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1998-99 \*

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES/SENATE †

**TAXATION LAWS AMENDMENT BILL (NO. 2) 1999**

CORRECTION TO THE  
EXPLANATORY MEMORANDUM

CLAUSE 20 DELEGATION

*Fourth line* - omit “section 30”, substitute “section 21” to correct a typographical error in the Explanatory Memorandum.

(Circulated by authority of the Treasurer,  
the Honourable Peter Costello, MP)

(\* Show the year(s) of the current Parliament, eg. 1998 or 1998-99, as shown on the bill)

(† Depending on which house the correction is to be tabled in)

**APPENDIX K: COVER SHEET FOR AN  
EXPLANATORY MEMORANDUM  
REPRINTED FOR INTRODUCTION IN  
THE SECOND HOUSE TO TAKE  
ACCOUNT OF AMENDMENTS TO A  
BILL IN THE FIRST HOUSE**

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1998-99 \*

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES/SENATE †

**YOUTH ALLOWANCE CONSOLIDATION BILL 1999 ‡**

REVISED EXPLANATORY MEMORANDUM

(Circulated by authority of the  
Minister for Family and Community Services,  
Senator the Honourable Jocelyn Newman)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY  
THE HOUSE OF REPRESENTATIVES/SENATE §  
TO THE BILL AS INTRODUCED

(\* Show the year(s) of the current Parliament, eg. 1998 or 1998-99, as shown on the bill)

(† Show the house for which the revised explanatory memorandum has been prepared,  
ie the second house)

(‡ Confirm the bill citation with the Legislation Officer in the Senate/House Table Office, especially if  
the bill was introduced into the first house in one year and passed by that house in a later year)

(§ Show the house in which the bill was introduced and amended, ie the first house)



**APPENDIX L: COVER SHEET FOR A COMBINED  
EXPLANATORY MEMORANDUM**

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1998-99 \*

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES/SENATE †

**RADIOCOMMUNICATIONS LEGISLATION AMENDMENT BILL 1999**

**RADIOCOMMUNICATIONS (RECEIVER LICENCE TAX)  
AMENDMENT BILL 1999**

**RADIOCOMMUNICATIONS (TRANSMITTER LICENCE TAX)  
AMENDMENT BILL 1999**

EXPLANATORY MEMORANDUM

(Circulated by authority of the  
Minister for Communications, Information Technology and the Arts,  
the Senator the Honourable Richard Alston)

(\* Show the year(s) of the current Parliament, eg. 1998 or 1998-99, as stated on the bill)

(† Depending on which house the amendments are to be introduced in)

## **APPENDIX M: SAMPLE GENERAL OUTLINE AND FINANCIAL IMPACT STATEMENT IN AN EXPLANATORY MEMORANDUM**

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### **NATIONAL FIREARMS PROGRAM IMPLEMENTATION BILL 1996**

#### **OUTLINE**

This bill appropriates monies for financial assistance to the states, the Australian Capital Territory and the Northern Territory in connection with the implementation of the national firearms program.

The appropriation is for the purposes of: –

- payments to the states and territories so that they may be reimbursed for compensation payments made by them to persons who hand in self-loading rifles, self-loading shotguns and pump action shotguns as part of the nationwide amnesty and compensation-for-surrender scheme agreed by the Australasian Police Ministers' Council on 10 May 1996;
- payments to the states and territories so that they may be reimbursed for compensation to gun dealers for surrender of stock and associated loss of business in accordance with the principles agreed by the Australasian Police Ministers' Council on 17 July 1996;
- payments to the states and territories and by the Commonwealth for purposes connected to the compensation-for-surrender scheme and for implementation of the new national licensing and registration schemes.

Payments for reimbursement for compensation will be limited to compensation for firearms surrendered during the nationwide amnesty period.

States and territories will be required to return any excess funds to the Commonwealth.

#### **Financial impact statement \***

The payments will be funded out of the gun levy (a one-off increase in the Medicare levy for the income year 1996-97). The amounts involved are estimated to be in the order of \$500 million. While the greater part of the payments is likely to be made in the financial year 1996/97, it is anticipated that some will not be made until 1997/98.

\* Departments should ensure that appropriate accrual accounting terminology is used to describe the financial impact of the bill.

