



Australian Government

---

Department of the Prime Minister and Cabinet

# LEGISLATION HANDBOOK

Department of the Prime Minister and Cabinet

Canberra

February 2017

© Commonwealth of Australia 2017

ISBN 978-1-925362-20-6 Legislation Handbook (PDF)

ISBN 978-1-925362-21-3 Legislation Handbook (DOCX)

With the exception of the Commonwealth Coat of Arms, this work is licensed under a Creative Commons Attribution 4.0 International licence (CC BY 4.0) (<http://creativecommons.org/licenses/by/4.0/deed.en>).



### **Third party copyright**

Wherever a third party holds copyright in this material, the copyright remains with that party. Their permission may be required to use the material. Please contact them directly.

### **Attribution**

This publication should be attributed as follows: Commonwealth of Australia, Department of the Prime Minister and Cabinet, *Legislation Handbook*.

### **Use of the Coat of Arms**

The terms under which the Coat of Arms can be used are detailed on the following website: <http://www.itsanhonour.gov.au/coat-arms/>.

### **Other uses**

Enquiries regarding this licence and any other use of this document are welcome at:

Department of the Prime Minister and Cabinet  
PO Box 6500  
CANBERRA ACT 2600  
Australia  
(02) 6271 5111

### **Appendixes and templates**

The appendixes referred to in this handbook contain information such as templates, checklists and contact details. The appendixes are available for download as separate documents on the [Department of the Prime Minister and Cabinet \(PM&C\) website](#). You can also obtain copies by contacting the Legislation Section in PM&C. The Legislation Section will update the appendixes as required.

# CONTENTS

---

<b>EXECUTIVE SUMMARY</b> .....	<b>VII</b>
<b>CHAPTER 1: INTRODUCTION</b> .....	<b>1</b>
Purpose of the handbook.....	1
When is legislation required?.....	1
Consultation when developing legislation.....	1
Primary or subordinate legislation?.....	2
Who has responsibility for which legislation?.....	3
<i>Bills affecting other ministers' legislation or portfolio interests</i> .....	3
Reducing the complexity of legislation.....	3
Developing a bill.....	4
Other resources.....	6
<b>CHAPTER 2: DEVELOPING THE LEGISLATION PROGRAMME</b> .....	<b>7</b>
What is the legislation programme?.....	7
Legislation priorities.....	7
Parliamentary Business Committee minutes.....	8
Failure to meet deadlines.....	8
Deletions from the legislation programme.....	8
Impact of legislation on businesses, community organisations and individuals.....	8
<i>Regulation impact statements</i> .....	8
Submitting a bid for a place on the legislation programme.....	9
<i>What is a bid?</i> .....	9
<i>Deadlines for submission of bids</i> .....	9
<i>Summary of information required for bids</i> .....	9
<i>The minister's covering letter for bids</i> .....	9
Submitting a request for a variation to the legislation programme.....	10
<i>What is a variation?</i> .....	10
<i>Deadline for submission of a request for a variation</i> .....	10
<i>Summary of information required for a variation</i> .....	10
<i>The minister's covering letter for a variation</i> .....	11
Adding Budget bills to the legislation programme.....	11
Templates for bids and variation requests.....	11
Statements of reasons for the Senate.....	12
<i>When is a statement of reasons required?</i> .....	12
<i>Preparation and clearance</i> .....	12

<b>CHAPTER 3: POLICY APPROVAL.....</b>	<b>14</b>
Levels of approval .....	14
The beginning of the policy approval process.....	14
Cabinet approval .....	15
Minor policy approval.....	16
<i>How and when to seek minor policy approval.....</i>	<i>16</i>
<i>Agreement of other ministers .....</i>	<i>17</i>
<i>Consultation seeking agreement on policy aspects.....</i>	<i>17</i>
<i>Approval of the text of amendments by other ministers .....</i>	<i>18</i>
<i>Information to be included in requests for minor policy approval.....</i>	<i>18</i>
<i>Expiry of policy authority.....</i>	<i>19</i>
Ministerial approval of minor technical amendments .....	19
First Parliamentary Counsel approval .....	19
Approval of non-government amendments .....	20
Announcement of legislation in advance of introduction.....	20
<b>CHAPTER 4: TYPES OF BILLS .....</b>	<b>21</b>
The options.....	21
<i>Bills specific to one subject or amendment of one Act.....</i>	<i>21</i>
<i>Multi-issue bills.....</i>	<i>21</i>
<i>Portfolio and omnibus bills.....</i>	<i>21</i>
<i>Annual appropriation bills.....</i>	<i>22</i>
<i>Statute Law Revision Bill.....</i>	<i>22</i>
Closing off portfolio and multi-issue bills for introduction.....	22
Cognate debate of several bills.....	22
<b>CHAPTER 5: PREPARATION OF DRAFTING INSTRUCTIONS .....</b>	<b>23</b>
Drafting instructions.....	23
Timing for drafting instructions .....	23
Responsibility for instructions and the role of instructing officers.....	23
Responsibility for consultations .....	24
OPC client advisers .....	24
Early access to drafters.....	24
Reducing complexity.....	25
Specific matters for consideration.....	25
<i>Retrospective legislation.....</i>	<i>25</i>
<i>Mention of specific ministers and departments.....</i>	<i>25</i>
<i>Delegations.....</i>	<i>26</i>
<i>Legislation review mechanism.....</i>	<i>26</i>
<i>International conventions and treaties.....</i>	<i>26</i>
Matters for consideration in consultation with OPC.....	26
<i>Commencement.....</i>	<i>27</i>
Use of a specified date.....	27
Use of proclamation provisions.....	27
<i>Saving and transitional provisions.....</i>	<i>27</i>
<i>Legislation binding the Crown.....</i>	<i>28</i>

Matters administered by the Attorney-General's portfolio .....	28
<i>Constitutional basis of cooperative schemes</i> .....	28
<i>Burden of proof, offences and penalties</i> .....	29
<i>Regulatory powers</i> .....	29
<i>Jurisdiction and powers of courts and tribunals</i> .....	29
<i>Review of administrative decisions</i> .....	29
<i>International obligations under human rights instruments</i> .....	30
<i>Secrecy provisions</i> .....	31
Consultation with other departments and agencies .....	31
<i>Operation of Commonwealth Acts in external territories</i> .....	31
<i>Governance of statutory entities and other portfolio bodies</i> .....	31
<i>Accounting and audit arrangements</i> .....	32
<i>Financial provisions</i> .....	32
Subordinate legislation: legislative and non-legislative instruments .....	33
<b>CHAPTER 6: THE DRAFTING PROCESS .....</b>	<b>35</b>
Developing a draft bill .....	35
Comments by the instructing department on draft bills .....	35
Consultation with other agencies on draft bills .....	35
Ministerial clearance of a bill .....	35
Security and advance disclosure/exposure of draft bills .....	36
Consulting for clarity, readability and complexity .....	36
<b>CHAPTER 7: PREPARING THE SUPPORT MATERIAL—EXPLANATORY MEMORANDUM AND SECOND READING SPEECH .....</b>	<b>37</b>
Explanatory memorandum .....	37
<i>The purpose of an explanatory memorandum</i> .....	37
<i>When an explanatory memorandum is required</i> .....	37
<i>Who prepares an explanatory memorandum</i> .....	37
<i>The form and content of an explanatory memorandum</i> .....	38
Cover sheet .....	38
General outline .....	38
Statement of compatibility with human rights .....	39
Notes on clauses .....	40
Department clearance processes .....	41
Concerns expressed by parliamentary committees .....	41
House of Representatives Standing Committee on Procedure .....	41
Senate Standing Committee for the Scrutiny of Bills .....	42
Parliamentary Joint Committee on Human Rights .....	44
<i>Printing an explanatory memorandum</i> .....	45
<i>Distributing an explanatory memorandum</i> .....	45
<i>Replacement explanatory memorandum, or correction or addendum to an     explanatory memorandum</i> .....	45
<i>Cognate bills and a combined explanatory memorandum</i> .....	46

Second reading speech.....	46
<i>The purpose of a second reading speech.....</i>	46
<i>A second reading speech is required for every bill.....</i>	46
<i>The content of a second reading speech.....</i>	46
<i>The length of a second reading speech.....</i>	47
<i>Non-inclusion of formal words at the beginning and end of a second reading speech.....</i>	47
<i>Printing and distribution of second reading speeches.....</i>	47
Support material for the second house.....	47
<i>Support material where a bill is not amended in the first house.....</i>	47
<i>Support material where a bill is amended in the first house.....</i>	48

**CHAPTER 8: THE LEGISLATION APPROVAL PROCESS FOR BILLS PRIOR TO INTRODUCTION IN THE PARLIAMENT..... 49**

All bills to be approved for introduction.....	49
The legislation approval process.....	49
Papers to be lodged for the legislation approval process.....	50
<i>Legislation Overview.....</i>	50
<i>Electronic lodgement.....</i>	50
<i>Ministerial approvals.....</i>	51
Corrections and other late changes to bills/amendments.....	51
Party consideration.....	51

**CHAPTER 9: AMENDMENTS DURING PASSAGE OF A BILL AND SUPPLEMENTARY SUPPORT MATERIAL..... 52**

Government amendments.....	52
Formal amendments.....	53
PBC consideration of government amendments.....	53
Drafting government amendments.....	53
Requests for amendments.....	53
Supplementary explanatory memorandum.....	54
Distributing and printing a supplementary explanatory memorandum.....	54
Approval of government amendments.....	54
Reprinting a bill to take account of amendments to the bill by the first house.....	55
Revising an explanatory memorandum to take account of amendments to the bill by the first house.....	55
Revising a second reading speech where a bill has been amended by the first house.....	56
Amendments to a bill by the second house.....	56

**CHAPTER 10: PARTY CLEARANCE..... 57**

Introduction.....	57
The process.....	57
<i>Government members' policy committees.....</i>	57
<i>Party clearance.....</i>	57
<i>The role of departmental staff.....</i>	57
<i>Consultation with non-government parties.....</i>	58

**CHAPTER 11: INTRODUCTION OF A BILL IN THE PARLIAMENT .....59**

Introduction..... 59  
Bills which cannot be introduced in the Senate ..... 59  
Which house?..... 59  
Double dissolution bills..... 59  
Timing of introduction..... 59  
Timing of debate on bills..... 60  
Passage of a bill through both houses ..... 60  
Appropriation bills..... 60  
    *Appropriation Bills Nos. 1 and 2; and the Appropriation (Parliamentary Departments) Bill..... 61*  
    *Bills containing special appropriations..... 61*  
Bills implementing an international treaty ..... 61  
Private members' and senators' bills ..... 62

**CHAPTER 12: PASSAGE OF A BILL THROUGH THE HOUSE OF REPRESENTATIVES.....63**

Introduction..... 63  
House-initiated bills ..... 63  
    *Preparation for introduction..... 63*  
    *Notice of introduction ..... 63*  
    *Minister's papers for presenting a bill..... 64*  
    *Presenting a bill—first reading..... 64*  
    *Selection Committee and referral of bills..... 64*  
    *Preparation for second reading debate and consideration in detail..... 65*  
    *Resumption of second reading debate..... 66*  
    *Cognate debate..... 67*  
    *Consideration in detail..... 67*  
        Government amendments..... 67  
        Amendments moved by non-government members..... 68  
        Amendments moved on the floor..... 68  
    *Third reading..... 68*  
    *Transmission of a bill to the Senate—reprinting the amended bill, explanatory memorandum and second reading speech..... 68*  
    *Bills returned from the Senate with amendments..... 69*  
Senate-initiated bills..... 69  
The Federation Chamber ..... 70  
Presence of departmental advisers in the chamber ..... 71  
Reports tabled by the Parliamentary Joint Committee on Human Rights..... 71

**CHAPTER 13: PASSAGE OF A BILL THROUGH THE SENATE.....73**

Introduction..... 73  
Senate-initiated bills..... 73  
    *Preparation for introduction..... 73*  
    *Notice of motion to introduce a bill ..... 73*  
    *Minister's papers for presenting a bill..... 74*  
    *Presenting (introducing) a bill..... 74*

<i>First reading</i> .....	74
<i>Second reading speech and adjournment of debate</i> .....	74
<i>Preparation for second reading debate and committee of the whole</i> .....	75
<i>Resumption of the second reading debate</i> .....	76
<i>Bills taken together</i> .....	76
<i>Non-controversial bills, Thursday lunchtime</i> .....	76
<i>Selection of Bills Committee and referral of bills</i> .....	77
<i>Committee of the whole stage</i> .....	77
Government amendments.....	78
Amendments moved by non-government senators.....	78
Amendments moved on the floor.....	79
Adoption of the committee report.....	79
<i>Third reading</i> .....	79
<i>Transmission to the House of Representatives</i> .....	79
<i>Bills returned from the House of Representatives with amendments</i> .....	80
House-initiated bills .....	80
Presence of departmental advisers.....	81
Reports tabled by the Senate Standing Committee for the Scrutiny of Bills.....	81
Reports tabled by the Parliamentary Joint Committee on Human Rights.....	82
Assistance and advice.....	82
<b>CHAPTER 14: PROCEDURES AFTER PASSAGE OF A BILL</b> .....	<b>83</b>
Royal assent.....	83
Normal assent procedures.....	83
Commencement of Acts by proclamation .....	84
<b>GLOSSARY</b> .....	<b>85</b>
<b>ABBREVIATIONS AND ACRONYMS</b> .....	<b>90</b>



# EXECUTIVE SUMMARY

---

The *Legislation Handbook* (the handbook) provides comprehensive guidance on the requirements of the legislation process—from policy approval and drafting through to passage in the Parliament.

This is the first revision of the handbook since 2000. It incorporates a number of changes in legislative and administrative practice over recent years. The clarity and usefulness of the handbook has been improved—for example, mandatory requirements have been made clearer, with consistent language such as ‘must’ and ‘required to’. In preparing this updated edition, the Department of the Prime Minister and Cabinet (PM&C) has consulted the Attorney-General’s Department, the Office of Parliamentary Counsel, the Treasury, the House of Representatives and Senate Table Offices and other relevant agencies.

In view of the complexity of the legislation process, the handbook must be comprehensive to ensure that all aspects of the process are explained. The handbook also reflects the long lead time needed to see a legislative bid to fruition, and details the various parties that are involved in ensuring a successful outcome.

This handbook is intended to comply with parliamentary procedural requirements as set out in standing orders for the House of Representatives and the Senate. It has been designed so that each chapter can stand alone or, if read in its entirety, guide the reader, step-by-step, through the legislation process.

**Chapter 1** provides an [introduction](#) to the legislation process and asks departments to consider the threshold question—is legislation required? This introductory chapter also examines primary and subordinate legislation and provides examples of matters to be implemented only through Acts of Parliament. The need for consultation is also emphasised and the chapter sets out the key players in the legislation process.

Once it is determined that legislation is required, **Chapter 2** provides guidance on [getting a bill on the legislation programme](#) so that departments are able to access drafting resources. The Parliamentary Business Committee of Cabinet determines the Government’s legislation programme in advance of a sitting period and accords a drafting priority to each bill.

All legislation must have full policy approval before it is introduced into the Parliament.

**Chapter 3** sets out the appropriate levels of [policy approval](#) (i.e. Cabinet, Prime Minister, Minister, First Parliamentary Counsel) and outlines the process for obtaining policy approval.

**Chapter 4** provides options on the [types of bills](#) that are available to implement a proposal.

**Chapter 5** and **Chapter 6** guide departments on the [preparation of drafting instructions](#) and the [drafting process](#) and outline the responsibilities of the instructor and the drafter. Departments may need to consult widely during the drafting process to ensure that all relevant matters are considered and, where necessary, formal written agreement is provided by relevant ministers.

Once drafting of the bill has commenced, departments are encouraged to focus on the [preparation of the support material](#). **Chapter 7** sets out the requirements for the explanatory memorandum and the second reading speech. These companion documents assist members of the Parliament, officials and the public to understand the objectives and detailed operation of the clauses of the bill. In light of concerns raised—particularly by Senate committees—about the general standard of explanatory memoranda, it is important that departments ensure that these documents are of a high quality in the interests of improving the transparency of the legislation process, the quality of legislation and the ability of people to read and understand the laws passed by the Parliament.

Before legislation is introduced in the Parliament, it must be approved by the minister nominated by the Prime Minister as part of the legislation approval process (LAP). The LAP ensures that policy approval has been obtained, that the legislation is consistent with policy approval and that all relevant ministers have been consulted. **Chapter 8** describes this process, commencing with the lodgement of papers with the Legislation Section in PM&C.

Amendments arise when the Government decides to amend a bill before the Parliament. Government amendments require all the same approvals as a bill. This process is summarised in **Chapter 9**, including the requirements for supplementary support material.

**Chapter 10** provides further information on the party clearance mechanism. Governments require that all government bills and amendments are subject to internal party clearance.

The next three chapters describe the parliamentary process in more detail—from the introduction of a bill (**Chapter 11**) through to its subsequent consideration by the House of Representatives (**Chapter 12**) and the Senate (**Chapter 13**). For a bill to become law, it must be passed in the same form by each house and assented to by the Governor-General. Broadly speaking, the process in both houses for passing a bill is the same and involves the following steps:

- giving notice of intention to present a bill;
- presentation of the bill and first reading;
- second reading—the minister tables the explanatory memorandum and moves that the bill be read a second time and either reads or incorporates the second reading speech;
- 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);
- in the Senate, report of the committee of the whole and adoption of that report; and
- third reading, i.e. passage by that house.

Chapters 12 and 13 also provide background on the referral of a bill to a House, Senate or joint committee. A committee has no power to amend a bill referred to it, but it may recommend amendments or that the House or the Senate agree to a bill without amendments. Bills are also examined by the Senate Standing Committee for the Scrutiny of Bills and the Parliamentary Joint Committee on Human Rights, pursuant to their terms of reference.

Once a bill has been passed by both houses, the final stage in the legislation process is for the bill to be presented to the Governor-General for the Queen's assent (known as Royal Assent). 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. This process is described in further detail in **Chapter 14**.

While the handbook is the principal guide to developing legislation, it is important that guidance is sought in matters that remain unclear or when additional advice is required. Therefore, agencies are asked to consult their Legislation Liaison Officers, the Legislation Section of PM&C, the Parliamentary Liaison Officers, the Office of Parliamentary Counsel and officers of the Table Offices, as required, in accordance with the directions in this handbook.

# CHAPTER 1: INTRODUCTION

---

## PURPOSE OF THE HANDBOOK

- 1.1 This handbook describes the procedures involved in making a law, especially those coordinated by the Department of the Prime Minister and Cabinet (PM&C).
- 1.2 Law-making is a lengthy process and requires a number of steps to be completed either simultaneously or sequentially. This chapter provides a short overview of the key matters that departments are required to take into account when formulating legislative proposals. The following chapters outline the steps necessary to get an Act of Parliament onto the statute book.

## WHEN IS LEGISLATION REQUIRED?

- 1.3 Departments are encouraged to give careful consideration as to whether legislation is actually needed or whether administrative action would be sufficient. Legislative resources are best directed towards proposals that require legislation.