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## APPENDIX N: SAMPLE NOTES ON CLAUSES IN AN EXPLANATORY MEMORANDUM

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### NATIONAL FIREARMS PROGRAM IMPLEMENTATION BILL 1996

#### NOTES ON CLAUSES

##### Clause 1: Short Title

1. Clause 1 is a formal provision specifying the short title of the Bill.

##### Clause 2: Commencement

2. The Bill will commence on the day it receives royal assent.

##### Clause 3: Interpretation

3. Several terms are defined in clause 3:
  - “amnesty period” is defined as the period starting at the beginning of 10 May 1996 and ending at midnight on 30 September 1997. This is the nationwide amnesty period agreed to by the Australasian Police Ministers’ Council. There is also provision for the Attorney-General to determine a lesser period of time to take account of any jurisdiction which wishes its amnesty and surrender period to be a shorter period. He may not determine a longer period. Payments to the states and territories for reimbursement for compensation will only be made for firearms surrendered during this period.
  - “national firearms program” is defined as the program of measures agreed to by the Australasian Police Ministers’ Council at its meetings on 10 May 1996 and 17 July 1996. These include an effective national registration scheme for firearms and a program of compensation for those restricted category firearms handed in during the nationwide amnesty period.
  - “qualifying compensation” is compensation paid under a state or territory scheme to implement the national firearms program. The scheme must be approved in writing by the Attorney-General. Qualifying compensation is compensation paid under such a scheme to persons who hand in self-loading rifles, self-loading shotguns or pump-action shotguns. These are restricted category firearms, to be surrendered under the national firearms program.

Qualifying compensation will also include compensation to gun owners for parts and accessories which are specific only to restricted category firearms and cannot be used in conjunction with other firearms. In addition, it will include compensation to gun dealers for surrender of stock-in-trade and of accoutrements such as parts and accessories, ammunition, service manuals and machinery which are for use in relation only to restricted category firearms and cannot be used in relation to any other firearms and for loss of business associated with such surrender.

Qualifying compensation is limited to compensation for firearms and associated equipment surrendered between 10 May 1996 and 30 September 1997 and claims for loss of business lodged during this period. The states and territories will only be reimbursed for payments of qualifying compensation.

- “state” is defined to include the Australian Capital Territory and the Northern Territory.

#### **Clause 4: Financial assistance for qualifying compensation paid by a state**

4. This clause enables the Attorney-General to authorise payment to a state or territory to reimburse the state or territory for qualifying compensation already paid. It also enables the Attorney-General to authorise payment to a state or territory in advance for amounts of qualifying compensation expected to be paid by that state or territory. In this case, any amounts in excess of the amount of qualifying compensation actually paid out by the state or territory must be repaid to the Commonwealth. The Commonwealth may take court action to recover any such excess not repaid to it.

#### **Clause 5: Additional financial assistance**

5. Clause 5 enables the Attorney-General to authorise payments to the states and territories and other payments by the Commonwealth for purposes directly connected to the scheme for payment of qualifying compensation and for implementation of the new nationwide licensing and registration schemes. This amount will be limited to an amount notified by the Attorney-General in the *Gazette*. The Attorney-General will not be able to revoke or change this limit.

#### **Clause 6: Nature of payments under this Act**

6. This clause makes it clear that payments under the Bill to the states are in the nature of financial assistance granted under section 96 of the Constitution.

#### **Clause 7: Appropriation**

7. Clause 7 appropriates the Consolidated Revenue Fund for payments made under the Bill.

**APPENDIX O: REQUIREMENTS FOR DOCUMENTATION**

**I DOCUMENTATION TO BE SUBMITTED TO THE LEGISLATION SECTION FOR THE LEGISLATION APPROVAL PROCESS (LAP)**

**Deadline:** **11 am Wednesday of the week before introduction.**

**Deliver to:** **Legislation Section  
Department of the Prime Minister and Cabinet  
3-5 National Circuit  
BARTON  
Telephone: 6271 5721, 6271 5783,  
6271 5762 or 6271 5787**

<u>From whom:</u>	<u>Number required:</u>	<u>Documents required (on A4 paper):</u>
<b>From departments:</b>	1	covering letter or submission evidencing a minister’s approval of the explanatory memorandum/ supplementary explanatory memorandum and the bill/ government amendments, and copies of letters or submissions evidencing approval from other ministers of the text of amendments to their legislation and agreement to policy issues  <i>Note:</i> consultation with other ministers should be initiated as soon as the need for consultation becomes apparent
	8	explanatory memoranda; supplementary explanatory memoranda
	20	outlines
	3	Legislation Profile forms
<b>From OPC:</b>	7	draft bills; draft government amendments
	9	OPC memoranda

<b>II COPIES OF AN EXPLANATORY MEMORANDUM (ON B5 PAPER) (INCLUDING A SUPPLEMENTARY OR REVISED EM OR A CORRECTION)</b>
---

**A Parliament House copies for introduction of a bill/amendments**

**Deadline: Deliver at least one day before introduction,  
to all recipients, including both Table Offices.**

<u>Number required:</u>	<u>For Whom?</u>	<u>Deliver to:</u>
100	House of Representatives	Document Supervisor, Table Office, House of Representatives (RG 89)
100	Senate	Legislation Officer Senate Table Office (SG 25)
2	to each PLO	PLOs – House (RG 98)  Senate (SG 120)
1 (House initiated bills only)	the minister, for presentation to the House at the time of introduction or moving	the minister's office
1 on disk (1 EM per disk)	for placing on the Internet	Document Supervisor, Table Office, House of Representatives (RG 89) (if House initiated Bill or House amendments)  <b>OR</b>  Legislation Officer Senate Table Office (SG 25) (if Senate initiated Bill or Senate amendments)

**B embargo copies (if CanPrint is not the printer)**

**Deadline:** Deliver only after authority for release is received from the Legislation Officer in the relevant Table Office (ie, after the EM has been tabled).

**Note:** Departments must ensure that the copies of the EM delivered match the EM tabled in the Parliament.

<u>Number required:</u>	<u>For What Purpose?</u>	<u>Deliver to:</u>
50 (Senate initiated bills only)	Senate Table Office stock copies (departments pay for these)	Legislation Officer Senate Table Office (SG 25) (temporarily located at S 1.30.1)
115	subscription copies (AusInfo pays for these)	CanPrint Publications Warehouse 16 Nyrang Street, Fyshwick
85-235 (see note below)	sale copies (AusInfo pays for these)	CanPrint Publications Warehouse 16 Nyrang Street, Fyshwick
50	free distribution (eg to libraries) (departments pay for these)	CanPrint Publications Warehouse 16 Nyrang Street, Fyshwick
1 electronic copy	for inclusion by AusInfo on the Attorney-General's Department SCALEplus site as an archive file	on disk to: AusInfo – Legislative Services Level 2, 111 Alinga Street Canberra City  or by e-mail: <a href="mailto:ausinfo@dofa.gov.au">ausinfo@dofa.gov.au</a>

**C other issues relating to printing an explanatory memorandum**

**DELIVERY**

Copies must be delivered to both Table Offices before introduction in the first house.

**SECURITY**

As bills and explanatory memoranda are confidential to the government until tabled, the e-mail system is not to be used for delivering explanatory memoranda (and second reading speeches) required before tabling. The e-mail system may be used to provide AusInfo with a copy of the explanatory memorandum after it has been tabled. If Senate amendments are cleared by the minister for circulation prior to tabling and the supplementary explanatory memorandum is available and cleared, that supplementary explanatory memorandum is circulated with the amendments and therefore remains confidential only until the time of circulation.

### INTERNATIONAL STANDARD BOOK NUMBERS

Departments, as publishers of explanatory memoranda, are responsible for giving each explanatory memorandum an ISBN. A barcode created from the ISBN is a feature that must be included if departments/printers have the required software. If CanPrint is the printer, CanPrint will give the documents an ISBN as a matter of routine. Departments using another printer are responsible for obtaining an ISBN. ISBNs can be obtained from the Library Deposit Unit of AusInfo on telephone 6275 3531; fax: 6275 3106; or [ldadmin@dofa.gov.au](mailto:ldadmin@dofa.gov.au) during business hours. The unit will also issue blocks of numbers.