## CONSULTATION WHEN DEVELOPING LEGISLATION

- 1.4 Consultation on proposed legislation must occur with relevant parties within government (see *Drafting Direction No. 4.2: Referral of drafts to agencies* prepared by the Office of Parliamentary Counsel (OPC)) and, where appropriate, with independent experts and interested parties outside government (see limitations at paragraph 1.8). Consultation with OPC must also occur at an early stage to ensure that policy can be reflected in legislation.
- 1.5 The responsibility for undertaking consultation rests mainly with the minister/department sponsoring the legislation (referred to throughout the handbook as the department). In considering options for consultation, departments may wish to keep in mind the role that parliamentary committees play in the legislation process, and the widespread consultation that committee consideration may entail.
- 1.6 The timing and extent of consultation may vary and are matters for the judgement of the minister, or department, or consideration by the 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 paragraph 3.17(j) and paragraphs 3.14 to 3.17); in other cases, consultation on the draft legislation may be more appropriate (see paragraphs 6.11 to 6.14 regarding security and advance disclosure/exposure of draft bills).
- 1.7 There may be cases where the urgency attached to the legislation will prevent widespread consultation. As a minimum, consultation must occur in line with *Drafting Direction 4.2: Referral of drafts to agencies* prepared by OPC (see Attachment B to that Direction). In addition, where the proposed legislation will amend laws that are another minister's responsibility, then the responsible minister's portfolio must be consulted and written agreement obtained (see paragraph 6.8).

- 1.8 It would not normally be appropriate for consultation outside government 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.
- 1.9 Consultation will extend the lead time required for preparation of a bill for introduction. This must be taken into account for planning purposes to ensure that consultation does not unduly reduce the time allowed for drafting a bill.

## PRIMARY OR SUBORDINATE LEGISLATION?

- 1.10 While it is not possible or desirable to provide a prescriptive list of matters suitable for inclusion in primary legislation and matters suitable for inclusion in subordinate legislation, the following are examples of matters generally 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 human rights and personal liberties;
  - (d) provisions imposing obligations on individuals or organisations to undertake certain activities (e.g. to provide information or submit documentation, noting that the detail of the information or documentation required may be included in subordinate legislation) or desist from activities (e.g. to prohibit an activity and impose penalties or sanctions for engaging in an activity);
  - (e) provisions creating offences or civil penalties which impose significant criminal penalties (imprisonment or fines equal to more than 50 penalty units for individuals or more than 250 penalty units for corporations)<sup>1</sup>;
  - (f) provisions imposing administrative penalties for regulatory offences (administrative penalties are imposed automatically by force of law instead of being imposed by a court);
  - (g) provisions imposing taxes or levies;
  - (h) provisions imposing high or substantial fees and charges;
  - (i) provisions authorising the borrowing of funds;
  - (j) procedural matters that go to the essence of the legislative scheme;
  - (k) provisions creating statutory entities (noting that some details of the operations of a statutory entity would be appropriately dealt with in subordinate legislation); and
  - (l) amendments to Acts of Parliament (noting that the continued inclusion of a measure in an Act needs to be examined against these criteria when an amendment is required).

---

<sup>1</sup> A penalty unit is defined in section 4AA of the *Crimes Act 1914*; at January 2017, a penalty unit was equivalent to \$180.

- 1.11 However, the decision as to whether a particular matter could 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 are required to consult OPC about the appropriateness of including particular matters in primary or subordinate legislation. (See also paragraphs 5.65 to 5.67.)
- 1.12 The Senate Standing Committee for the Scrutiny of Bills, the Parliamentary Joint Committee on Human Rights and the Senate Standing Committee on Regulations and Ordinances each has a role in scrutinising legislation (see also the [Parliament House—Committees](#) website for further information on the work of these committees).

## WHO HAS RESPONSIBILITY FOR WHICH LEGISLATION?

- 1.13 The Governor-General, on the advice of the Prime Minister, makes an [Administrative Arrangements Order](#) (AAO) under section 61 of the Constitution to assign responsibilities to ministers (references to ministers throughout the handbook could include assistant ministers and parliamentary secretaries) and departments.
- 1.14 The AAO sets out the legislation administered by ministers who are appointed to administer a department, and the matters to be dealt with by each department. Where a portfolio has more than one minister, each of those ministers administer the department with the effect that all ministers are formally able to administer the legislation associated with the department (see *Acts Interpretation Act 1901*, sections 19 and 19A).
- 1.15 In practice, each minister in a portfolio will have discrete areas of policy and legislative responsibility.

### Bills affecting other ministers' legislation or portfolio interests

- 1.16 Where the measures proposed in a bill may affect the responsibilities of another minister, or affect their portfolio interests, that minister must be consulted in writing and give agreement to the proposal unless this has already been agreed by the Cabinet. (See paragraphs 3.13 to 3.17 for further details on consultation.)
- 1.17 Where a bill amends legislation that is the responsibility of another minister, the department which administers the legislation must be consulted on the text of the proposed amendments. Approval must be in writing before the bill can be introduced in the Parliament (see paragraph 6.8).
- 1.18 The Minister for Finance must be consulted on any bill containing a special appropriation or special account.

## REDUCING THE COMPLEXITY OF LEGISLATION

- 1.19 Complex legislation can create uncertainties about the law and impose unnecessary burdens on businesses, community organisations and individuals. It can also restrict the ability of those affected by the law to understand their legal rights and obligations. Further information on plain language and reducing complexity is available on the [AGD](#) and [OPC](#) websites.

- 1.20 The following principles are to be applied by policy makers, instructing agencies and drafters when developing legislation:
- (a) consider all implementation options—don't legislate if you don't have to;
  - (b) when developing policy, reducing complexity and unnecessary regulation is a core consideration;
  - (c) laws need be no more complex than is necessary to give effect to policy;
  - (d) those affected by the legislation are able to understand how the law applies to them; and
  - (e) continual assessment of the clarity of a proposed law is desirable—from policy development through to consideration by the Parliament (for Acts) or consideration by the rule-maker (for legislative instruments).

## DEVELOPING A BILL

- 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 this 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. The officer must have a thorough understanding of the policy that is to be implemented, knowledge of the legislation and sufficient authority to make on-the-spot decisions on most issues that will arise during the drafting process. 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 supporting material for the bill is prepared (see paragraph 6.5).
  - *Departmental Legislation Liaison Officer (LLO)*—each department is required to nominate an officer to be its LLO 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 in PM&C and the Parliamentary Liaison Officers regarding programming of legislation in the Parliament. 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* above and paragraphs 5.5 to 5.8).
  - *Legislation Section*—the section in PM&C which coordinates the legislation programme; prepares papers for the Parliamentary Business Committee of Cabinet on the legislation programme; prepares submissions to the minister nominated by the Prime Minister for the legislation approval process (referred to in this handbook as the Legislation Minister); and coordinates advice on minor policy proposals to the Prime Minister or the Legislation Minister.

- *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 (often the Departmental Liaison Officer (DLO)).
- *Office of Best Practice Legislation (OBPR)*—an office in the Department of the Prime Minister and Cabinet which administers the Government’s regulatory impact analysis system, including assisting agencies in preparing regulation impact statements (RISs) and advising on the quality of RISs.
- *Office of Parliamentary Counsel (OPC)*—a statutory agency within the Attorney-General’s portfolio responsible for drafting bills for introduction into the Parliament and drafting government amendments to those bills, drafting a range of subordinate legislation, the compilation of various laws and the publication of all laws, predominantly through the Federal Register of Legislation.
- *Office of Parliamentary Counsel (OPC) client adviser*—a senior drafter from whom client agencies can obtain quick, informal advice on options for legislative approaches and related matters (see paragraphs 5.11 to 5.12).
- *Parliamentary Business Committee of Cabinet (PBC)*—committee of the Cabinet which manages the Government’s legislation and parliamentary business programme, and allocates priorities to legislation proposals. The PBC 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 Liaison Officer (PLO)*—PM&C officers who assist the Leader of the House and the Leader of the Government and the Manager of Government Business in the Senate in the programming of government business in the Parliament. Once a bill has been introduced, departments can contact the PLO in each house for information about the programming of the bill for debate.
- *Prime Minister (or the Legislation Minister acting on behalf of the Prime Minister)*—considers requests for policy approval not previously considered by the Cabinet and approves legislation for introduction.
- *Regulatory Reform Division*—a division in the Department of the Prime Minister and Cabinet that oversees the Government’s regulatory reform agenda. It has a number of oversight roles to facilitate the reduction of red tape and help the Government to reduce the cost of unnecessary regulation.
- *Regulatory reform units*—units located within portfolios that are responsible for each portfolio’s regulatory reform activity and ensuring understanding of, and compliance with, RIS requirements.
- *Table Office(s)*—the offices in the Department of the Senate and the Department of the House of Representatives (the chamber departments) responsible for coordinating the documentation to enable introduction of legislation and for ensuring the progress of all legislation through its subsequent stages.

## OTHER RESOURCES

- 1.22 A range of other resource materials are available to assist departments when they are developing policies and legislative proposals—for example:
- (a) Cabinet procedures are set out in the *Cabinet Handbook*;
  - (b) procedures for making subordinate legislation, such as regulations, are set out in the Federal Executive Council Handbook;
  - (c) an electronic database of Commonwealth primary and subordinate legislation, as well as other ancillary documents and information, are available on the Federal Register of Legislation;
  - (d) all bills, subsequent prints of bills, their associated documents, and other bill-related information can be found on bill homepages on the Parliament House website;
  - (e) drafting directions, the Instruments Handbook and other guidance materials prepared by the Office of Parliamentary Counsel are available on the OPC website;
  - (f) legislative design and scrutiny materials on criminal law, administrative law, privacy, human rights and other legal policy matters for which AGD is responsible are available on AGD's website; and
  - (g) the *Australian Government Guide to Regulation* provides the context for regulations and guidance on Australian Government regulation impact statements.



# CHAPTER 2: DEVELOPING THE LEGISLATION PROGRAMME

---

## WHAT IS THE LEGISLATION PROGRAMME?

- 2.1 The legislation programme is a list of bills proposed for introduction in the Parliament in a sitting period.
- 2.2 Prior to each sitting period of the Parliament, ministers are asked to advise the Prime Minister of their legislation requirements.
- 2.3 The Parliamentary Business Committee of Cabinet (PBC) considers ministers' requests and determines the drafting priority for each bill on the legislation programme. The PBC may agree to requests from ministers to vary the legislation programme during a sitting period.

## LEGISLATION PRIORITIES

- 2.4 The PBC prioritises legislation bids to ensure the appropriate allocation of drafting and parliamentary resources (including the time required to debate bills in each sitting period). The PBC has agreed that the following categories are to 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.
- 2.5 The category accorded each proposed bill will determine the priority for drafting by OPC. In setting the programme, the PBC will take into account the following factors:
  - (a) announced government priorities;
  - (b) political and financial significance;
  - (c) implementation dates and other timing considerations;
  - (d) regulatory aspects of each bid; and
  - (e) progress in developing policy and issuing drafting instructions.

Departments need to be realistic in the priorities they recommend that ministers seek for their bills. Legislation requirements are to be planned well in advance so that legislation is generally drafted for introduction in one sitting period for debate and passage in the next. Bills not intended for introduction until a later sitting period but which require the allocation of drafting resources can be included in the minister's bids.

## PARLIAMENTARY BUSINESS COMMITTEE MINUTES

- 2.6 Cabinet minutes setting out PBC decisions about the legislation programme, including deadlines applying to the sitting period, are sent to all ministers and departments. Minutes of the PBC do not normally require endorsement by the Cabinet.
- 2.7 A decision by the PBC on a bill's priority does not give approval for 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 3).

## FAILURE TO MEET DEADLINES

- 2.8 Category T bills on the programme which do not meet the deadlines set by the PBC for introduction may be downgraded in priority by the PBC. A lack of progress in seeking policy approval or issuing drafting instructions for a bill may result in that bill being accorded a lower priority. The PBC will consider the views of ministers before deciding whether to downgrade bills on the legislation programme. Decisions will be recorded in Cabinet minutes.

## DELETIONS FROM THE LEGISLATION PROGRAMME

- 2.9 If a bill on the programme is not to go ahead, the departmental LLO is expected to advise the Legislation Section in PM&C and OPC in writing (letter or email) as soon as practicable.

## IMPACT OF LEGISLATION ON BUSINESSES, COMMUNITY ORGANISATIONS AND INDIVIDUALS

- 2.10 The Government requires a regulation impact statement (RIS) to be prepared for all proposed new or amending legislation which is likely to have a regulatory impact on businesses, community organisations or individuals, unless the impact is of a minor or machinery nature and does not substantially alter existing arrangements. All Cabinet submissions must contain a RIS.
- 2.11 Departments need to consider the RIS requirements for each bill proposed to be included in the legislation programme, and must contact the Office of Best Practice Regulation (OBPR) to determine whether a RIS is required.

### Regulation impact statements

- 2.12 A RIS must be prepared by a department or agency if the OBPR advises a RIS is required. The purpose of the RIS is to ensure that departments and agencies fully consider the costs and benefits of all viable options, with a view to choosing the options with the highest net benefit. The RIS is to be submitted with the request for policy approval (see paragraphs 3.7(d), 3.10(b) and 3.19(e)) and included in the explanatory memorandum (see paragraphs 7.14 to 7.15).
- 2.13 The *Australian Government Guide to Regulation* and related material are available to assist departments in the preparation of RISs.

## SUBMITTING A BID FOR A PLACE ON THE LEGISLATION PROGRAMME

### What is a bid?

- 2.14 A bid is a request from a minister for inclusion of a proposed bill on the Government's legislation programme. Bids are sought from ministers prior to each sitting period. Before submitting proposed bids to ministers for consideration, departments must be satisfied that amending or creating primary legislation is necessary (see paragraphs 1.3 and 1.10 to 1.11).

### Deadlines for submission of bids

- 2.15 The deadlines for the submission of bids for each sitting period are set by the PBC and recorded in the PBC minutes. LLOs are also advised of deadlines in legislation circulars issued by the Legislation Section.
- 2.16 Bids for legislation for the next sitting period are generally sought from ministers prior to the end of each sitting period. 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

- 2.17 A minister's letter to the Prime Minister is to be accompanied by:
- (a) the details of each proposed bill for the forthcoming sitting period (see paragraphs 2.37 to 2.38); and
  - (b) for each proposed category T bill, a statement of reasons explaining why the bill needs to be introduced and passed in the same sitting period (see paragraphs 2.42 to 2.47).

At the same time, an electronic copy of the bid and any statements of reasons are to be sent to the Legislation Section (see paragraphs mentioned above). Legislation Liaison Officers can download the appropriate templates from the PM&C website.

### The minister's covering letter for bids

- 2.18 The minister's bids letter must contain information about the bids and list bills in **priority order within each category**. The letter, bids and statements of reasons must include all the necessary documentation in support of the bids and their place on the programme and address the requirements set by the PBC.
- 2.19 The minister's letter must indicate clearly whether policy approval is also being sought and for which measures it is being sought, or whether approval will be sought by separate letter (see Chapter 3 for details on seeking minor policy approval).
- 2.20 Where policy approval has already been obtained for particular measures in a bill, this must 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 each measure, or group of measures; whether policy approval has been obtained (and, if so, the date of the Prime Minister's letter or the Cabinet minute) or is yet to be sought; and whether the measure, or group of measures, is for approval by the Cabinet, the Prime Minister or the minister.

- 2.21 Where minor policy approval is being sought from the Prime Minister in the bids letter, the letter is required to state that policy approval is sought for amendments to the XYZ Act, which will be included in the ABC Bill, and details of the request included, as an attachment to the letter (see Chapter 3 for details on seeking policy approval).
- 2.22 Ministers may also wish to provide an indication of the non-government parties' likely attitude (if known), and the extent of consultations with such parties (if any).

## **SUBMITTING A REQUEST FOR A VARIATION TO THE LEGISLATION PROGRAMME**

### **What is a variation?**

- 2.23 If, after the legislation programme for a sitting period has been settled by the PBC, a minister wishes to:
- (a) add a new bill to the programme;
  - (b) upgrade the category of 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 the Parliament (see paragraph 9.11)

the minister will need to write to the Prime Minister seeking authority to **vary** the legislation programme.

- 2.24 The PBC will consider the priority to be accorded to the minister's proposal in the context of the Government's overall legislative priorities.
- 2.25 If a bill is on the programme and, in the course of drafting, there emerges a need for a separate consequential or transitional bill, or a separate bill to comply with section 55 of the Constitution, a variation request may not be required.
- 2.26 In all cases, when considering whether a variation is required, departments must consult the First Parliamentary Counsel (FPC). If the FPC agrees that a variation is required, the department must advise the Legislation Section as soon as possible. Requests to vary the legislation programme are considered by the PBC.

### **Deadline for submission of a request for a variation**

- 2.27 For a variation request to be considered by the PBC on the Monday of a sitting week, the minister's signed letter to the Prime Minister is due with the Legislation Section by **COB Wednesday of the week before the PBC meeting**. An advance copy of the minister's letter is to be provided to the Legislation Section as soon as possible, to enable consultation within PM&C.

### **Summary of information required for a variation**

- 2.28 A minister must submit a request for a variation to the current programme, in writing, to the Prime Minister.
- 2.29 A minister's letter is to be accompanied by:
- (a) the details of the variation(s) sought in the standard format (see appendixes), including an indication of whether a RIS is required (see paragraphs 2.37 to 2.38 and 2.12 to 2.13); and

(b) for a proposed category T bill, a statement of reasons (see paragraphs 2.42 to 2.47).

Variation requests and any statement of reasons are to be set out in the appropriate templates and sent to the Legislation Section (see paragraphs mentioned above). Legislation Liaison Officers can download the appropriate templates from the PM&C website.

### **The minister's covering letter for a variation**

- 2.30 The minister's letter is required to:
- (a) contain information about the variation;
  - (b) explain why the variation is being sought for the current sittings rather than as a bid for a future sitting period; and
  - (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 is to be included if these steps have not occurred as the lack of progress may influence the PBC's decision on the request.
- 2.31 Ministers may also wish to provide an indication of the non-government parties' likely attitude (if known), and the extent of consultations with such parties (if any).
- 2.32 The letter is to provide all the necessary documentation in support of a variation request (i.e. details included in the appropriate template and a statement of reasons, where applicable).
- 2.33 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.
- 2.34 Where minor policy approval is being sought from the Prime Minister in the variation request letter, the request is to be clearly identified in the covering letter (e.g. policy approval is sought for amendments to the XYZ Act which will be included in the ABC Bill) and details of the request are also to be included, as an attachment if appropriate (see Chapter 3 for details on seeking policy approval).

## **ADDING BUDGET BILLS TO THE LEGISLATION PROGRAMME**

- 2.35 Bills implementing decisions that form part of the annual Commonwealth Budget are normally given priority over other bills.
- 2.36 Budget-related bids are essentially variations to the Winter legislation programme and are submitted using a letter, variation template, and statement of reasons (see paragraphs 2.28 to 2.29). Bids are normally required by the Thursday after the Budget is delivered.

## **TEMPLATES FOR BIDS AND VARIATION REQUESTS**

- 2.37 Details of bids and variation requests must be compiled on templates available from your departmental LLO. Departments must adhere to the templates. The information included in a bid or variation request must be accurate; information is not to be included in anticipation of the outcome of discussions which are yet to take place.

- 2.38 Completed templates and statements of reasons (if required) are to be sent to the Legislation Section via secure email (Fedlink<sup>2</sup>) or CABNET; they must **not** be sent via ordinary email facilities.
- 2.39 Completed draft templates are to 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 is to be attached to the minister's letter to the Prime Minister.

## STATEMENTS OF REASONS FOR THE SENATE

- 2.40 In order to achieve introduction and passage of a category T bill in the one sitting period, ministers must seek exemption from Senate standing order 111, which provides that the Senate will generally not debate a bill unless the legislation:
- (a) was first introduced in the Parliament in a previous sitting period; and
  - (b) in the case of a House-initiated bill, was also received by the Senate before the expiration of two-thirds of the total number of days of the current sitting period (i.e. by the Senate cut-off date, indicated by the scissors on the parliamentary sitting pattern).
- 2.41 The Senate may consider exempting a bill from the order provided that the Government gives reasons for such exemption.