### EMBARGO COPIES

If CanPrint is the printer, the embargo copies (for Senate, sale, subscription and free distribution purposes) will be printed and distributed as a matter of routine. CanPrint will issue separate invoices to the department and AusInfo. When using another printer, departments must ensure that these copies are part of the print job and that they are delivered to the locations indicated above, after authority for release is received from the Legislation Officer in the relevant Table Office. Departments will need to advise the printer of the billing arrangements and will need to advise the relevant Legislation Officer of the identity and contact details of the holder of the embargo stock. When the department/printer delivers the sale, subscription and free distribution copies to CanPrint they must supply the release slip from the relevant Table Office at the time of delivery. If the release slip is not supplied CanPrint will not accept the delivery.

The number of explanatory memoranda required for sale varies according to the level of interest in the subject matter. If an immediate decision must be made about the number of copies to print, any quantity in the range indicated above (85-235) is acceptable. However, if departments wish to discuss the matter with AusInfo the contact during normal business hours is Peter Lowther on telephone 6275 3472.

### INSUFFICIENT TIME TO PRINT AN EXPLANATORY MEMORANDUM

When a department has an extremely tight timeframe in which to print an explanatory memorandum it can, with the agreement of the relevant Table Office, provide A4 photocopies of the explanatory memorandum. The Table Office will then arrange for the additional copies to be printed (by their print provider, CanPrint) and the department will be billed for the costs involved. In these circumstances, CanPrint will arrange for AusInfo to receive an invoice for the cost of the subscription and sale copies. Departments must discuss the requirements for documentation in these circumstances with the relevant Table Office.

<b>III TECHNICAL REQUIREMENTS FOR THE PROVISION OF AN EXPLANATORY MEMORANDUM ON DISK</b>
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Departments and agencies must provide explanatory memoranda in electronic form for electronic conversion by the relevant Table Offices to the parliamentary network and the Internet. Preferred formats are IBM Word or RTF. PDF is not an acceptable format.



Departments and agencies will be responsible for ensuring that the text of the electronic version of an explanatory memorandum is identical to the text of the hard copy as printed (apart from differences in formatting). The Table Offices will check the title page but will not accept responsibility for any discrepancies between the electronic text and the printed copy.

The disk or electronic version must be clearly labelled with the file name, the name of the bill to which the explanatory memorandum relates and a departmental contact.

Inquiries: Senate:	Ms Bev Orr	ph 6277 3033;
House of Representatives:	Mr Jason Sherd	ph 6277 4802;
AusInfo:	Ms Vanessa Muller	ph 6275 3586;
	Ms Helen Truelove	ph 6275 3596;
CanPrint:	Mr Ron Hutchison	ph 6295 4554;
	Mr Dave Stirling	ph 6295 4543.

<p><b>IV COPIES OF A SECOND READING SPEECH (ON A4 PAPER) FOR INTRODUCTION OF A BILL</b></p>
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**Deadline: Copies of a speech must be delivered at least one day before introduction of the bill; deliver to all recipients, including both Table Offices, before introduction.**

<u>Number required:</u>	<u>For Whom?</u>	<u>Deliver to:</u>
80	House of Representatives	Document Supervisor, Table Office, House of Representatives (RG 89)
100	Senate (* see note below)	Parliamentary Officer (Legislation), Senate Table Office (SG 25)
2 (House initiated bills only)	the minister for use in the House, and a copy for the opposition if required by the minister	the minister's office
4	to each PLO	PLOs – House (RG 98)
1 on disk (1 speech per disk)	for each PLO to give to Hansard	Senate (SG 120)

\* Where possible, second reading speeches should be written in a way that makes them suitable for both the House and the Senate. If a different speech is required for the Senate it must not contain references appropriate to a speech to the House.

## APPENDIX P: LEGISLATION PROFILE FORM

### CABINET-IN-CONFIDENCE

Department of the Prime Minister and Cabinet

## LEGISLATION PROFILE

**To be completed by the Legislation Liaison Officer for each draft bill (or package of bills) and each set of amendments, and submitted with the draft explanatory memorandum to the Legislation Section**

**Full Title:** <sup>19</sup>

**Sponsoring Minister (HOUSE):**

**Sponsoring Minister (SENATE):**

**Purpose:**

**Financial Implications:** <sup>20</sup>

**Timing Considerations:** <sup>21</sup>

**Comments:**

**Departmental Contact Officers:**

First Contact:

Name:

Telephone: (bh)  
(ah)  
(mobile)

Alternative Contact:

Name:

Telephone: (bh)  
(ah)  
(mobile)

**Date completed:** <sup>22</sup>

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**CABINET-IN-CONFIDENCE**

<sup>19</sup> Indicate whether it is a bill (or package of bills being introduced together) or amendments to a bill and include the exact title of the bill(s).