### When is a statement of reasons required?

- 2.42 Statements are required for all proposed category T bills and are to be submitted with the bid or variation request.
- 2.43 A statement is also required for the Senate when an exemption from the order is being sought. The statement of reasons is tabled at the same time the notice of motion is given for the exemption from the cut-off. The Legislation Section will contact LLOs in such situations to advise that a statement is required.

### Preparation and clearance

- 2.44 Statements of reasons must be prepared in a form suitable for public release. If there is to be any embargo on the release (e.g. because policy approval has not yet been obtained), this can be noted on the bottom of the statement and in the minister's covering letter.
- 2.45 Statements of reasons must be clear, concise and compelling to support the urgent consideration of the legislation by the Senate. They must:
- (a) 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;

---

2 Information is not to be emailed to the Legislation Section via non-secure links as this does not provide a safe means for transmitting legislative proposals.

- (b) be cleared for circulation by the responsible minister and include an annotation that the statement is 'circulated by authority of the Minister for XXX'; and
- (c) **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).

2.46 Each statement of reasons must be **on a separate page** and headed:

'STATEMENT OF REASONS FOR INTRODUCTION AND PASSAGE IN THE  
20XX XXX SITTINGS

XXXX BILL'

Statements are required to be sent to the Legislation Section **in advance**, as soon as papers are ready to be submitted for signature by the minister (see paragraph 2.42).

2.47 The term 'Category T' must **not** be used in the statement as this term has no relevance for senators and members. Instead, reference can be made to a bill for which introduction and passage in the one sitting period is being sought.

2.48 Statements of reasons will be noted by the 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 3: POLICY APPROVAL

---

## LEVELS OF APPROVAL

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

Measure	Authority	Reference
Measures with significant policy implications	Cabinet	paragraph 3.5
Measures with minor policy significance	Prime Minister	paragraph 3.8
Technical amendments within existing policy	Relevant minister	paragraph 3.23
Technical corrections of the kind that would otherwise be suitable for inclusion in a Statute Law Revision Bill	First Parliamentary Counsel	paragraph 3.24

- 3.2 For measures with minor policy significance, the agreement of other ministers will be necessary when the measures affect their portfolio interests. It is expected that other ministers' agreements be obtained before the Prime Minister's approval is sought.

## THE BEGINNING OF THE POLICY APPROVAL PROCESS

- 3.3 As soon as a department becomes aware of a need for action that may involve legislation, it must:
- begin work on settling policy details, consulting other departments and agencies as necessary;
  - confirm that legislation is necessary to achieve the policy objectives;
  - where appropriate, discuss with OPC how to avoid unduly complex legislation and whether there might be alternative approaches which would permit simpler legislation (see also paragraphs 5.16 to 5.17); and
  - consult the OBPR at an early stage to determine if a RIS is required (see paragraphs 2.12 to 2.13).
- 3.4 If legislation is required, the minister must seek policy approval for measures in the proposed bill and also seek a place for the bill on the legislation programme. Seeking policy approval will involve preparing a Cabinet submission or a letter requesting the Prime Minister's approval (in accordance with paragraph 3.1).
- Where a RIS has been prepared as part of the policy development process it is to be included in the submission or with the letter and must:
    - include an assessment of the costs and benefits of alternative means of addressing the policy objective (see paragraphs 2.12 to 2.13); and
    - be tabled as part of the explanatory memorandum (see paragraphs 7.5(b) and 7.14 to 7.15).



- (b) In most cases, it is necessary for further policy approvals to be sought during the drafting process as policy issues arise as drafting proceeds. **It is the responsibility of the instructing officer to identify, during the course of the drafting of a bill, whether all the measures in the bill have policy approval.** Copies of letters seeking and giving the Prime Minister's approval, and other ministers' agreement, to measures with minor policy significance must be provided to OPC. OPC provides advice to the Legislation Minister on the authorities for the bill, and will advise the instructing officer whether further policy approval is required.
- (c) The Legislation Minister will not approve a bill for introduction into the Parliament unless there is clear authority for all matters contained in the bill.

## CABINET APPROVAL

- 3.5 The Cabinet will consider significant policy proposals involving legislation, including any 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 the Parliament, 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*).
- 3.6 If the instructing officer is in doubt about whether Cabinet consideration will be required, they may consult the relevant policy area in PM&C.
- 3.7 Some points to note regarding Cabinet consideration of matters requiring legislation are listed below. The *Cabinet Handbook* gives detailed instructions about Cabinet procedures and the preparation of Cabinet documents.
- (a) *Explain need for legislation.* Any Cabinet submission or memorandum recommending a proposal requiring legislation must indicate whether there is any way to implement the relevant policy without legislation and, if there is, why the legislative proposal is to be preferred. Consideration of this issue is to occur early so that the draft circulated for coordination comments may include a considered statement on the need for legislation.
  - (b) *Provide a legislation certificate.* A submission or memorandum proposing legislation is to include advice from the Attorney-General's Department stating whether the Australian Government Solicitor (AGS) considers that legislation is necessary.
  - (c) *Ensure constitutional risk has been assessed.* All legislation proposals are to indicate the constitutional basis of the legislation and that any constitutional risks have been identified and assessed. Instructors must seek guidance from the relevant area in AGD or AGS when preparing a constitutional risk assessment.
  - (d) *Prepare a regulation impact statement (RIS),* where one is required, consistent with the RIS guidance for any new regulation.
  - (e) *Ensure that all measures requiring Cabinet authority are spelled out clearly.* The wording of Cabinet minutes is often based on the wording of the recommendations contained in Cabinet submissions. Care is to 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 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. Even when Cabinet authority has been obtained, it is also often necessary to secure the Prime Minister's approval in clarifying minor matters or to cover changes in policy arising during the drafting process.

- (f) *Do not seek the Cabinet's endorsement of the legislative approach, form or wording of proposed legislation.* A submission or memorandum is to focus on the policy to be implemented but 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 legislation as it is being drafted.
- (g) *Do not attach drafting instructions or draft legislation to a Cabinet submission or memorandum unless the Cabinet or a Cabinet committee specifically requires the instructions.* If possible, preliminary instructions are to be circulated to departments and authorities consulted in the preparation of the submission or memorandum to help them understand the nature of the proposal. Drafting will normally only commence following Cabinet consideration.
- (h) *Do not ask the Cabinet to give priority to the legislation or fix a date for its introduction.* The PBC decides which bills to include on the legislation programme and assigns a drafting priority to each of them; any timing imperatives must be raised in the bids ministers submit for consideration by the PBC (see Chapter 2). Cabinet submissions or memoranda are not to pre-empt the role of the PBC by seeking from the Cabinet any specific priority for proposed legislation.
- (i) *Allow sufficient time for drafting and passage of legislation by the Parliament if asking the 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 allow no certainty about timing, unless passage has been negotiated with all non-government parties. 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 5.20 and 7.26 to 7.29.) If necessary, sufficient time will need to be allowed for the draft bill to be exposed, for comments to be reviewed and instructions issued, and for OPC to draft changes to the exposure draft.
- (j) *Consultation.* Departments must undertake their consultations with departments or areas of departments mentioned in OPC's *Drafting Direction No. 4.2* (see reference at paragraph 1.4).
- (k) *Release of an exposure draft.* If a minister wishes to release an exposure draft of the bill prior to introduction, the minister can seek the Cabinet's agreement. Separate to the Cabinet process, ministers can also seek the Prime Minister's agreement to release exposure draft legislation. The requirements regarding public announcement of legislation in advance of introduction are set out at paragraphs 3.26 to 3.29.

## MINOR POLICY APPROVAL

### How and when to seek minor policy approval

- 3.8 If a minister believes that a proposal involving legislation does not warrant consideration by the Cabinet, they must write seeking the Prime Minister's policy approval. The minister must 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 by the Cabinet.

- 3.9 Amendments which are consistent with the intention of existing policy (e.g. correcting a technical defect to ensure that legislation operates as intended) can be approved by the responsible minister (see paragraph 3.23). Amendments of a minor technical nature (e.g. correcting typographical errors) can be approved by the First Parliamentary Counsel (see paragraph 3.24).
- 3.10 When seeking minor policy approval from the Prime Minister, the minister's letter must:
- (a) *explain need for legislation.* Advice on whether there is any way to implement the relevant policy without legislation and, if there is, why the legislative proposal is to be preferred.
  - (b) *include a regulation impact statement (RIS).* Any legislation proposal which has a regulatory impact on businesses, community organisations or individuals, unless the impact is of a minor or machinery nature and does not substantially alter existing arrangements, must be accompanied by a RIS (see paragraphs 2.12 to 2.13).
  - (c) *ensure that all measures requiring the Prime Minister's authority are spelled out clearly.* Focus on the policy to be implemented but do not prescribe the way in which policy details are to be legislated. It will be the role of OPC, in consultation with the instructing officer, to advise on the exact form and wording of the legislation as it is being drafted.
  - (d) *be mindful that the Prime Minister does not normally give priority to the legislation or fix a date for its introduction.* The PBC decides which bills to include on the legislation programme and assigns a drafting priority to each of them; any timing imperatives are to be raised in the bids ministers submit for consideration by the PBC (see Chapter 2).
  - (e) detail the consultation undertaken. Departments must undertake consultations in accordance with OPC's *Drafting Direction No. 4.2*.
- 3.11 If not previously sought, minor policy approval can be sought at the time the minister submits a bid to have the legislation included on the programme. If it becomes apparent during the drafting of a bill that further approval is required for minor policy matters, the minister will need to write to the Prime Minister as soon as possible (see paragraph 3.8). Replies to requests for minor policy approval are signed by the Prime Minister, or the Legislation Minister on behalf of the Prime Minister.
- 3.12 Departments must consult OPC on the terms of draft letters to the Prime Minister seeking minor policy approval to ensure that policy approvals match the draft provisions of a bill and that nothing is overlooked.

### **Agreement of other ministers**

- 3.13 Minor policy matters, not requiring Cabinet consideration, which affect other ministers' portfolio legislation or interests require the agreement of the responsible ministers, preferably in writing prior to requesting the Prime Minister's approval.

### **Consultation seeking agreement on policy aspects**

- 3.14 It may be necessary for the minister's department to consult other departments and agencies, in line with the consultation requirements outlined at paragraphs 1.4 to 1.9.
- 3.15 The preferred approach is for the letter to the Prime Minister seeking policy approval to include advice on the consultation that has taken place and whether or not agreement has been reached.

- 3.16 This enables the Prime Minister or the Legislation Minister to take account of all relevant views when considering the request for minor policy approval. The absence of this advice could delay the response to the request for minor policy approval. However, approval may be given subject to the written agreement of other ministers, but again this could delay the finalisation of the legislation.
- 3.17 If there is disagreement between ministers regarding a proposal, or if for any other reason the proposal warrants collective consideration, the Prime Minister may require the matter to be submitted to the Cabinet.

### **Approval of the text of amendments by other ministers**

- 3.18 Where a bill amends legislation that is the responsibility of another minister as a consequence of a policy decision, the department which administers the legislation must be consulted on the text of the proposed amendments. The onus is on the administering department to determine whether the minister must approve the text of the relevant amendment(s) or if departmental approval is sufficient. In either case, approval must be in writing before the bill can be introduced in the Parliament. OPC can provide advice to departments on amendments for which ministerial agreement is desirable.

### **Information to be included in requests for minor policy approval**

- 3.19 The following checklist is designed to assist departments in preparing minor policy request letters to the Prime Minister from their ministers. Each letter must provide a clear and self-contained description of the proposal and must 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) the nature of the proposal, including:
    - (i) the objective;
    - (ii) the title of any Act(s) to be amended;
    - (iii) the legislative measures proposed; and
    - (iv) justification for any proposed retrospective dates of effect and an explanation of any adverse impact;
  - (c) the reason why the minister regards Cabinet consideration as unnecessary;
  - (d) the outcome of any consultation with other ministers or agencies;
  - (e) the OBPR's advice as to the RIS requirements (where a RIS is required, it can be attached);
  - (f) the Treasurer's approval for any proposed exceptions to the *Competition and Consumer Act 2010* or to the Competition Code;
  - (g) any timing considerations, including deadlines for passage;
  - (h) the way in which the proposal is to be effected—for example, 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, noting that:
    - (i) a request for a variation to the programme may be required and if so must accompany the request for minor policy approval (see paragraphs 2.23 to 2.34);

- (ii) if inclusion of the proposal in a portfolio bill is envisaged, OPC must be consulted before the letter is sent; and
  - (i) the name and telephone number of a departmental contact officer and of the responsible Senior Executive Service officer.
- 3.20 Before finalising the letter from a minister to the Prime Minister, departments may consider expediting approval by giving advance notice to the Legislation Section at PM&C and discussing the proposal with the relevant policy area in PM&C. These steps are essential if minor policy approval is being sought urgently. Sufficient time also needs to be allowed for consultation.
- 3.21 Departments are requested to send to the Legislation Section (depending on the sensitivity of the content, via CABNET or, if available, on an appropriately secure email (Fedlink)) an advance copy of the minister's letter to the Prime Minister requesting minor policy approval. A copy of the signed letter is to be provided to the Legislation 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.

### **Expiry of policy authority**

- 3.22 Once a bill is introduced, the policy authority for the measures in the bill is generally regarded as having expired (also referred to as 'spent authority'). Further policy approval is required for any later changes to the bill, whether through government amendments or revision before reintroduction, even if those later changes would have been covered by the original authority. (See also Chapter 3 of *OPC's Drafting Services: A Guide for Clients*). The only exceptions are changes or amendments to:
  - (a) correct drafting or other errors that, if not addressed, would mean the bill as introduced would not implement the approved policy; and
  - (b) add provisions implementing policy covered in the original policy authority but not addressed in the original bill.

## **MINISTERIAL APPROVAL OF MINOR TECHNICAL AMENDMENTS**

- 3.23 If the proposal is consistent with the intention of the existing policy and is essentially a technical or drafting amendment to remedy errors or defects in existing legislation, the minister is able to approve the proposed legislation changes without seeking approval from the Cabinet or the Prime Minister. OPC must be consulted about whether the proposal constitutes a technical or minor policy matter. Evidence of the minister's specific approval of the technical amendments must be provided to the drafter.

## **FIRST PARLIAMENTARY COUNSEL APPROVAL**

- 3.24 The PBC has agreed that the First Parliamentary Counsel can approve technical amendments of the kind that would 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 and updating (including modernisation of style). The First Parliamentary Counsel can approve the repeal of spent provisions when the repeal is accompanied by amendments which render the provisions 'spent', or if recent amendments were made and the need to repeal the spent provision was overlooked at the time.

## **APPROVAL OF NON-GOVERNMENT AMENDMENTS**

- 3.25 Ministers must seek the Prime Minister's agreement to accept proposed non-government amendments as the amendments alter the Government's agreed policy position as reflected in the bill. Amendments, both government and non-government, may be moved on the floor of the chamber during debate, and urgent policy authority will be required. Departments must contact the Legislation Section in the first instance. In exceptional circumstances, ministers may need to deal directly with the Prime Minister, and other ministers, as appropriate and as time permits. In this circumstance, it is important that departments keep the Legislation Section informed of developments.

## **ANNOUNCEMENT OF LEGISLATION IN ADVANCE OF INTRODUCTION**

- 3.26 Media releases cannot be issued until approval of a proposal has been given by the Cabinet or the Prime Minister. They must not specify when legislation will be introduced. Media releases are only to indicate that a bill will be introduced as soon as possible, consistent with the Government's legislation priorities.
- 3.27 The practice of announcing an intention to introduce legislation to operate with effect from the date of the announcement is to be adopted only where there is some special justification. Media releases announcing legislation that is to operate with immediate effect are to:
- (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 the Cabinet (as attachment to the relevant submission) or by the Prime Minister and other ministers concerned.
- 3.28 Once a media release announcing amendments to the taxation law has been issued, Resolutions Expressing Opinions of the Senate No. 44 requires introduction of the bill within six months of the announcement of the measure.
- 3.29 The essential features of the legislation must not be announced until the policy development process is well advanced and policy approval has been obtained in the event the Government wishes to refine the proposed legislative scheme.

## CHAPTER 4: TYPES OF BILLS

---

- 4.1 In preparing bids or requests for variations, departments are required to give careful consideration to the appropriate type of bill to implement a proposal.

### THE OPTIONS

#### **Bills specific to one subject or amendment of one Act**

- 4.2 A separate bill may be necessary or 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 the Parliament;
  - (c) the imposition of a tax or an increase in the rate of a tax (see section 55 of the Constitution and OPC's *Drafting Direction No. 3.2*);
  - (d) the imposition of a customs duty or an increase in the rate of a customs duty (see section 55 of the Constitution and OPC's *Drafting Direction No. 3.2*);
  - (e) the imposition of an excise duty or an increase in the rate of an excise duty (see section 55 of the Constitution and OPC's *Drafting Direction No. 3.2*); and
  - (f) consequential amendments and transitional provisions that may be needed to accompany a bill for a new Act.
- 4.3 These separate bills would normally be titled to reflect the Acts that they are amending, e.g. the Environment Protection and Biodiversity Conservation Amendment Bill to amend the *Environment Protection and Biodiversity Conservation Act 1999*, or the major policy initiative they are implementing, e.g. the Biosecurity Bill.

#### **Multi-issue bills**

- 4.4 Multi-issue bills are useful in reducing the number of bills from a broad area of policy that are put before the Parliament. Examples of such bills are Tax Laws Amendment Bills and many Crimes Legislation Amendment Bills. Multi-issue bills contain schedules, each of which deals with a particular policy initiative. Generally, the policy initiatives are all within the same broad area of policy (e.g. taxation, social security or criminal law). Each schedule may amend one Act or may include amendments to several Acts. Generally, the bills only relate to matters within one portfolio, although occasionally they will amend legislation from more than one portfolio where the portfolios have related functions.

#### **Portfolio and omnibus bills**

- 4.5 Portfolio bills may include amendments to a range of Acts within a portfolio or to related legislation within the portfolio and are suitable 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 (can be stockpiled until a convenient opportunity arises to include them in a bill).

- 4.6 The extent of the portfolio legislation being amended would normally be reflected in the title of the bill—for example, an Agriculture Legislation Amendment Bill could contain amendments to a range of legislation within the Agriculture portfolio, while a Fisheries Legislation Amendment Bill would contain amendments to legislation relating to fisheries matters.
- 4.7 In the same way, amendments to a range of Acts across a number of portfolios could be considered for an omnibus bill.

### **Annual appropriation bills**

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

### **Statute Law Revision Bill**

- 4.9 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 provisions. No proposals involving changes of policy will be included in a Statute Law Revision Bill. OPC will prepare a Statute Law Revision Bill when time permits (usually once a year).
- 4.10 Where OPC considers that a matter is purely formal (e.g. correction of errors, repeal of spent provisions, modernisation of style or a standard provision) and thus suitable for inclusion in a Statute Law Revision Bill, the First Parliamentary Counsel may approve the amendment and its inclusion in a portfolio or other bill.
- 4.11 Some changes that previously would have been made in Statute Law Revision Bills can now be made by the First Parliamentary Counsel using editorial powers under the *Legislation Act 2003*. The cases in which this can be done are quite limited. OPC can provide additional advice on this matter.

## **CLOSING OFF PORTFOLIO AND MULTI-ISSUE BILLS FOR INTRODUCTION**

- 4.12 The First Parliamentary Counsel has the discretion to ‘close off’ a portfolio bill or a multi-issue bill when it becomes too lengthy or is required for introduction.

## **COGNATE DEBATE OF SEVERAL BILLS**

- 4.13 Related bills within a portfolio or across portfolios are to 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 12.31 and 13.23).



# CHAPTER 5: PREPARATION OF DRAFTING INSTRUCTIONS

---

## DRAFTING INSTRUCTIONS

- 5.1 All government bills are drafted by the Office of Parliamentary Counsel (OPC), based on drafting instructions provided by instructing departments (see paragraph 1.21 for an explanation of the instructing department). Drafting instructions, which are almost always to be in writing, indicate a genuine commitment by instructors to progress the legislative project.
- 5.2 Drafting instructions outline the key policy objectives and explain why legislation is needed for them to be implemented. It is the role of departmental instructing officers to ensure that the instructions are expressed in clear and simple language, and provide accurate information on all relevant matters of detail intended to be covered by the legislation.
- 5.3 OPC has prepared a number of useful reference documents about the instructing and drafting process, including *OPC's Drafting Services: A Guide for Clients* and *Giving Written Drafting Instructions to OPC* (see the [OPC website](#)). Anyone involved in the preparation of drafting instructions, or in instructing OPC, will benefit from referring to these documents.

## TIMING FOR DRAFTING INSTRUCTIONS

- 5.4 The Parliamentary Business Committee of Cabinet stipulates a date for each sitting by which drafting instructions for a bill need to be received by OPC. Failure to meet the deadline could jeopardise access to drafting resources. In the case of any subsequent variations to the legislation programme, instructions need to be received at the time the legislation variation is lodged. If these deadlines cannot be met, the department must contact the First Parliamentary Counsel to discuss the options. For example, it may be viable to instead provide provisional drafting instructions (clearly identified as such), and to provide further detailed instructions later when firm policy decisions are made.

## RESPONSIBILITY FOR INSTRUCTIONS AND THE ROLE OF INSTRUCTING OFFICERS

- 5.5 Generally, only one department may instruct OPC on a bill. Agencies within a portfolio are not to instruct OPC in relation to their own legislation.
- 5.6 To ensure continuity through the drafting process, the instructing department must nominate at least two officers to instruct OPC. These officers must have a thorough understanding of the policy underlying their legislative projects and a knowledge of the legislation process (or have access to someone within the department who does). Such an understanding is necessary to ensure that instructors and drafters are able to work together to produce clear legislation that is no more complex than is necessary to give effect to the underlying policy.

- 5.7 At least one of the instructing officers must be of sufficient seniority to speak on behalf of the department and to take most decisions on details arising in the course of drafting without further reference to the department unless, for example, a major issue of policy is involved. If a department has a legal or legislation area, officers from that area must also be involved in both the preparation of initial drafting instructions and the processes of working with OPC to develop and finalise the bill.
- 5.8 It is desirable for drafting instructions to be cleared by a suitable senior officer before being submitted to OPC.

## **RESPONSIBILITY FOR CONSULTATIONS**

- 5.9 In developing the policy detail to the stage at which drafting instructions can be provided, a range of general policy issues that are relevant to all legislation need to be considered. Many of these require consultation with other departments and agencies. The instructing department is responsible for considering these issues and ensuring the necessary consultations take place.
- 5.10 If consequential amendments to another minister's legislation are proposed, the instructing department must consult and seek agreement from the department of the other minister about the drafting instructions. This may involve seeking the clearance of the other department for relevant parts of the drafting instructions. Any disagreement about who is to issue instructions needs to be resolved before the policy is approved. If the matter cannot be resolved at officer level, the ministers are to be consulted as soon as possible and the matter referred to the Prime Minister for resolution if necessary.

## **OPC CLIENT ADVISERS**

- 5.11 OPC has client advising arrangements under which a department can obtain quick informal advice, from a drafter who is allocated to the department, about matters in which OPC has expertise that may not be readily available in the department. For example, advice may be obtained about:
- (a) options for legislative approaches;
  - (b) matters necessary, desirable or acceptable for inclusion in legislation; or
  - (c) the form of drafting instructions.
- 5.12 A full list of client advisers, showing which advisers are allocated to which departments, is available on [OPC's website](#).

## **EARLY ACCESS TO DRAFTERS**

- 5.13 Traditionally, OPC has not become involved in legislative projects until it receives written instructions from the instructing department. This is still the standard approach for most legislative projects.
- 5.14 However, in limited circumstances, it may be necessary for the instructing department to seek access to a drafting team in advance of providing written instructions. The First Parliamentary Counsel can advise whether early access can be arranged for a particular project. The sort of assistance that drafters can provide under an early access arrangement goes beyond the kind of quick advice that is provided under the OPC client advising arrangements.

- 5.15 The First Parliamentary Counsel will assess requests for early access 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.

## **REDUCING COMPLEXITY**

- 5.16 In developing drafting instructions, the instructing department may consider whether any aspects of the proposed approach add complexity, and whether there are any acceptable alternative approaches that would be less complex. Further information on plain language and reducing complexity can be found on [OPC's website](#) and [AGD's website](#).
- 5.17 Instructors are welcome to discuss with OPC client advisers, or the drafters allocated to their project, whether there are non-legislative options for dealing with matters, or options that would involve less or simpler legislation. Drafters will also be proactive in raising these kinds of issues with instructors.

## **SPECIFIC MATTERS FOR CONSIDERATION**

- 5.18 The following paragraphs provide information on a number of specific matters which departmental instructing officers will need to consider in preparing drafting instructions.

### **Retrospective legislation**

- 5.19 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 paragraphs 3.7(i) and 3.19(b) and also paragraphs 3.26 to 3.29 concerning announcement of legislation to operate from the date of announcement).
- 5.20 Departments need to be aware that the Senate Standing Committee for the Scrutiny of Bills and the Parliamentary Joint Committee on Human Rights, which scrutinise all bills, expect that an explanation and justification for any retrospective provisions will be included in the explanatory memorandum and statement of compatibility with human rights (see paragraphs 7.20 and 7.29(c) to 7.29(d)).

### **Mention of specific ministers and departments**

- 5.21 Particular ministers or departments are generally not specified in legislation. The minister or department administering the legislation is sufficiently identified by the Administrative Arrangements Order (AAO) and Part 5 of the *Acts Interpretation Act 1901* (see paragraphs 1.13 to 1.15). There will be exceptions to this rule, for example, to preserve the responsibilities of the Attorney-General in legal processes.
- 5.22 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 (e.g. the minister responsible for administering the *Seat of Government (Administration) Act 1910* for matters relating to the Australian Capital Territory (ACT)) or to the minister responsible for a particular matter (e.g. the minister responsible for constitutional development of the ACT (taken from matters listed in the AAO)).

- 5.23 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 must have the specific approval of the Cabinet or the Prime Minister.

### **Delegations**

- 5.24 The sorts of powers that can be delegated, and the categories of people to whom they are delegated, are to be as limited as practicable. Important powers (e.g. a power vested in a minister to give a conclusive certificate or to make an important legislative instrument) can only be delegated to very senior officials such as the secretary to the department or the chief executive officer of the authority concerned. The class of delegates needs to be defined—it is generally not appropriate to allow for delegation to ‘any person’.
- 5.25 The Senate Standing Committee for the Scrutiny of Bills expects that powers to delegate will be appropriately limited as discussed above, and that the need for, and scope of, any power to delegate will be justified in the explanatory memorandum.

### **Legislation review mechanism**

- 5.26 In developing new legislation and amending existing legislation, departments will need to consider whether a mechanism for reviewing the legislation could be included. Such a provision could require a one-off or regular review and specify those matters to be considered. For example, a provision could require regular consideration of whether the legislation:
- (a) is operating in a way that is legally effective to implement government policy;
  - (b) has resulted in any unintended legislative consequences;
  - (c) remains relevant and clear; or
  - (d) contains any outdated or redundant provisions.

### **International conventions and treaties**

- 5.27 Bills relating to international conventions and treaties must not include clauses providing for parliamentary approval of the treaty or convention.
- 5.28 The Attorney-General’s Department (AGD) and the Department of Foreign Affairs and Trade (DFAT) are to be consulted on the international law aspects of legislation which implements an international convention or treaty. This will ensure such legislation is consistent with, and not contrary to, an international convention or treaty to which Australia is a party and, where possible, that legislation is not introduced into the Parliament before the Joint Standing Committee on Treaties (JSCOT) has reported on the relevant convention or treaty (see paragraphs 11.21 to 11.23).
- 5.29 In addition to those consultations, the drafter (or an OPC client adviser) may be able to provide advice on possible legislative approaches for implementing a convention or treaty.

## **MATTERS FOR CONSIDERATION IN CONSULTATION WITH OPC**

- 5.30 The following paragraphs provide information on matters which departmental instructing officers will need to consider in consultation with OPC (see paragraph 1.4). Further information is available on OPC’s website.

## **Commencement**

- 5.31 Although the *Acts Interpretation Act 1901* provides for a default commencement if no commencement provision is included, the longstanding approach is that every bill have a commencement provision.
- 5.32 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 registration of proclamations, regulations and other legislative instruments, instruments of appointment or other matters that require action or approval after Royal Assent and before commencement. These matters will also need to be explained in the explanatory memorandum to the legislation.

### ***Use of a specified date***

- 5.33 If it is proposed that provisions of a bill be expressed to commence on a specified date (e.g. 1 July in a particular year), the instructing department needs to be aware of the problems that will arise if the bill does not pass through the Parliament and receive Royal Assent before that date. For example, where it becomes apparent that a specified date will pass before the bill has been passed by the Parliament, it would usually be necessary to draft a government amendment (and seek policy approval) to postpone the specified date or to 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. The Legislation Section in PM&C must be contacted if there is expected to be a need to seek Royal Assent urgently.

### ***Use of proclamation provisions***

- 5.34 As the Government is required to report to the Senate on unproclaimed legislation at regular intervals (in response to Senate standing order 139(2)), proclamation provisions in bills are generally drafted with a deadline placed on the time within which an Act is expected to be proclaimed—for example, that the Act 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 7.26 to 7.29 and 13.61 to 13.63). See also paragraphs 14.12 to 14.13 on commencement of Acts by proclamation.

## **Saving and transitional provisions**

- 5.35 Where the law on a particular subject matter is to be altered, OPC needs to be instructed on the relationship between the new law and the old law. In particular, instructing officers need to 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;
  - (c) to what extent, if any, things done under the old legislation are to have effect under the new legislation; and
  - (d) to what extent, if any, provisions of the old law need to continue in force after commencement of the new law for limited purposes (e.g. recovery of liabilities that arose under the old law before commencement of the new law).

## Legislation binding the Crown

- 5.36 An Act normally would not bind the Commonwealth Government, a state government or the Australian Capital Territory or Northern Territory governments unless there is a specific provision or it is necessarily implied that it binds the Crown.

## MATTERS ADMINISTERED BY THE ATTORNEY-GENERAL'S PORTFOLIO

- 5.37 Legislative proposals may contain one or more matters in which AGD has a policy interest. AGD must be consulted on such matters when departments are developing a proposal.
- 5.38 AGD has a policy interest in a range of matters, including:
- constitutional law;
  - native title rights and interests (including creation or removal of interests in land, or regulatory schemes around the use, preservation or extraction of resources, flora or fauna);
  - criminal law (including offence provisions and penalties);
  - jurisdiction and powers of courts and tribunals;
  - evidence law (including privileges and evidentiary certificates);
  - administrative law (including review of administrative decisions);
  - international obligations, including under human rights instruments;
  - legislative instruments (including exemptions from the *Legislation Act 2003*) and legislative frameworks (including application of the *Regulatory Powers (Standard Provisions) Act 2014*); and
  - privacy, secrecy and freedom of information.
- 5.39 The following paragraphs provide information on some of these matters. Departmental instructing officers will need to consult AGD for further information (see paragraph 1.4).

## Constitutional basis of cooperative schemes

- 5.40 AGD must be consulted at an early stage on any proposal to establish a cooperative legislative scheme. Instructors and drafters need to be aware that legislative mechanisms proposed to implement such 'federal' schemes may require the Attorney-General's policy approval.
- 5.41 Cooperative schemes take a variety of different forms, including:
- (a) Commonwealth legislation relying on constitutional references of power from the states;
  - (b) Commonwealth legislation enacted on the basis of existing Commonwealth constitutional powers, but that is intended to be applied (or to be available to be applied) by the states as state law (or the reverse where the Commonwealth 'applies' a model law enacted by a state or territory);
  - (c) legislative schemes that involve the Commonwealth and the states enacting mirror legislation; and
  - (d) legislative schemes that assume that the Commonwealth will legislate for some matters and that the states will legislate for other matters.

## **Burden of proof, offences and penalties**

- 5.42 AGD has published information on its website for officers seeking guidance in developing their policy and instructions on the following matters:
- (a) guidance on framing criminal offences, including information about provisions contained in the Criminal Code (Schedule 1 to the *Criminal Code Act 1995*) and the *Crimes Act 1914* that have a bearing on the framing and operation of offences, choosing appropriate penalties and developing defences;
  - (b) considerations when developing an infringement notice scheme; and
  - (c) guidance on developing coercive powers, such as entry, search and seizure powers, notices to produce or attend, and other types of enforcement powers (excluding those powers that are used to support regulatory frameworks).
- 5.43 The Senate Standing Committee for the Scrutiny of Bills and the Parliamentary Joint Committee on Human Rights expect that any reversal of the burden of proof in criminal proceedings will be justified given this limits the presumption of innocence. If such provisions are used, these must be explained and justified in the explanatory memorandum and statement of compatibility with human rights (see paragraphs 7.26 to 7.29 and 7.34 to 7.37). Officers can consult AGD, and contact the secretariat of either committee, for advice if necessary.

## **Regulatory powers**

- 5.44 AGD is to be consulted on any proposals that seek to establish or amend frameworks that provide for regulatory powers. Such proposals will trigger the standard suite of provisions in the *Regulatory Powers (Standard Provisions) Act 2014* unless there are compelling reasons to the contrary. The Act streamlines and simplifies Commonwealth regulatory powers by providing for standard provisions in relation to monitoring and investigation powers, as well as enforcement provisions through the use of civil penalties, infringement notices, enforceable undertakings and injunctions.

## **Jurisdiction and powers of courts and tribunals**

- 5.45 AGD must be consulted on any proposal to confer jurisdiction on or amend powers of courts or tribunals or to exclude matters from the jurisdiction of courts or tribunals which would otherwise have jurisdiction (including any proposals to alter or remove existing jurisdiction of courts or tribunals) (see paragraph 6.25).
- 5.46 AGD must also be consulted on any proposal to confer functions on federal judicial officers or Administrative Appeals Tribunal members in a personal capacity (*'persona designata'*) or to confer functions on retired federal judicial officers.

## **Review of administrative decisions**

- 5.47 If it is proposed that the legislation will confer discretionary powers (e.g. the giving of approvals, the granting of licences or permits, or the imposition of some penalty or obligation), the exercise of these powers would normally be subject to some form of external review on the merits.

- 5.48 If review rights are excluded or limited, the Senate Standing Committee for the Scrutiny of Bills and the Parliamentary Joint Committee on Human Rights are likely to require an explanation as to why the rights are excluded and whether the exclusion is compatible with the right to a fair hearing. If review rights are limited or excluded, this must be explained and justified in the explanatory memorandum and statement of compatibility with human rights (see paragraphs 7.26 to 7.29 and 7.34(d)).
- 5.49 In most cases, the appropriate review body will be the Administrative Appeals Tribunal; however, the Tribunal can only review decisions where there is an enactment (as defined in the *Administrative Appeals Tribunal Act 1975*) which provides that applications may be made to the Tribunal. Where legislation confers power to give directions or to make determinations of a legislative nature, 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.
- 5.50 The *Administrative Decisions (Judicial Review) Act 1977* automatically applies in relation to new legislation unless explicitly excluded. This 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, and the approval of the Attorney-General will be required.
- 5.51 AGD must be consulted on the review procedures to be incorporated in proposed legislation (Acts or subordinate legislation) 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 Australian Public Service Commissioner. In the latter three cases, PM&C must also be consulted. These matters need to be raised at an early stage in the preparation of legislative proposals as part of the development of the Cabinet submission.

### **International obligations under human rights instruments**

- 5.52 AGD must be consulted on proposed provisions that may be inconsistent with, or contrary to, an international instrument relating to human rights. In particular, the instruments set out in the *Human Rights (Parliamentary Scrutiny) Act 2011*:
- (a) the International Covenant on Civil and Political Rights;
  - (b) the International Covenant on Economic, Social and Cultural Rights;
  - (c) the Convention on the Elimination of All Forms of Racial Discrimination;
  - (d) the Convention on the Elimination of All Forms of Discrimination Against Women;
  - (e) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
  - (f) the Convention on the Rights of the Child; and
  - (g) the Convention on the Rights of Persons with Disabilities.
- 5.53 All bills (and instruments that are disallowable) must be accompanied by a statement of compatibility that assesses whether the bill (or instrument) is compatible with human rights. See paragraphs 7.16 to 7.20 on statements of compatibility.



## Secrecy provisions

- 5.54 AGD must be consulted at an early stage on the scope of any proposed new secrecy provisions or changes to existing secrecy provisions. Secrecy 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*. Specific secrecy provisions need only be enacted where the existing provisions of the *Crime Act 1974* are inadequate.

## CONSULTATION WITH OTHER DEPARTMENTS AND AGENCIES

- 5.55 The following paragraphs provide information on matters which departmental instructing officers will need to consider in consultation with other departments and agencies (see paragraph 1.4).

### Operation of Commonwealth Acts in external territories

- 5.56 The Acts constituting Australia's various external territories provide either that Commonwealth Acts extend, or 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.

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

- 5.57 Consultation on 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 occur **at an early stage** for any proposal which:
- applies differently in external territories to the way it applies elsewhere;
  - is specifically directed at external territories; or
  - is particularly controversial in its application to external territories.
- 5.58 In such cases, proposals are to be referred to:
- the department with responsibility for external territories if the impact is on the Christmas Island, Cocos (Keeling) Islands, Ashmore and Cartier Islands, Norfolk Island, or Coral Sea Islands; and
  - the department with responsibility for matters concerning the Antarctic if the impact is on Heard Island and McDonald Islands, or the Australian Antarctic Territory.

### Governance of statutory entities and other portfolio bodies

- 5.59 The general position is that new functions are conferred on an existing Commonwealth entity in preference to the creation of a new Commonwealth entity and that, where possible, new entities be established administratively. Only where it is clear that there is a need for statutory powers to be exercised is it necessary to establish a new Commonwealth entity in statute.

- 5.60 The Finance Department provides advice on the Commonwealth's governance and financial management frameworks, particularly in relation to the most appropriate governance structure for the intended policy outcome. Departments must ensure that the Finance Department is consulted at an early stage as part of the policy development process leading to the decision to create a new body or the variation of existing governance arrangements.

### **Accounting and audit arrangements**

- 5.61 Departments must consult the Finance Department and the Australian National Audit Office on appropriate accounting and audit provisions.