<sup>20</sup> Indicate the total financial impact of the whole bill, per annum, as set out in the explanatory memorandum.

<sup>21</sup> Indicate any critical dates by which measures contained in the bill(s) must be passed, or any factors which should be known to the PLO for the purpose of programming the bill(s) for debate.

<sup>22</sup> LLO to insert the date that the form is completed and lodged with the Legislation Section.

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## GLOSSARY

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Act	a bill, when passed by both houses of the Parliament and assented to by the Governor-General, becomes an Act
bill	OPC prepares a <i>draft bill</i> which is a confidential document until it is introduced into Parliament or otherwise approved for public circulation. When approved for introduction by the Parliamentary Secretary to Cabinet, the draft is printed as a <i>bill</i> and introduced into either the House of Representatives or the Senate
clause	see the term “parts of an Act”
delegated or subordinate legislation	laws made under the authority of Acts by persons or bodies other than the Parliament (usually the Governor-General in Council or a minister) and variously described as rules, regulations, by-laws, orders, statutory instruments, notices, ordinances, determinations and proclamations. The <i>Federal Executive Council Handbook</i> provides details of procedures to be followed for subordinate legislation required to be made by the Governor-General in Council. If required to be printed and published under the <i>Statutory Rules Publication Act 1903</i> , they are also known as “Statutory Rules”
first house	the house into which a bill is first introduced
FPC	First Parliamentary Counsel - the head of the Office of Parliamentary Counsel
House-initiated bills	bills which are first introduced in the House of Representatives
LAP memo	memorandum prepared by OPC for each bill, indicating the policy authority for all measures contained in the bill
LLO	Departmental Legislation Liaison Officer
Legislation Circular	Circulars issued by the Legislation Section advising LLOs on a range of matters relating to the legislation process
Legislation Section	Parliamentary Affairs and Legislation Section, Department of the Prime Minister and Cabinet
OPC	Office of Parliamentary Counsel
ORR	Office of Regulation Review
paragraph	see the term “parts of an Act”

parts of an Act	an <i>Act</i> is made up of <i>sections</i> which may be divided into <i>subsections</i> which may be further divided into <i>paragraphs</i> and <i>subparagraphs</i> . For example section 9, subsection 9(1), paragraph 9(1)(a). Sections are commonly grouped into parts, divisions and sub-divisions. In a <i>bill</i> , sections are called <i>clauses</i> , and subsections called <i>subclauses</i> and paragraphs are called <i>paragraphs</i> . Amendments to Acts are set out in schedules
PBC	Parliamentary Business Committee of Cabinet
PLO	Parliamentary Liaison Officer: there are two officers of PM&C responsible for working with the Leader of the House in the House of Representatives and the Leader of Government Business and the Manager of Government Business in the Senate to programme government business
PM&C	Department of the Prime Minister and Cabinet
primary legislation	legislation passed by the Parliament, ie Acts of Parliament
RIS	a regulation impact statement, which must be prepared for all proposed new or amending legislation which directly affects business or has a significant indirect effect on business or which restricts competition
section	see the term “parts of an Act”
Senate-initiated bills	bills which are first introduced in the Senate
schedules to an Act/bill	where an Act/bill amends a number of Acts, the amendments to each Act are set out in a series of schedules, often with a separate schedule for each Act being amended. Schedules for non-amending Acts/bills may contain matters of detail, the text of documents such as treaties, or other appropriate material.
sitting period/ sittings of Parliament / sitting pattern	there are generally three periods of sitting of the Parliament each year: the Autumn sittings from late January/February to March/ April; the Winter sittings from late April/May to late June; and the Spring sittings from August to November/December. The sitting pattern for each year is approved by the Prime Minister. The days on which each house sits during a period of sitting are determined by each house
subclause	see the term “parts of an Act”
subordinate or delegated legislation	see the term “delegated legislation”
subparagraph	see the term “parts of an Act”
subsection	see the term “parts of an Act”

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