### **Financial provisions**

- 5.62 All proposed provisions which are in any way related to the appropriation, use or control of Commonwealth moneys (including Special Accounts) must be determined in consultation with the Finance Department. The Treasury must be consulted on proposals that affect taxation law.
- 5.63 Special (also known as 'standing') appropriations are only to be included in legislation 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, noting the special appropriation might be uncapped (e.g. the age pension);
  - (b) support the independence of an office from the Parliament and the Executive by providing for the automatic payment of the remuneration of holders of the office (e.g. the salaries of judges);
  - (c) demonstrate Australia's ability to meet its financial obligations independently of further parliamentary approval of funds (e.g. the repayment of loans to multilateral international organisations);
  - (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 Finance Minister is not suitable (e.g. urgent payment of large amounts for natural disaster relief);
  - (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 Finance Minister; or
  - (f) support schemes that provide for levies, fees or amounts from other governments that are collected to be paid through the Consolidated Revenue Fund to an industry body or for a specified purpose.
- 5.64 As a general principle, any legislation authorising expenditure programmes will 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 (e.g. by adjustments to eligibility criteria, the levels of grant, or deferment of payment). Consideration also needs to be given to a financial limit or a sunset arrangement, so that a special appropriation is not perpetuated beyond the initial requirements without further government and parliamentary approval.

## SUBORDINATE LEGISLATION: LEGISLATIVE AND NON-LEGISLATIVE INSTRUMENTS

- 5.65 Matters of detail and matters which may change frequently are best dealt with by subordinate legislation, for example:
- (a) fees to be paid for various services; and
  - (b) addresses where applications are to be lodged.
- 5.66 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 1.10 to 1.12). 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.
- 5.67 OPC needs to be aware of the general scope of any intended subordinate legislation so that sufficiently wide instrument-making powers are included in the bill. For example, if legislative instruments are to confer judicial power, impose penalties or require the charging of fees, an 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 1.12) and may be disallowed as part of the parliamentary process.
- 5.68 OPC is available to provide advice on issues connected with legislative and non-legislative instruments, including:
- (a) the drafting of instruments;
  - (b) the power to make instruments;
  - (c) the making, registration and disallowance of instruments; and
  - (d) the preparation of compilations of instruments.
- 5.69 If a bill provides for an instrument-making power, consultation with AGD may be required to determine whether an instrument made using that power would be of legislative character.
- 5.70 OPC will (within the policy parameters known at the time of drafting a bill) ensure that instrument-making powers are sufficient.
- 5.71 Bills that inappropriately delegate legislative powers (including by relying on instrument-making powers) are likely to attract criticism in the Parliament, particularly from the Senate Standing Committee for the Scrutiny of Bills. In addition, legislative instruments that contain matters more appropriate for parliamentary enactment are likely to attract criticism, particularly from the Senate Standing Committee on Regulations and Ordinances. If broad instrument-making powers are included in a bill, these must be fully explained and justified in the explanatory memorandum (see paragraphs 7.26 to 7.29).
- 5.72 Drafting of some forms of subordinate instruments are tied to OPC under the Legal Services Directions issued by the Attorney-General under the *Judiciary Act 1903*. Tied work includes regulations, ordinances and regulations of non-self-governing territories and other legislative instruments made or approved by the Governor-General. Other subordinate instruments can be drafted by in-house counsel, by OPC on a fee-for-service basis or by other legal advisers.

- 5.73 The *Legislation Act 2003* (the Legislation Act) governs the making, registration, scrutiny and sunseting of legislative instruments. Importantly, the Legislation Act requires legislative instruments to be registered on the Federal Register of Legislation. Once registered, instruments are tabled and scrutinised in the Parliament and most are subject to parliamentary disallowance. They are also generally subject to automatic sunseting after 10 years. The Legislation Act provides that certain instruments are exempt from its provisions or can be made exempt from all or some of its provisions by regulations under the Legislation Act. Exemptions from sunseting are generally provided in the Legislation (Exemptions and Other Matters) Regulation 2015. Information about processes and requirements for exemptions is contained in the [Guide to Managing Sunseting of Legislative Instruments](#).
- 5.74 If an exemption is to be sought, there must be strong justification to depart from the policy on legislative instruments as embodied in the Legislation Act. An example is where the possibility of parliamentary disallowance may cause uncertainty for business if the instrument is to be relied upon from the date it takes effect.
- 5.75 AGD must be consulted on proposals to exempt instruments from some or all of the Legislation Act. Instructors must make early contact with AGD to discuss seeking such approval.
- 5.76 The Legislation Act is important as it ensures access to, and parliamentary scrutiny of, laws affecting the public. It also improves the transparency and integrity of the making of legislative instruments. Accordingly, the Senate Standing Committee for the Scrutiny of Bills is likely to consider carefully any bill that proposes the exemption of an instrument that would normally have been subject to the Legislation Act's requirements. It is therefore important that the explanatory memorandum states clearly why the exemption is necessary and what will be the effect. Further information about legislative instruments and compliance with the Legislation Act can be found in the [Instruments Handbook](#).

# CHAPTER 6: THE DRAFTING PROCESS

---

## DEVELOPING A DRAFT BILL

- 6.1 Written drafting instructions 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 an instruction be confirmed in writing (e.g. if it is potentially controversial). Information about issuing drafting instructions to OPC can be found in *Giving Written Drafting Instructions to OPC*.
- 6.2 After appropriate discussions with instructing officers (which may first lead to the development of a drafting plan), OPC will prepare a draft bill. More detail about the process can be found on [OPC's website](#).

## COMMENTS BY THE INSTRUCTING DEPARTMENT ON DRAFT BILLS

- 6.3 OPC expects the instructing department to provide its comments on the draft bill in a timely manner, in line with the timetable for the particular bill. The drafter can advise when comments are due to be provided on the bill. A failure to provide comments in a timely manner could jeopardise the timetable for the bill.
- 6.4 Comments need to be provided quickly if the matter is urgent. For less urgent matters, if the appropriate timeframe has not been discussed with the drafter, the instructing department is expected to provide its comments to OPC within 5 working days of receipt of the draft bill. If other departments or authorities are being consulted, comments are due within 10 working days.

## CONSULTATION WITH OTHER AGENCIES ON DRAFT BILLS

- 6.5 The instructing department is to arrange for copies of the draft bill to be sent to appropriate agencies for comment. Agencies are required to provide their comments in writing within the timeframe stipulated by the instructing department. An agency providing comments on a draft bill is to copy its comments to other agencies which receive copies of the bill.
- 6.6 OPC will also send copies to any agency that has a right or responsibility to provide policy input in relation to the bill (for further information on the referral of bills by OPC to other agencies, see OPC's *Drafting Direction No. 4.2*). Agencies that receive a copy of a draft bill for comment from OPC are required to provide comments in accordance with the covering email accompanying the draft. Copies of the draft bill are automatically provided by OPC to PM&C as part of the legislation approval process (see Chapter 8).

## MINISTERIAL CLEARANCE OF A BILL

- 6.7 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 of the text. See also paragraph 8.16.

- 6.8 Where a bill amends legislation that is the responsibility of another minister, approval of the final text of the amendments must also be obtained prior to introduction of the bill, either through agreement at department level or, in exceptional circumstances, through an exchange of letters between ministers.
- 6.9 When a bill has been settled with the department, OPC arranges for copies to be sent to the Legislation Section at PM&C for the preparation of a legislation approval submission. This can occur ahead of ministerial approval of the bill.
- 6.10 OPC also provides a memorandum to PM&C 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 OPC memorandum is finalised. Departments are encouraged to consult the drafter on the terms of draft policy approval letters. Departments can assist drafters by providing them, early in the process, with copies of all correspondence seeking the Prime Minister's policy approval and the agreement of other ministers, plus copies of the responses.

## **SECURITY AND ADVANCE DISCLOSURE/EXPOSURE OF DRAFT BILLS**

- 6.11 Draft bills and all associated material, including related correspondence, drafting instructions and typed or manuscript versions of a bill, are confidential to the Government and can attract legal professional privilege and may also attract public interest immunity. Access is on a 'need to know' basis.
- 6.12 Details of bills are not to be released outside government before their introduction into the Parliament unless disclosure is authorised by the Cabinet or the Prime Minister. Where possible, Cabinet submissions seeking policy authority for a proposal will also include a recommendation to release the draft of a bill if consultation outside government is considered desirable (see paragraph 3.7(k)). Otherwise, ministers who wish to release the draft of a bill must write to the Prime Minister seeking approval to do so. The request needs to specify the terms of the release (e.g. public release or targeted consultation with stakeholders).
- 6.13 Copies of bills sometimes need to be provided to state ministers or officials, particularly where complementary legislation has to be prepared. Ministers are to 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.
- 6.14 In seeking approval from the Prime Minister for a draft bill to be exposed, ministers must indicate whether all measures in the bill have policy authority. In exceptional circumstances, ministers may consider that exposure can proceed in advance of policy authority. In such cases, ministers must provide reasons in the letter to the Prime Minister. Where necessary, policy authority could be sought in the same letter (see paragraph 3.8), together with an assurance that a regulation impact statement (RIS) has been prepared, if one is required.

## **CONSULTING FOR CLARITY, READABILITY AND COMPLEXITY**

- 6.15 In consulting on exposure drafts, departmental instructing officers may invite consideration of, and comments on, the clarity, readability and complexity of the draft legislation. Any appropriate feedback is expected to be used to assess and improve the legislation to ensure, where possible, that the public is able to access, read and understand the laws that apply to them.

# CHAPTER 7: PREPARING THE SUPPORT MATERIAL—EXPLANATORY MEMORANDUM AND SECOND READING SPEECH

---

## EXPLANATORY MEMORANDUM

### The purpose of an explanatory memorandum

- 7.1 An explanatory memorandum is a companion document to a bill, to assist members of the Parliament, officials and the public to understand the objectives and detailed operation of the clauses of the bill. It helps a reader to understand the intent and effect of the legislation and may play an important role in a statute's interpretation.
- 7.2 The *Acts Interpretation Act 1901* (section 15AB) allows an explanatory memorandum (and also a second reading speech—see paragraphs 7.45 to 7.46) 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

- 7.3 An explanatory memorandum is required for every bill introduced in the Parliament except in relation to cognate bills (see paragraph 7.44). The minister tables 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/addendum to an explanatory memorandum—must be tabled in the House or the Senate.

### Who prepares an explanatory memorandum

- 7.4 Preparation and printing of the explanatory memorandum are the responsibility of the instructing department. Departments are encouraged to commence preparation of the explanatory memorandum early in the drafting process. The memorandum must be available for consideration by the Legislation Minister 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 8 on the legislation approval process and the appendixes on the copies of documents required.)

## The form and content of an explanatory memorandum

- 7.5 An explanatory memorandum must have:
- (a) a cover sheet (see paragraphs 7.8 to 7.9);
  - (b) a general outline (see paragraphs 7.10 to 7.20) including:
    - (i) a financial impact statement;
    - (ii) a regulation impact statement, where required;
    - (iii) a statement of compatibility with human rights; and
  - (c) notes on clauses or on amendments (see paragraphs 7.21 to 7.23).
- 7.6 An **explanatory memorandum is circulated by authority of the responsible minister** (either the portfolio minister or another minister in the portfolio). Ideally, the memorandum will be submitted to the minister for approval of the text at the same time as the bill prior to the legislation approval process (see paragraph 6.7 and Chapter 8).
- 7.7 As an explanatory memorandum is available publicly once it is tabled, it must not contain any confidential material.

### *Cover sheet*

- 7.8 The cover sheet must indicate:
- (a) the year(s) of the current session of the Parliament (as shown on the bill), e.g. 2016 (if the bill is being introduced in the first year of the current session of the Parliament) and include each subsequent year, ending with the year of introduction;
  - (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 11.4);
  - (d) the short title of the bill;
  - (e) a heading 'Explanatory Memorandum'; and
  - (f) a statement that the memorandum is being circulated by authority of the relevant portfolio minister.
- 7.9 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 (paragraph 7.3);
  - (b) to accompany government amendments (paragraphs 9.1 to 9.7);
  - (c) a replacement for a memorandum (paragraphs 7.42 to 7.43);
  - (d) a correction/addendum to a memorandum (paragraphs 7.42 to 7.43);
  - (e) for use in the second house where the bill has been amended in the first house (paragraphs 9.26 to 9.27); or
  - (f) for more than one bill (paragraph 7.44).

### *General outline*

- 7.10 The general outline will have:
- (a) the short title of the bill across the top of the page (or, in the case of a supplementary explanatory memorandum, 'Amendments to the XYZ Bill 20xx');
  - (b) a brief but clear statement of the purpose/objective of the bill or amendments;



- (c) an outline of why the bill or amendments are required, the effect of the principal provisions, and an explanation of the policy background;
- (d) a financial impact statement (see paragraphs 7.12 to 7.13);
- (e) a full version of the regulation impact statement (RIS), where a RIS is required (see paragraphs 7.14 to 7.15); and
- (f) a statement of compatibility with human rights (see paragraphs 7.16 to 7.20).

7.11 The general outline commences on page 1 of an explanatory memorandum and pages must be sequentially numbered where the outline is more than one page. **If possible, the combined statement of purpose/objective, the outline of the bill and the financial impact statement will be limited to one page.**

### *Financial impact statement*

- 7.12 A financial impact statement follows immediately on from the outline (see paragraph 7.10(c) above), and forms part of the general 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). The financial impact of legislative proposals is to be shown to one decimal place in \$million, e.g. \$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 needs to give a broad outline of the expected financial impacts and reasons why it is not possible to provide figures. Indicate if there is no financial impact.
- 7.13 Where the bill provides for taxation concessions, the explanatory memorandum is to 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 is also to be addressed in the regulation impact statement.

### *Regulation impact statement*

- 7.14 Responsibility for preparing a RIS lies with the department. If a RIS is required, it must be prepared in accordance with the *Australian Government Guide to Regulation* (see reference at paragraph 2.13). The RIS follows the financial impact statement and forms part of the general outline. Some ministers may prefer to state in the general outline that the RIS is attached to the end of the explanatory memorandum.
- 7.15 Where the OBPR has advised that a RIS is not required, there must be no reference to the absence of a RIS in the explanatory memorandum. Neither is an explanation of why a RIS is not required or the advice from the OBPR to the department to be included. If the RIS relates to particular schedules and not to the whole bill, this will need to be indicated at the beginning of the RIS. An explanation of why the RIS does not cover the whole bill is not to be included.

### *Statement of compatibility with human rights*

- 7.16 The *Human Rights (Parliamentary Scrutiny) Act 2011* introduced a requirement for statements of compatibility to accompany all new bills and disallowable legislative instruments and established a new Parliamentary Joint Committee on Human Rights.

- 7.17 A statement of compatibility is an assessment of the compatibility of a bill or legislative instrument with human rights under the seven core international human rights treaties which Australia has ratified. There is no prescribed form for statements, although they are expected to form part of the general outline of the explanatory memorandum and follow the RIS. Some ministers may prefer to state in the general outline that the statement is attached to the end of the explanatory memorandum. For legislative instruments, the statement of compatibility must form part of the explanatory statement.
- 7.18 Responsibility for presenting a statement of compatibility lies with the minister responsible for the legislation or the rule-maker. AGD is available to provide assistance in relation to statements of compatibility. It also provides legal advice (on a billable basis) on Australia's international human rights obligations.
- 7.19 A range of templates and guidance materials are available. Agencies are not required to use these templates. However, they may assist in the preparation of statements of compatibility. These materials are available from AGD's website—*Tools for assessing compatibility for human rights*. Specific questions about this requirement can be addressed to [humanrights@ag.gov.au](mailto:humanrights@ag.gov.au).
- 7.20 The Parliamentary Joint Committee on Human Rights will review all statements of compatibility as part of its consideration of a bill or legislative instrument. The Committee has issued [Guidance Note 1](#) setting out its expectations of what is to be provided in statements of compatibility: statements are to read as stand-alone documents and provide a detailed and evidence-based assessment of the measures in the legislation against the limitation criteria.

### **Notes on clauses**

- 7.21 Notes on clauses or amendments in an explanatory memorandum are intended to be a companion explanation to the clauses of, or amendments to, a bill and are to be drafted in a way that makes them accessible to, and understood by, both expert and non-expert users of the legislation. Notes are also to take into account those matters considered by the Senate Committee for the Scrutiny of Bills set out at paragraphs 7.26 to 7.29. **The notes must avoid repeating the words of the bill or amendments or restating them in alternative language.** As these notes are made public they are not to include any material that is not suitable for public release.
- 7.22 Departmental officers could consider using their drafting instructions to OPC as the basis for drafting the notes. Ideally, notes on clauses would (with equivalent requirements for notes on amendments):
- (a) **state the origin and intention of the clause** by setting out what action is provided for in the clause and how the clause came about (including reasons why a clause is drafted in a particular way and when the clause commences);
  - (b) **provide examples** of the intended effect of the clause, or the problem it is intended to overcome;
  - (c) **explain** how the clause fits within the existing legislative framework (if appropriate) and relate it to other provisions in the bill, particularly where related clauses do not appear consecutively in a bill;
  - (d) **consider the audience** and tailor the content of the notes accordingly; for example, common concerns about business regulation or particular interest groups that could be affected by the legislation;

- (e) **explain the underlying policy** to assist the courts to interpret potentially ambiguous provisions by explaining the policy intention behind a clause or an amendment to a clause. This is especially important as an explanatory memorandum is **extrinsic material** to which a court can refer under section 15AB of the *Acts Interpretation Act 1901* when interpreting legislation;
- (f) **address significant issues** as they arise during consultation on the legislation; any issues that are raised by OPC during the drafting process can be explained in the notes; and
- (g) **stand alone** as much as practicable, so that the clause note can be read separately and give the reader a complete understanding of the reason(s) for the legislative change without having to read the whole explanatory memorandum. In some cases, such as where amendments involve several consequential changes, there may be merit in grouping some clause notes together.

7.23 Notes on clauses must:

- (a) commence on a new page;
- (b) be serially numbered;
- (c) immediately follow the outline, financial impact statement, the RIS (where required) and the statement of compatibility;
- (d) have internal paragraph numbers;
- (e) have consistent use of acronyms;
- (f) have a centred or shoulder heading for each clause or group of clauses—the heading is expected to be the same as the heading in the bill for that clause or group of clauses; and
- (g) have all the pages numbered in series following on from the general outline (excluding the cover sheet).

### ***Department clearance processes***

7.24 Departmental officers need to be aware of their department's internal clearance processes. LLOs are able to provide this information to departmental officers. In all cases, the explanatory memorandum needs to be cleared by a Senior Executive Service officer with appropriate knowledge of the bill before it is submitted to the minister for approval and the bill introduced into the Parliament. This will ensure that the explanatory memorandum fully and accurately explains the effect and operation of the proposed legislation and that it complies with the requirements set out in this handbook.

### ***Concerns expressed by parliamentary committees***

#### *House of Representatives Standing Committee on Procedure*

7.25 The House of Representatives Standing Committee on Procedure has commented in the past on the general standard of explanatory memoranda. An explanatory memorandum must be written in plain language and 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 paragraphs 9.17 to 9.20 for requirements where a bill is amended during passage).

## Senate Standing Committee for the Scrutiny of Bills

- 7.26 The Senate Standing Committee for the Scrutiny of Bills provides comments to the Senate on bills which may:
- (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 (Senate standing order 24).
- 7.27 The Committee has expressed concern in the past at the quality of explanatory memoranda. Where a measure in a bill is likely to be the subject of comment by the Committee (in its regular *Scrutiny Digest*), the reasons for proceeding in the manner proposed in the bill must be explained in the explanatory memorandum (see paragraphs 13.61 to 13.63).
- 7.28 Where a measure in a bill is not sufficiently explained in an explanatory memorandum, the Committee will seek a written explanation from the responsible minister. If explanatory memoranda address the issues likely to be of concern to the Committee, the need for the Committee to seek clarification will be reduced.
- 7.29 Officers involved in preparing an explanatory memorandum need to be aware of issues that fall within the Committee's terms of reference and ensure that:
- (a) the **policy and legislative background** are explained so that the reason and intent of a bill/provision or amendments are clear;
  - (b) **examples** of the intended effect of a clause or the problem it is intended to overcome are provided wherever possible;
  - (c) **reasons for commencement dates** are explained in detail, especially where (1) there is **no specific commencement date**; (2) commencement will be **longer than six months after Royal Assent**, or (3) an Act commences **retrospectively**. The explanatory memorandum must set out whether, and why, retrospective application of the Act would adversely affect any person other than the Commonwealth and, if applicable, include an assurance that no person would be disadvantaged by the retrospective application of the Act<sup>3</sup>;
  - (d) **'legislation by press release'** is adequately explained—this is needed where it appears that a legislative taxation initiative has been implemented following a ministerial announcement and no reasons have been provided for backdating the commencement of the legislation to the date of that announcement. This is a form of retrospective commencement (Resolutions Expressing Opinions of the Senate No. 44);
  - (e) allowing the **incorporation of other material by reference** is justified and clearly explained. An example of this is when a bill proposes compliance based on the requirements of another document (such as a standard) **as in force from time to time**. When the other document can be amended without reference to the Parliament, the arrangement allows a change in obligations to be made without parliamentary scrutiny. In particular, the Committee looks to the nature of the material to be incorporated, whether there is free and ready access to it and how any affected person will be notified about a change in the material **as in force from time to time** (as any change gives rise to a change in the content of the law);

---

<sup>3</sup> See OPC's *Drafting Direction No. 1.3: Commencement provisions*.

- (f) the **use of subordinate legislation is appropriate** and an explanation is given for any unusual arrangements, such as using regulations for important measures that would normally be included in primary legislation or a 'Henry VIII' clause which authorises the amendment of primary legislation by delegated legislation (e.g. that 'rules' can modify the effect of the primary legislation);
- (g) any wide **delegation of powers** is properly explained. For example, delegation to 'a person' or to 'an officer below the level of Senior Executive Service' would be of concern as the Committee prefers that a limit is set on either the sorts of powers that can be delegated or the categories of people to whom they are given, such as to holders of a nominated office, members of the Senior Executive Service or to persons holding specified qualifications;
- (h) the use of **strict or absolute liability offences** is justified. Reference must be made to the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*. The notes on clauses must also outline why the offences are appropriate in the circumstances in which they will be applied and provide background on the reasons for the decision to make an offence one of strict or absolute liability;
- (i) notes on clauses set out the background to, and justify why there is, a **reversal of the usual onus of proof**;
- (j) notes on clauses provide an explanation when a **discretion** is available but **merits review** has not been provided;
- (k) notes on clauses provide an explanation where **decisions are not made subject to review** under the *Administrative Decisions (Judicial Review) Act 1977*;
- (l) notes on clauses provide an explanation where **delegated legislation is not subject to parliamentary scrutiny**;
- (m) if a **levy or similar** is being proposed, the primary legislation will usually include an **upper limit or a formula** or both, and notes on clauses provide an explanation for the proposed approach;
- (n) if the **privilege against self-incrimination** will be affected, the notes on clauses need to provide an explanation for the proposal to remove the privilege and consideration be given to balancing the proposal with use immunity and derivative-use immunity, which also needs to be explained in the notes;
- (o) notes on clauses explain why **entry and search provisions** are required, taking into account the Committee's *Fourth Report of 2000: Entry and Search Provisions in Commonwealth Legislation*; and
- (p) explanations are given for **technical corrections, instrument-making powers and transitional and application provisions**.

This list is by no means exhaustive and departmental officers are encouraged to continue to note any concerns that the Committee may raise in its *Scrutiny Digest*. These documents reflect the Committee's most recent views on issues and are available on the [Senate Committees website](#). Departmental officers are expected to familiarise themselves with any relevant advice issued by PM&C as well as guidance materials issued by the Attorney-General's Department.

## *Parliamentary Joint Committee on Human Rights*

- 7.30 The Parliamentary Joint Committee on Human Rights is a joint statutory committee which has the following functions under the *Human Rights (Parliamentary Scrutiny) Act 2011*:
- (a) to examine bills for Acts, and legislative instruments, that come before either house of the Parliament for compatibility with human rights, and report to both houses of the Parliament on that issue;
  - (b) to examine Acts for compatibility with human rights, and report to both houses of the Parliament on that issue; and
  - (c) to inquire into any matter relating to human rights which is referred to it by the Attorney-General, and report to both houses of the Parliament on that matter.
- 7.31 The Committee considers the statement of compatibility to be the starting point of the Committee's consideration of a bill or legislative instrument, and expects statements to read as stand-alone documents and to include a detailed and evidence-based assessment of the measures in the legislation against the limitation criteria.
- 7.32 If legislation does not engage any rights, the Committee expects that reasons will be given to support that conclusion.
- 7.33 If the bill engages human rights, the Committee expects that the statement will state whether rights are promoted or limited by the bill. If the bill promotes rights, the Committee expects that the statement will identify the relevant right and explain how the provisions of the bill will promote rights.
- 7.34 If the bill limits human rights (e.g. the bill reverses the burden of proof and so limits the right to be presumed innocent), the Committee expects that the statement will:
- (a) identify the right that is limited and explain how relevant provisions limit the right;
  - (b) explain the purpose of the measure and why it is considered necessary. The measure must be aimed at achieving a legitimate objective. A legitimate objective is one that addresses an area of public or social concern that is pressing and substantial enough to warrant limiting the right;
  - (c) explain how the measure is likely to be effective in achieving the objective being sought, as it is not sufficient to put forward a legitimate objective if in fact the measure limiting the right would not make a real difference in achieving that aim;
  - (d) explain how the measure is proportionate. The statement could explain the extent of the interference with human rights, whether there are effective safeguards or controls (including the availability of review rights where relevant), and explain if any less restrictive measures to achieve the same objective were considered and why these were not adopted.
- 7.35 If the bill includes civil penalties, the Committee expects that the statement will explain whether the civil penalty provisions will be considered to be 'criminal' for the purposes of human rights law and, if so, explain whether the provisions are consistent with the criminal process rights in articles 14 and 15 of the International Covenant on Civil and Political Rights, including providing justifications for any limitations of these rights (see [Guidance Note 2](#)).
- 7.36 The Committee's approach to human rights scrutiny and its expectations for statements of compatibility are set out in its [Guidance Notes](#) and other materials available on the Parliament House website.

- 7.37 Officers involved in preparing a statement of compatibility are required to be aware of human rights and be able to assess when human rights may be engaged, promoted or limited. The Attorney-General's Department has prepared a list of policy triggers which may assist officers to identify when human rights are engaged.

### **Printing an explanatory memorandum**

- 7.38 An explanatory memorandum must be printed on international B5 size paper for presentation to the Parliament. If time does not permit that, the explanatory memorandum may be printed on A4 paper for initial presentation, but B5 copies must be supplied as soon as possible afterwards.
- 7.39 The instructing department is responsible for arranging printing of the memorandum. This generally occurs after the memorandum has been approved by the minister and cleared through the legislation approval process. The department funds the setting-up cost of printing, introduction copies and any additional copies required for their own purposes, and also bears the cost of any run-on copies it requires for sale. Once finalised, the explanatory memorandum must be emailed to the relevant Table Office (i.e. the chamber in which the explanatory memorandum is to be tabled) for publication on the Parliament House website.
- 7.40 If it is necessary to arrange printing of the explanatory memorandum in advance of the legislation approval process, departments are advised to contact the Legislation Section before arranging printing.

### **Distributing an explanatory memorandum**

- 7.41 The department is responsible for delivering copies of the explanatory memorandum to the Parliament and the PLOs prior to introduction. The required copies must be delivered to both Table Offices before introduction in the first house. Copies must also be supplied to the minister's office as the minister will need to sign and table a copy when introducing the bill in the House of Representatives (see paragraph 12.10).

### **Replacement explanatory memorandum, or correction or addendum to an explanatory memorandum**

- 7.42 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, the department (in consultation with the minister) may wish to consider whether to issue a replacement explanatory memorandum.<sup>4</sup> Similarly, an addendum or replacement explanatory memorandum may also be necessary to respond to recommendations raised by a parliamentary committee following its inquiry into a bill. In any event, the department must alert the PLOs and the relevant Table Office to arrange for the minister to present the correction or addendum to the explanatory memorandum or the replacement explanatory memorandum to the Parliament without delay.

---

4 In contrast to a replacement explanatory memorandum, a **revised** explanatory memorandum is prepared for the second house if the bill has been amended in the first house (see paragraphs 8.42 and 10.25).

- 7.43 In circumstances where agencies propose that the minister table an addendum or a correction to an explanatory memorandum in response to matters raised by the Senate Standing Committee for the Scrutiny of Bills or the Parliamentary Joint Committee on Human Rights, the following text must be included in the document: 'This addendum/correction responds to concerns raised by the Senate Standing Committee for the Scrutiny of Bills (or the Parliamentary Joint Committee on Human Rights) in *Scrutiny Digest No. XX*, dated xx and/or xxx report of [year] dated xxx.'

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

- 7.44 A separate explanatory memorandum is normally required for every bill, including cases where two or more bills are related. However, in those rare cases where a number of very closely related bills are introduced at the same time, a single document incorporating the 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, 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.

## **SECOND READING SPEECH**

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

- 7.45 A second reading speech, explaining the purpose and policy objectives of a bill, is made or incorporated into Hansard by a minister after the second reading of a bill is moved in either 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 with 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 7.2).
- 7.46 A second reading speech therefore forms an important part of the legislative process; it allows current and future audiences to understand the intent of the legislation and its context.

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

- 7.47 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**

- 7.48 The speech explains 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 spelled out in the second reading speech. A second reading speech does 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 7.1 to 7.44).



- 7.49 Officers involved in drafting second reading speeches need to keep 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**

- 7.50 With the exception of the Budget speech, the maximum time allowed for a second reading speech is 30 minutes in the House of Representatives (standing order 1) and 20 minutes in the Senate (standing order 189(1)). 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**

- 7.51 The procedural wording for moving the second reading and tabling the explanatory memorandum will be provided to ministers by the Table Office of the relevant parliamentary department. **Procedural wording must not be included in the second reading speech.**
- 7.52 The headings on speeches for bills introduced in the Senate must not name a particular minister as the speech may be delivered or incorporated into Hansard by the duty minister (see paragraph 13.8). References to house-specific terms such as *Speaker*, *President*, *House*, *Senate*, *members or senators* **must** 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 7.54). Similarly, avoid minister-specific phrases such as *I announced ... or, when I visited ... etc.*

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

- 7.53 Once a second reading speech has been cleared by the minister, departments are responsible for arranging the printing and distribution of the speech. The speech may be printed on either international B5 size or A4 paper (single or double-sided) for presentation to the Parliament. Copies are to be delivered to both Table Offices and to the PLOs before introduction in the first house. Copies are also to be supplied to the minister's office, including a copy for the minister to read when introducing the bill into the House of Representatives and a copy to provide to the Opposition if desired (see paragraph 12.12). Lastly, the speech is to be emailed to the relevant PLO (i.e. for the chamber in which the bill is to be introduced) to assist publication in Hansard.

## **SUPPORT MATERIAL FOR THE SECOND HOUSE**

### **Support material where a bill is not amended in the first house**

- 7.54 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, i.e. 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.

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

- 7.55 Where a bill has been amended in the first house, the explanatory memorandum must be revised accordingly. It is also good practice to review and, if necessary, revise the statement of compatibility with human rights. The reprinted explanatory memorandum is known as the *revised* explanatory memorandum (not the 'replacement explanatory memorandum'), which is reflected in the cover sheet. 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 9.24 to 9.25).
- 7.56 The Table Office of the first house can provide departments with an advance copy of the third reading print of the bill to check against the revised explanatory memorandum. This would allow the revised explanatory memorandum to be printed and copies delivered to Parliament House before the amended bill is introduced in the second house.
- 7.57 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.
- 7.58 Where a bill has been amended in the first house, the second reading speech would not necessarily be revised for the second house **unless** the text of the speech would otherwise be made inaccurate or misleading by the amendments (e.g. minor amendments will often have no bearing on the speech).
- 7.59 See also paragraphs 12.42 to 12.49 and 13.43 to 13.50 for further details of requirements in the House of Representatives and the Senate.

# CHAPTER 8: THE LEGISLATION APPROVAL PROCESS FOR BILLS PRIOR TO INTRODUCTION IN THE PARLIAMENT

---

## ALL BILLS TO BE APPROVED FOR INTRODUCTION

- 8.1 Every government bill, and all government amendments, must be approved for introduction by the Legislation Minister, on behalf of the Prime Minister, before they can be introduced in the Parliament.
- 8.2 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 the Cabinet, the Prime Minister and/or the relevant minister and that all relevant ministers have been consulted.

## THE LEGISLATION APPROVAL PROCESS

- 8.3 The Legislation Minister meets the 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.
- 8.4 For each bill and set of government amendments considered by the Legislation Minister, 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 OPC, 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 scope of, or contrary to, that authority, and to any other matters OPC considers need to be brought to the attention of the Legislation Minister;
  - (c) the draft bill; and
  - (d) the explanatory memorandum.
- 8.5 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 Legislation Minister 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 the text of legislation that is the responsibility of another minister.

- 8.6 Where approval is conditional, a bill cannot be introduced or government amendments cannot be moved until those conditions are met. The onus is on the minister and department to ensure that the stipulated conditions are met. Written evidence (letter or email) of agreement by ministers to measures contained in a bill or, where appropriate, to the text of the bill itself, must be provided 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, a copy of a departmental submission which has been signed or initialled by the minister, or a verifying email from the department that the minister has agreed. The process for party clearance is outlined at Chapter 10.

## PAPERS TO BE LODGED FOR THE LEGISLATION APPROVAL PROCESS

### Legislation Overview

- 8.7 Ahead of each sitting week, the Legislation Section will provide departments with a Legislation Overview form for each bill or set of amendments that OPC has indicated is expected to be ready for introduction. Departments must complete the Legislation Overview and return it to the Legislation Section as confirmation that the legislation is proceeding.
- 8.8 The completed Legislation Overview is required to enable the Legislation Section to prepare documents for the legislation approval process (LAP), and includes a short description of the legislation and advice on outstanding policy authority and ministerial clearance. The Legislation Overview also assists the PLOs in programming bills for debate by providing information on sponsoring ministers, the urgency of a bill and its financial implications.
- 8.9 It is important for departments to ensure that the 'Timing considerations' section of the Legislation Overview identifies the timing by which **passage is required**, not the timing of introduction or likely debate, and provides:
- (a) any critical date(s) for implementation of measures contained in the bill or amendments **and** the consequences of the date(s) not being met;
  - (b) any commencement date(s) that are specified in the bill or amendments; and
  - (c) any special timing requirements for a bill or for amendments.
- 8.10 The LLO must return the completed Legislation Overview by the deadline specified by the Legislation Section. A revised Legislation Overview will be required by the Legislation Section if any of the information (e.g. contact officers or timing considerations) needs updating.

### Electronic lodgement

- 8.11 To enable a bill to be approved for introduction, or a set of amendments to be approved for circulation, departments must lodge the following documents at [lodgement@pmc.gov.au](mailto:lodgement@pmc.gov.au):
- (a) the explanatory memorandum or supplementary explanatory memorandum;
  - (b) copies of letters from other ministers who have been consulted, indicating their agreement or approval; and
  - (c) confirmation that there is agreement to the text of amendments administered by another minister.

- 8.12 The **deadline for the receipt of documents by Legislation Section is 11.00 am on the Wednesday** of the week before the bill is to be introduced or government amendments are to be moved.
- 8.13 Departments are requested to meet the Wednesday deadline for all bills and amendments. The Legislation Section must be contacted at the earliest opportunity if a department anticipates difficulty in meeting the Wednesday deadline.
- 8.14 OPC will electronically lodge the draft bills and amendments with the Legislation Section separately.
- 8.15 While the electronic lodgement of documents with Legislation Section is required for LAP purposes, departments are to deliver hard copies of the explanatory memorandum or supplementary explanatory memorandum to the Table Offices and the PLOs (paragraph 7.41 refers).

### **Ministerial approvals**

- 8.16 Departments must advise **no later than 11.00 am on the Friday** of the week before the bill is to be introduced or the government amendments are to be moved that the minister has approved:
- (a) the text of the bill (see paragraph 6.7) and the explanatory memorandum (see paragraph 7.6); or
  - (b) the text of the amendments (see paragraph 9.5) and supplementary explanatory memorandum (see paragraph 9.17); and/or
  - (c) any technical amendments (see paragraph 3.23).
- 8.17 This timing ensures that bills and amendments will be considered by the Legislation Minister at the LAP meeting, usually held on Monday mornings. The Legislation Section must be advised if a department anticipates difficulty in meeting the Friday deadline.
- 8.18 The deadlines outlined above for lodgement and ministerial approval will mean that, on occasion, documents will be lodged before all approvals are in place. However, lodgement on Wednesday in advance of ministerial approval is necessary if the Legislation Section is to meet its obligations for briefing and consultation on all bills and amendments ahead of the Monday morning LAP meeting.

### **CORRECTIONS AND OTHER LATE CHANGES TO BILLS/AMENDMENTS**

- 8.19 If minor changes are made to a bill or amendments after the legislation approval process and before introduction, OPC may prepare a replacement brief for the Legislation Minister identifying the changes made.
- 8.20 Importantly, if changes made after the legislation approval process are more than minor or technical, departments will need to allow time to have the revised bill or amendments and the revised explanatory memorandum approved by the relevant minister and go through the legislation approval process again.

### **PARTY CONSIDERATION**

- 8.21 In addition to the above legislation approval process, all government bills and amendments must have party clearance—see Chapter 10.

# CHAPTER 9: AMENDMENTS DURING PASSAGE OF A BILL AND SUPPLEMENTARY SUPPORT MATERIAL

---

## GOVERNMENT AMENDMENTS

- 9.1 The Government may decide to amend a bill that is currently before the Parliament. This may occur for a number of reasons but, in general, government amendments will **not** be considered unless they are critical in nature, i.e. to correct a serious defect in a bill, to address issues arising out of consultations with non-government parties or responding to recommendations to parliamentary inquiries, or to correct issues identified by parliamentary scrutiny committees (such as the Senate Standing Committee for the Scrutiny of Bills and the Parliamentary Joint Committee on Human Rights).
- 9.2 Government amendments are to be progressed only if essential—for example, to address circumstances that have changed since the bill was introduced. As an alternative, if the proposed amendments are not essential they can be included in a bid for a bill on the next legislation programme.
- 9.3 In cases where a large number of government amendments are being considered, there is the option of withdrawing the bill and reintroducing it in a consolidated form.
- 9.4 In considering the need for government amendments, departments need to be aware, and brief their ministers as appropriate, that **government amendments are likely to delay passage of a bill**.
- 9.5 The need for government amendments to correct errors or defects in bills will be minimised by departments undertaking a thorough check of each bill prior to introduction. Accordingly, a Senior Executive Service officer with appropriate knowledge of the bill would be expected to clear the bill prior to it being submitted to the minister for approval and introduced into the Parliament.
- 9.6 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. If the amendments are made by the second house, the bill will need to be returned to the first house for agreement. If the amendments are made by the first house, the bill and explanatory memorandum, and possibly the second reading speech, will need to be updated to take account of the amendments and reprinted before transmission to the second house (see paragraphs 9.24 to 9.28).
- 9.7 The Senate Standing Committee for the Scrutiny of Bills applies the same standards to amendments moved to a bill as it does to the original text of the bill (see paragraphs 7.26 to 7.29). As such, any amendments are subject to the same legislative scrutiny and ministers may be asked to provide explanations and justifications for any amendments introduced. All new provisions are to be fully explained in the supplementary explanatory memorandum.

## FORMAL AMENDMENTS

- 9.8 During passage through either house, amendments of a formal nature (e.g. correcting a cross-reference) 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 the First Parliamentary Counsel is sought about these amendments.
- 9.9 Departmental instructing officers must contact OPC (which sends a note to the relevant Clerk) when they become aware of the need for such amendments during the passage of a bill.

## PBC CONSIDERATION OF GOVERNMENT AMENDMENTS

- 9.10 Departments must advise the Legislation Section (desirably through the LLO), OPC and the relevant PLO of proposed government amendments as soon as the need for them becomes apparent.
- 9.11 Where proposed government amendments are, in the opinion of the First Parliamentary Counsel, likely to require significant drafting resources, a request for a variation to the legislation programme must be prepared for consideration by the PBC (see paragraphs 2.23 to 2.34).

## DRAFTING GOVERNMENT AMENDMENTS

- 9.12 Government amendments are drafted by OPC. Departments need to discuss proposed amendments with OPC and issue drafting instructions in the usual manner in accordance with OPC's *Giving Written Drafting Instructions to OPC*.

## REQUESTS FOR AMENDMENTS

- 9.13 Where the Senate may not amend a bill (as limited by section 53 of the Constitution), it 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. The Senate does not read a bill for a third time until any requested amendments are resolved.
- 9.14 Following a resolution on 26 June 2000 (Senate Procedural Order of Continuing Effect No. 1), the Senate requires that all amendments circulated in the Senate chamber as requests be accompanied by a statement of reasons for their being circulated as requests, together with a statement by the Clerk of the Senate on whether amendments would be regarded as requests under the precedents of the Senate.
- 9.15 Where the drafter is of the opinion that government amendments in the Senate need to be circulated as requests, they will provide written advice of that opinion to the sponsoring minister together with a separate explanation for that opinion. If the amendments are circulated as requests, the explanation will serve as the statement of reasons for the purposes of the Senate requirement. When the Senate Table Office seeks authorisation from the minister to circulate the amendments, the minister is also requested to indicate which, if any, amendments are to be circulated as requests.
- 9.16 The drafter can give further advice on the procedural and other implications of Senate requests.

## SUPPLEMENTARY EXPLANATORY MEMORANDUM

- 9.17 A supplementary explanatory memorandum must be prepared for **all** government amendments regardless of whether the amendments are being moved in the first or the second house (although see paragraph 9.23 for exceptional cases). The supplementary explanatory memorandum follows the same form as an explanatory memorandum. A Senior Executive Service officer with appropriate knowledge of the bill would be expected to clear the supplementary explanatory memorandum before it is submitted to the minister for approval and the amendments moved in the Parliament (see paragraph 7.24). If the amendments limit human rights, it is good practice for a supplementary statement of compatibility with human rights to be included (see paragraphs 7.16 to 7.20).
- 9.18 As for an explanatory memorandum, the financial impacts of the amendments or requests for amendments must be included in the financial impact statement in the supplementary explanatory memorandum. Even a negligible financial impact may require amendments to be moved as Senate requests for amendments. A financial impact statement describing a requested amendment as having a negligible financial impact needs to note that the financial impact may nevertheless have constitutional significance. Advice about the constitutional significance of requested amendments can be sought from the drafter.
- 9.19 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 paragraph 9.18 in relation to requests for amendments).
- 9.20 Where both amendments and requests for amendments are proposed for a bill in the Senate, a single supplementary explanatory memorandum can be prepared. 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 will need to be printed by your print provider. See paragraphs 9.26 and 9.27 for information on the preparation of a revised explanatory memorandum for introduction in the second house.

## DISTRIBUTING AND PRINTING A SUPPLEMENTARY EXPLANATORY MEMORANDUM

- 9.21 The department is responsible for arranging the printing of a supplementary explanatory memorandum and distributing copies to the Table Offices, the PLOs and the minister's office prior to the accompanying government amendments being approved for circulation (see paragraphs 7.38 to 7.41). See also paragraphs 12.36 and 13.36 regarding speech notes for the minister.

## APPROVAL OF GOVERNMENT AMENDMENTS

- 9.22 Government amendments require **all the same approvals as a bill** that is being introduced, i.e.:
- (a) policy approval for all proposals contained in the amendments;
  - (b) approval of the responsible minister for text of the amendments and the supplementary explanatory memorandum;



- (c) approval or agreement of other ministers, or departments where appropriate;
- (d) party clearance; and
- (e) approval from the Legislation Minister for the amendments to be moved (see Chapter 8 for further information on the legislation approval process, including electronic lodgement of documents).

9.23 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 policy approvals to be sought. In such situations, the relevant minister must clear any amendments with the Prime Minister, other ministers, and the relevant party committee, as appropriate and as time permits. Also in such situations, a supplementary explanatory memorandum is to be prepared if time permits.

## **REPRINTING A BILL TO TAKE ACCOUNT OF AMENDMENTS TO THE BILL BY THE FIRST HOUSE**

9.24 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'. The Table Office prepares the third reading print according to the instructions set out in the amendments and does not renumber the clauses in the bill to take account of inserted or omitted clauses. Newly inserted provisions will be cited using a combination of numerical and alphabetical references, e.g. a new clause after 3 will be 3A and the existing clause 4 will remain as 4. Where provisions are omitted by amendment, the resulting gaps in numbering will remain. This avoids the need to rectify incorrect references in other bills which have already been passed and that refer to provisions in the bill as introduced. Reprinting may take a minimum of 24 hours and can take much longer if there are extensive or complex amendments. See also paragraphs 12.43, 12.51, 13.44 and 13.52.

9.25 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 THE BILL BY THE FIRST HOUSE**

9.26 If either government or non-government amendments to a bill are made in the first house, departments **must** revise the explanatory memorandum to reflect the amendments. It is also good practice to revise the statement of compatibility with human rights. 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 obtained from the appropriate Table Office), and must arrange for the revised explanatory memorandum, cleared through the minister's office, to be printed and for copies to be lodged before the bill is introduced in the second house. Departments will need to commence work on the revised explanatory memorandum, including any revised statement of compatibility, as soon as amendments are made by the first house. Departments are to contact the Table Office of the second house to confirm the timing for the introduction of the bill in the second house. See also paragraphs 12.44 to 12.47, 12.51, 13.45 to 13.48 and 13.52.

- 9.27 It is necessary to prepare a supplementary explanatory memorandum if further government amendments are to be moved in the second house (see also paragraphs 12.22, 12.35, 13.17 and 13.35).

### **REVISING A SECOND READING SPEECH WHERE A BILL HAS BEEN AMENDED BY THE FIRST HOUSE**

- 9.28 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, it is cleared through the minister's office and copies are lodged at the same time as copies of the revised explanatory memorandum.

### **AMENDMENTS TO A BILL BY THE SECOND HOUSE**

- 9.29 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 paragraphs 12.53 and 13.49). 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 10: PARTY CLEARANCE

---

## INTRODUCTION

- 10.1 Governments require that all government bills and amendments are subject to internal party clearance. Special arrangements may be made in respect of Budget and other sensitive legislation, and urgent and unforeseen legislation. For a Labor government, this is the Caucus. For a Coalition government, this is the Joint Party. The reference to 'party clearance' below is intended to be a general reference to the party clearance mechanism.

## THE PROCESS

### Government members' policy committees

- 10.2 Before party consideration, all bills and amendments are to be considered by the relevant government members' policy committee. Each minister is responsible for consulting the committee about their legislation 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 legislation. In the week or so before a bill is to be introduced, the departmental instructing officer may wish to remind their minister's office of the need for the office to make arrangements to have the bill considered by the relevant committee before party consideration. 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 may need to contact the committee chair to discuss arrangements for consideration of the bill.

### Party clearance

- 10.3 Parties usually meet on Tuesday morning of a sitting week and will consider bills and amendments for introduction. Draft bills and amendments are not to be provided for party clearance processes. As with the policy committee process, each minister is responsible for explaining their bill or amendments, or for ensuring another minister 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.

### The role of departmental staff

- 10.4 Departmental officers may be asked to attend policy committee meetings to provide factual briefing and background material. It is not appropriate for officers attending policy committee meetings to enter into discussions on matters of policy; this is the preserve of the minister. Reference can be made to the appropriate parts of the *Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters*.
- 10.5 Ministers may ask their departments to provide briefing for use by the minister for party clearance processes. Any briefing of a political nature is to be prepared by the minister's personal staff.

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

- 10.6 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.
- 10.7 However, a minister may wish to brief the non-government parties and independent members on a draft bill, especially for category T bills where exemption will be sought from the cut-off order in the Senate (see paragraphs 2.40 to 2.41 and 13.12 to 13.13). The responsible minister must seek the Prime Minister's agreement if they wish to provide a draft bill to the non-government parties before introduction into the Parliament.
- 10.8 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 legislation. The relevant PLO must be kept informed of any developments that may affect the timing of debate.

# CHAPTER 11: INTRODUCTION OF A BILL IN THE PARLIAMENT

---

## INTRODUCTION

- 11.1 For a bill to become an Act, it must be passed in the same form by each house and be assented to by the Governor-General.
- 11.2 A bill which has been approved for introduction by the Legislation Minister, on behalf of the Prime Minister, and received party clearance and any outstanding ministerial approvals or agreements, 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

- 11.3 Section 53 of the Constitution provides that 'proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate'. OPC will advise during the drafting process whether a bill can only be introduced into the House of Representatives.

## WHICH HOUSE?

- 11.4 If a bill can be introduced into either house, the minister may consider whether there are advantages in introducing the bill in one house over 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

- 11.5 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

- 11.6 In the House of Representatives, bills are usually introduced on Wednesday or Thursday in a sitting week, following the legislation approval process on Monday and party clearance on Tuesday. Introduction in the Senate can occur on any day. To enable introduction of a bill to take place, the department must have arranged for delivery to the Table Offices in Parliament House of the required copies of the explanatory memorandum and the second reading speech. OPC arranges delivery of the bills.

## TIMING OF DEBATE ON BILLS

- 11.7 The PLOs will advise the department of the timing of debate of a bill (see paragraphs 12.18 to 12.27 and 13.14 to 13.21). Departments must advise of any special timing requirements, or other factors impacting on the timing of debate of a bill, in the Legislation Overview which is provided to the Legislation Section for the legislation approval process (see paragraphs 8.7 to 8.10).

## PASSAGE OF A BILL THROUGH BOTH HOUSES

- 11.8 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 12.6 and 12.7);
  - (b) presentation of the bill and **first reading**;
  - (c) **second reading**—the minister tables the explanatory memorandum and moves that the bill be read a second time and either reads (in the House) or incorporates (in the Senate) the second reading speech;
  - (d) resumption of second reading debate, including the minister’s summing up speech, 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**, i.e. passage by that house.
- 11.9 Details of the procedure for the House are at Chapter 12 and for the Senate at Chapter 13.

## APPROPRIATION BILLS

- 11.10 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’).
- 11.11 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.
- 11.12 In most cases, where the Senate cannot amend a bill, it may request the House to make the amendment (see paragraph 9.13).
- 11.13 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**

- 11.14 These bills are introduced on Budget night by the Treasurer. The second reading speech on the Appropriation Bill (No. 1) is the 'Budget Speech'. A message from the Governor-General under section 56 of the Constitution is required for each of these bills.
- 11.15 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 special appropriations). The Senate cannot amend the bill but can request the House to make amendments.
- 11.16 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 special appropriation is planned. The Senate may amend the No. 2 bill (but see paragraph 11.19).
- 11.17 Appropriation Bills Nos. 3 and 4 are referred to as the additional or supplementary estimates. Appropriation Bill (No. 3) appropriates funds for ordinary annual services, while Appropriation Bill (No. 4) provides for other expenditure—that is, they parallel Appropriation Bills Nos. 1 and 2.
- 11.18 The Appropriation (Parliamentary Departments) Bill appropriates revenue for the current financial year for the expenses of the Parliament. The Senate may amend the bill (but see paragraph 11.19).
- 11.19 If the Senate seeks to amend the Appropriation Bill (No. 2), the Appropriation Bill (No. 4) or the Appropriation (Parliamentary Departments) Bill with the effect that 'any proposed charge or burden on the people' is increased, it is necessary for the Senate to request the House to make such an amendment.

### **Bills containing special appropriations**

- 11.20 A special appropriation is included in a bill when it is desired to provide for an automatic authority to pay funds where an entitlement exists or to provide for a payment separately from an annual appropriation bill (see also paragraphs 5.63 to 5.64). The Government decides on a case-by-case basis whether an annual appropriation or a special appropriation is to be used for a particular government function. A message from the Governor-General is required for bills containing special appropriations.

## **BILLS IMPLEMENTING AN INTERNATIONAL TREATY**

- 11.21 Consistent with Joint Standing Committee on Treaties (JSCOT) Report 55, in relation to bills which implement international treaties, every effort is to be made to ensure that the Committee has due time to consider all treaty action before relevant implementing legislation is introduced. However, due to the national interest, this may not always be possible. It remains open for the Parliament to delay considering such legislation until the Committee has reported.
- 11.22 Departments are to keep track of proposed legislation and subordinate legislation that implements a treaty and ensure that, where possible, legislation is not introduced or subordinate legislation laid before the Parliament before JSCOT has reported on the relevant treaty.

- 11.23 In cases where legislation or subordinate legislation is submitted before JSCOT has reported on a treaty, departments must:
- (a) advise their minister, and other ministers with an interest in the treaty-enabling legislation or legislative instrument, that JSCOT has not yet reported;
  - (b) include advice in the explanatory memorandum (or other supporting material) that JSCOT has not yet reported, and provide a reason why the Government has decided to proceed before the Committee has reported; and
  - (c) advise the PLOs in the Senate and the House of Representatives.

## **PRIVATE MEMBERS' AND SENATORS' BILLS**

- 11.24 The process for introduction of bills by private members or senators and the time set aside for debate on such bills will vary depending on the house.
- 11.25 The drafting of a private member's or senator's bill is the responsibility of the member or senator concerned, and is usually drafted by parliamentary officers or, occasionally, by OPC.
- 11.26 Ministers may ask their departments to provide briefing and assist during debate on these bills as relevant to the portfolio. The PLOs can advise on debate timing in these cases.



# CHAPTER 12: PASSAGE OF A BILL THROUGH THE HOUSE OF REPRESENTATIVES

---

## INTRODUCTION

- 12.1 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 *House of Representatives Practice* and the *House of Representatives Standing and Sessional Orders*.

## HOUSE-INITIATED BILLS

### Preparation for introduction

- 12.2 The Office of Parliamentary Counsel will order the required copies of a bill and arrange delivery to the House of Representatives Table Office. OPC usually makes a small number of copies available to the department. Apart from that, 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.
- 12.3 Extra copies of the introduction print of the bill do not have the security marking 'sensitive: legal' on them. Additional copies ordered by departments will not be released until after the bill is introduced.
- 12.4 The department must arrange for the printing and delivery to Parliament House of the required copies of the explanatory memorandum and the second reading speech.
- 12.5 Once a bill is introduced, it is the property of the relevant house, not the minister. After introduction, copies are published online and printed on the authority of the relevant house on instruction from parliamentary officers, not OPC.

### Notice of introduction

- 12.6 For most bills, the responsible minister is required to give written notice to the House at least one sitting day 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.
- 12.7 A bill which requires notice for introduction may be introduced by leave of the House (i.e. 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 the 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

- 12.8 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.
- 12.9 The department must provide to the minister:
- (a) the explanatory memorandum to be signed on the cover by the minister in advance of presentation to the House; and
  - (b) the second reading speech to be read by the minister on moving the second reading of the bill.
- Note: The Table Office will not provide any copies of the bill, except for the minister's introduction copy, before it has been introduced.

## Presenting a bill—first reading

- 12.10 Bills to be introduced are listed as items of government business in the *Daily Program*. 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 and a signed copy of the explanatory memorandum 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 and published on the Parliament House website.
- 12.11 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**.
- 12.12 The minister may also give a copy of the second reading speech to the Opposition shadow minister at the table.
- 12.13 Debate on the bill is then adjourned and set down as a government business order for a future sitting.

## Selection Committee and referral of bills

- 12.14 The Selection Committee is established under House standing order 222. The Selection Committee may select bills that it regards as controversial or as requiring further consultation or debate for referral to the relevant House standing or joint committee. The Selection Committee's recommendations are treated as having been adopted when they are presented to the House.
- 12.15 The Selection Committee may refer bills only after introduction in the House. Bills introduced first in the Senate may be referred after they have passed the Senate and have been received by the House. While the Selection Committee may specify a date by which the House standing or joint committee is to report to the House, practice is to allow committees to determine a reporting date. A bill referred by the Selection Committee for inquiry may not proceed beyond the second reading debate stage until the House standing or joint committee has reported. This enables the House to consider recommendations of the standing or joint committee and the necessity for amendments.

- 12.16 Once introduced, a bill may also be referred to a House standing or joint committee by a resolution of the House or by a minister writing to the chair of a committee requesting the committee examine the bill. Similarly, draft bills may be referred for inquiry by a minister writing to a committee or, if tabled (as a government document), by resolution of the House. Automatic referral of a bill may occur if the terms of reference of a committee stipulate that legislation on a defined topic will stand referred once introduced.
- 12.17 The operation of committees is governed by the House of Representatives Standing and Sessional Orders. House standing or joint committees may hold public or private hearings to take evidence and seek information from ministers and their departments. If a minister's bill is referred to a committee, departments will need to be available to provide background briefing and factual information to the minister or the committee. This could include advice on any possible amendments to the bill and to progress preparation of amendments when required.

### **Preparation for second reading debate and consideration in detail**

- 12.18 The PLO programmes bills for second reading debate in consultation with ministers' offices and departments, having regard to the priority status of the bills.
- 12.19 Generally, only urgent bills (i.e. 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 latter 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.
- 12.20 Bills, other than urgent bills, are not normally programmed for debate until the Opposition party room has had an opportunity to consider the bills. However, non-urgent bills that are not controversial could be debated in the Federation Chamber (see paragraphs 12.55 to 12.59).
- 12.21 It is the responsibility of the department to alert the PLO as early as possible to any urgency (e.g. critical deadlines for implementation) or other factors (e.g. 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 must be indicated on the Legislation Overview form (see paragraphs 8.7 to 8.10).
- 12.22 If government amendments are to be moved during debate on a bill, follow the requirements set out in Chapter 9. The required copies of the government amendments and supplementary explanatory memorandum must be lodged with the Table Office and the PLO in time for the resumption of the second reading debate. This will enable the minister to move the amendments and present the supplementary explanatory memorandum during the consideration in detail stage of the bill, which (unless debate is adjourned) follows immediately upon conclusion of the second reading stage.
- 12.23 It is customary for government amendments to be circulated at least several hours before they are moved by the minister in the chamber. Clearance will be sought from the minister's office to circulate the amendments when the required copies are lodged with the Table Office and the legislation approval process has been completed (see Chapter 8). Ministers' offices may wish to provide copies to the shadow spokesperson's office at the same time. The text of circulated amendments can be accessed at a bill's homepage on the Parliament House website.

- 12.24 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 (see Chapter 14). Where there is a need to move a large number of government amendments, there may be merit in withdrawing the bill and reintroducing it in a consolidated form. Ultimately, this may save time and cause less inconvenience.
- 12.25 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 must be prepared for the resumption of the second reading debate.**
- 12.26 In consultation with the responsible minister's office, departments must ensure that the minister taking a bill through the House is fully briefed prior to the second reading debate, and is supported by departmental advisers during the debate on the bill. The responsible House minister may not be available to take the bill through the House and would be represented by another minister. Depending on their familiarity with the bill, the representing minister may need to rely heavily on the briefing material and the advice of the departmental advisers. Therefore, briefing material needs to be in a form that can be presented to ministers who are not totally familiar with the subject matter.
- 12.27 Departmental advisers are to be present in the chamber during the second reading debate and the consideration in detail stage. Advisers must have a detailed knowledge of the legislation (i.e. the bill, and any proposed amendments, including the impact on the primary Act if applicable) and the authority to provide and recommend responses to the minister at all stages of debate on the bill. It is not possible for the debate to be suspended to allow departmental advisers to refer to the department during the passage of the bill through the chamber. However, when several advisers are in attendance, one adviser may leave the chamber to consult the department if necessary. Phones are available just outside the House chamber.

### **Resumption of second reading debate**

- 12.28 On the resumption of debate, an Opposition member (usually the shadow spokesperson) 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. The minister taking the bill through the chamber is not always present during the second reading speeches; duty ministers may be present at this stage. However, the responsible minister would usually be in the chamber at the conclusion of the second reading speeches in time to sum up and respond as appropriate to any comments or issues raised during the debate. Departmental advisers may need to quickly draft clear, hand-written points where necessary, to assist the minister in the summing up speech.
- 12.29 An Opposition, minor party or independent member may move a second reading amendment to the bill 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. Such an amendment generally relates to the principles of the bill, but not the text of the bill.
- 12.30 At the end of the second reading stage, a decision is taken on the question 'That this bill be now read a second time' and on any amendments moved to that question. 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**

- 12.31 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 and explanatory memoranda are required for the respective bills, but the second reading speeches for bills other than the principal bill may be very brief. In some cases, related bills may have a single explanatory memorandum—see paragraph 7.44.

## **Consideration in detail**

- 12.32 The purpose of the consideration in detail 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 (see paragraph 12.41).
- 12.33 During consideration in detail, clauses and schedules of the bill may be taken in their numerical order according to the standing and sessional orders, and, if no member objects, a number of clauses may be taken together. However, common practice in the House is for members to agree to consider the bill as a whole.
- 12.34 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. Amendments are generally circulated before the debate begins. Copies of circulated amendments, both government and non-government, are available in the tray on the advisers' box in the chamber. The Table Office prepares a procedure sheet for the minister and members moving amendments. These sheets are used as the guide to working through the proposed amendments. Departmental advisers are to ensure they have the latest copy of the procedure sheet. The text of circulated amendments can also be accessed at a bill's homepage available on the [Parliament House](#) website.

## **Government amendments**

- 12.35 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 9).
- 12.36 When moving the amendments, the minister is expected to explain briefly their purpose and scope. The department must therefore ensure that the minister has a clause-by-clause briefing and brief speech notes on all amendments. The briefing and speech notes are to be presented in such a way that they could quickly be reorganised if necessary. Departmental advisers also need to be prepared for amendments to be considered in detail as per the procedure sheet and also either individually, or in batches, or taken as a whole.
- 12.37 Departmental advisers could also encourage the minister's office to establish the position of the non-government parties on each amendment.

### ***Amendments moved by non-government members***

- 12.38 Departmental advisers will need to obtain copies of any circulated proposed amendments by non-government members through their minister's office in advance of the debate so the minister can be advised of the impact of the proposed amendments and a response recommended. Non-government amendments are also available on the relevant bill's homepage on the Parliament House website once they are released for circulation. The Prime Minister's agreement must be sought if the minister proposes to accept the amendments (see paragraph 3.25). Where amendments are circulated in advance of the debate, the minister will need notes for use in the chamber.
- 12.39 Ideally, departments will seek OPC's advice on the wording of any non-government amendments that the minister proposes to accept, to ensure consistency of terminology with the bill or the principal Act and, if the amendments were accepted, on whether any further amendments would be needed to ensure that the legislation works as intended.

### ***Amendments moved on the floor***

- 12.40 Occasionally, amendments are not circulated in advance and are moved on the floor by non-government members. Departmental advisers must be able to quickly draft clear, hand-written points where necessary, to assist the minister in responding.

### **Third reading**

- 12.41 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 passed the House.

### **Transmission of a bill to the Senate—reprinting the amended bill, explanatory memorandum and second reading speech**

- 12.42 If a bill has not been amended in the House, the Clerk certifies that the bill is ready for presentation to the Senate for its concurrence. A message signed by the Speaker is sent to the Senate transmitting the bill for its concurrence.
- 12.43 If a bill originating in the House 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. If a bill is amended in a year subsequent to its introduction, the short title of the bill is amended to reflect the current year. The reprint is referred to as the 'third reading print'. Departments can 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, or to confirm whether a bill title has been amended. The third reading print is certified by the Clerk and sent to the Senate under cover of a message signed by the Speaker, as per paragraph 13.51.
- 12.44 It is the responsibility of the department to revise the explanatory memorandum to reflect the amendments incorporated in the third reading print, to clear it through the minister's office and to arrange for its reprinting (see paragraph 9.26). Departments must alert the House and Senate PLOs to any urgency to ensure that relevant documents are available for resumption of the debate.

- 12.45 The cover page for the revised explanatory memorandum is to be identical to that used for introduction in the House with the **exception** that:
- (a) the words 'HOUSE OF REPRESENTATIVES' must be replaced with the word 'SENATE';
  - (b) it must be entitled 'REVISED EXPLANATORY MEMORANDUM';
  - (c) a statement must 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'; and
  - (d) if necessary, it must reflect a change in the bill title.
- 12.46 As necessary, the department will also need to arrange for the revision, clearance through the minister's office and reprinting of the second reading speech to reflect the amended bill (see paragraph 9.28).
- 12.47 Copies of any revised documentation must be delivered to both Table Offices and PLOs 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**

- 12.48 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 bill. The procedures for the consideration of Senate amendments are similar to those applying during the consideration in detail stage. The House may agree, amend or disagree to the amendments made or requested by the Senate.
- 12.49 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. The PLO can assist departments when preparing the statement. The minister then moves that the reasons be adopted by the House, after which the bill is returned to the Senate by message with a schedule listing the amendments disagreed and the statement of reasons.

### **SENATE-INITIATED BILLS**

- 12.50 When a Senate-initiated bill has passed all stages in the Senate, it is transmitted to the House under cover of a message from the Senate. The bill is introduced in the House by the Speaker, who reads 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 responsible minister does not need to present copies of the bill and is not involved in the first reading stage.
- 12.51 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 arranges the revision, clearance through the minister's office and reprinting of the explanatory memorandum and, as necessary, the second reading speech. The same arrangements as those set out in paragraphs 13.44 to 13.48 must be followed, except that the cover page of the revised explanatory memorandum will indicate the 'HOUSE OF REPRESENTATIVES' rather than the 'SENATE' (see also paragraph 9.26).

- 12.52 Following the first reading in the House, 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. On occasion, this may occur immediately after introduction. This is because documentation on a Senate-initiated bill would have been available from the Table Offices from the day of introduction in the Senate or shortly afterwards, thus allowing an 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, i.e. there is no need for the department to lodge new versions for the House.
- 12.53 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.
- 12.54 If the Senate agrees to the amendments, the bill is reprinted by the Senate Table Office, incorporating the amendments, for presentation to the Governor-General for Royal Assent (see Chapter 14). If the Senate does not agree, and the two Houses cannot reach agreement, a bill may be 'laid aside' (not further pursued).

## **THE FEDERATION CHAMBER**

- 12.55 The Federation Chamber is the second chamber of the House of Representatives. It can 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 Federation Chamber.
- 12.56 All members of the House are members of the Federation Chamber.
- 12.57 The Federation Chamber routinely sits on Mondays, and Wednesday and Thursday mornings of a sitting week. It sometimes also sits on Tuesday and Wednesday evenings, in accordance with the House of Representatives Order of Business. The business and sitting times of the Federation Chamber are determined following consultation between the Government and the Opposition.
- 12.58 The Federation Chamber 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 Federation Chamber is a subordinate body, any decision it makes on business referred to it must be reported to the House and the final question on the item taken in the House. Decisions of the Federation Chamber are taken on the voices; dissent by one member would result in a question being unresolved. Proceedings on a bill may be continued regardless of unresolved questions, unless the nature of the unresolved question makes this procedurally impossible. Any unresolved question (e.g. a proposed amendment) is reported back to the House for resolution.
- 12.59 The third reading of a bill takes place in the main chamber of the House.



## PRESENCE OF DEPARTMENTAL ADVISERS IN THE CHAMBER

- 12.60 It is customary for one or more departmental advisers to be present in the House or the Federation Chamber 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 12.32 to 12.40).
- 12.61 There is only limited seating for officials in the House chamber and the Federation Chamber so the number of advisers will need to be kept to a minimum. The adviser(s) must have sufficient knowledge and authority to provide full support to the minister during debate of bills, without reference back to the department. Departmental officers who wish to attend the debate, but who will not be advising, can view the debate from the public gallery, rather than the advisers' box.
- 12.62 In the House, departmental advisers sit in the advisers' box to the right of the Speaker's chair on the government side of the chamber. This area is close to the ministerial bench but is separated from and does not form part of the House. In the Federation Chamber, there are two chairs for departmental advisers to the right of the Deputy Speaker's chair, and adjacent to the Clerk. **Under no circumstances may a departmental officer encroach on the floor of the House or the Federation Chamber.** Technically, passing notes to or speaking to a minister who is on the floor (i.e. on the front bench) constitutes an encroachment. The minister may seek advice by approaching the departmental adviser. Advice may also be given to the minister by a note conveyed by a chamber attendant. Departmental advisers may not leave or enter the House when the doors are locked for a division requiring a vote on a particular matter. When the Federation Chamber is interrupted or suspended by a division in the House, advisers must remain in the Federation Chamber for resumption of proceedings unless otherwise advised by the PLO.
- 12.63 Dress standards for advisers are similar to those for members. Advisers are required to wear business attire. Advisers are to limit conversation in the House and in the Federation Chamber to advising the minister. Given advisers are not part of the proceedings of the House, there is no need to acknowledge the Chair by bowing on entering or departing the Chamber.
- 12.64 Advisers carrying mobile phones must ensure they are switched off or muted before entering the House or the Federation Chamber. Eating or drinking is strictly prohibited in the House or the Federation Chamber.
- 12.65 Advisers may find it useful to access information electronically during debate as a supplement to briefing folders. Advisers must ensure that the sound is disabled and that use of the electronic equipment does not intrude on proceedings.
- 12.66 Parliamentary Counsel does not attend debates unless special arrangements are made. These arrangements are only to be made in cases where it is likely that urgent amendments will be required to be drafted during the course of the debate on a bill.

## REPORTS TABLED BY THE PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

- 12.67 The Parliamentary Joint Committee on Human Rights reports to the House of Representatives and the Senate on all bills presented to the Parliament. The Committee is a joint statutory committee that was established under the *Human Rights (Parliamentary Scrutiny) Act 2011*. See paragraph 7.30 for further information on the functions of the Committee.

- 12.68 A report examining bills and legislative instruments is produced by the Committee and tabled in the House of Representatives and the Senate every joint sitting week. The report notes the Committee's preliminary findings on bills and legislative instruments. The relevant minister, member or senator is advised if the Committee has concerns about a bill or legislative instrument. Once the minister, member or senator responds to these concerns, the response is included in a subsequent report of the Committee.
- 12.69 Ministers may respond to the Committee by:
- (a) proposing government amendments to legislation (see Chapter 9); or
  - (b) writing to the Committee explaining why the bill is in the form it is.

# CHAPTER 13: PASSAGE OF A BILL THROUGH THE SENATE

---

## INTRODUCTION

- 13.1 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.
- 13.2 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.
- 13.3 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' (Senate standing order 113). If this motion is agreed, 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* and *Odgers' Australian Senate Practice*.

## SENATE-INITIATED BILLS

### Preparation for introduction

- 13.4 The arrangements set out at paragraphs 12.2 to 12.5 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

- 13.5 All bills originating in the Senate are introduced after a notice of motion is given. Written 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 and lodged with the Table Office as notices of motion on the sitting day prior to introduction. Alternatively, the minister reads out the notice at the appropriate time during the business of the chamber. The notice will appear on the Notice Paper for the following day as a government business notice of motion and on the Senate's Order of Business.
- 13.6 A bill cannot be introduced until the Table Office receives the required copies of the bill from OPC and the explanatory memorandum and second reading speech from the department. If these are not provided in a timely way, introduction of the bill may be delayed.

## Minister's papers for presenting a bill

- 13.7 The Senate Table Office prepares a folder for the minister containing:
- (a) the procedures and wording to be used in presenting the bill;
  - (b) two 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

- 13.8 At the appropriate time in the Senate's programme on the day of introduction, usually at 'Discovery of Formal Business', the minister will 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.
- 13.9 When the motion to introduce a bill is agreed to, the minister hands two signed copies of the bill to the Clerk.

## First reading

- 13.10 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 reads out the long title of the bill—this is the first reading of the bill. Copies of the bill and the explanatory memorandum, which have been held under embargo, are then made available to senators and published on the Parliament House website.

## Second reading speech and adjournment of debate

- 13.11 After the bill has been read a first time, the minister tables the explanatory memorandum and moves that the bill be read a second time, again using the wording provided by the Table Office. While a minister may choose to read out the second reading speech, the usual practice is for the minister to seek leave to have the speech incorporated in Hansard. (The second reading speech prepared for the Senate therefore must not include any reference to moving the second reading or tabling the explanatory memorandum—see paragraphs 7.51 to 7.52.)
- 13.12 At this point, the usual practice is for the minister to move to adjourn the debate. If that motion is agreed to, the resumption of the debate is set down as a government business order of the day 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.

- 13.13 If the Government desires an exemption from the above order (i.e. to allow 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 tables, at the time of giving notice of the motion for the exemption, 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, have it cleared by a sufficiently senior officer who is familiar with the bill, submit it to the minister for clearance and provide a copy to the Legislation Section (see paragraphs 2.40 to 2.48).

### **Preparation for second reading debate and committee of the whole**

- 13.14 The PLO programmes bills for second reading debate in consultation with departments, ministers' offices and the non-government whips and independent senators.
- 13.15 Only urgent bills (i.e. 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.
- 13.16 It is the responsibility of the instructing department to alert the PLO as early as possible to any urgency or other factor which may affect the timing for resumption of the second reading debate. These factors must be indicated on the Legislation Overview (see paragraphs 8.7 to 8.10).
- 13.17 If government amendments are to be moved to a bill, follow the requirements set out in Chapter 9. OPC provides the required number of copies of the amendments to the Senate Table Office. Departments must provide the required number of copies of the related supplementary explanatory memorandum to the Table Office and PLO prior to the amendments being approved for circulation. This is to ensure that the amendments and accompanying supplementary explanatory memorandum are circulated to senators at the same time to give senators sufficient time to consider the amendments 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 authority in writing from the minister (or the minister representing) to circulate the amendments and advice as to whether the amendments are to be circulated as amendments or as requests (see paragraphs 9.13 to 9.16). The amendments and any related supplementary explanatory memorandum remain under embargo until that authority is received.
- 13.18 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 9.1 to 9.7 and 12.24 for further discussion of the issues involved).
- 13.19 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 Senate standing order 111 (see paragraph 13.13). **Thus, as soon as a bill is introduced in the Senate, the department and the minister must be prepared for the possible resumption of the second reading debate at short notice.**

- 13.20 In consultation with the relevant minister's office, departments must ensure that the minister taking a bill through the Senate is fully briefed prior to the second reading debate, and is supported by departmental advisers during the debate on the bill. The responsible Senate minister may not be available to take the bill through the Senate and would be represented by another minister. Depending on their familiarity with the bill, the representing minister may need to rely on the briefing material and the advice of the departmental advisers. Therefore, briefing material needs to be in a form that can be presented to ministers who are not familiar with the subject matter.
- 13.21 Departmental advisers are to be present in the chamber during the second reading debate and the committee of the whole stage. Advisers must have a detailed knowledge of the legislation (i.e. the bill, and any proposed amendments, including the impact on the primary Act if applicable) and the authority to provide and recommend responses to the minister at all stages of debate on the bill. It is not possible for the debate to be suspended to allow departmental advisers to refer to the department during the passage of the bill through the chamber. However, when several advisers are in attendance, one adviser may leave the chamber to consult the department if necessary. Phones are available just outside the Senate chamber.

### **Resumption of the second reading debate**

- 13.22 The procedures are generally the same as the procedures in the House (see paragraphs 12.28 to 12.30), with the exceptions of the form and consequences of certain second reading amendments.

### **Bills taken together**

- 13.23 It is common practice in the Senate for related bills to be introduced together as a 'package' and considered as a single item of business. When bills are taken together, only one question is put in relation to the bills at the conclusion of each procedural stage. 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.

### **Non-controversial bills, Thursday lunchtime**

- 13.24 Senate standing orders provide that from 12.45 pm to 2.00 pm on sitting Thursdays, non-controversial government business will be considered. In practice, the Senate PLO and office of the Manager of Government Business will liaise with non-government parties to seek agreement to bills being dealt with as non-controversial business where all parties support the bill.
- 13.25 If the department or the relevant minister considers that a bill is non-controversial and may be able to be programmed in this time slot, 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. The Managers of Government and Opposition Business in the Senate, the minor parties and independent senators will then determine which bills will be programmed in this time slot on a particular day.

- 13.26 The Senate PLO will advise departments and ministerial offices if their bill will be dealt with as non-controversial business and provide advice on the preparation of briefing material. In consultation with the responsible minister's office, departments must ensure that the minister taking a bill through the Senate (usually the duty minister) is fully briefed prior to the second reading debate, and is supported by departmental advisers during the debate on the bill.

### **Selection of Bills Committee and referral of bills**

- 13.27 The Selection of Bills Committee (SoBC) is appointed pursuant to Senate standing order 24A. 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 SoBC recommends to the Senate whether a bill is to be referred to a 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, even before the bill has been scheduled for debate in the House of Representatives. To have effect, the SoBC's recommendations must be adopted by the Senate.
- 13.28 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. Where the Government wishes to initiate reference of a bill, the Senate PLO must be consulted about the process.
- 13.29 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. If a bill is referred to a committee, departments will need to be available to provide background briefing and factual information to the minister or the committee. This could include advice on any possible amendments to the bill and information to progress preparation of amendments when required (see Chapter 9). If a bill has been referred to a committee, it will not be programmed for Senate debate until the committee has reported.
- 13.30 The SoBC will also consider, and can refer, a private member's or senator's bill for inquiry and report. Departments with policy responsibility for the matters raised in the bill need to be aware that officials may be asked to make a submission to an inquiry and/or appear before the committee.

### **Committee of the whole stage**

- 13.31 After the second reading of a bill is agreed to, the Senate forms itself immediately into a committee of the whole (unless debate is adjourned) for the detailed consideration of the bill and any amendments circulated to the bill.
- 13.32 If no amendments are circulated to a bill and no senator requires a bill to be considered in the committee of the whole, the minister will move 'That this bill be now read a third time'. If amendments are circulated, the committee of the whole 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 numerous amendments.

- 13.33 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. Amendments are generally circulated before the committee of the whole stage begins. The PLO will provide a copy of the circulated amendments to LLOs, DLOs and relevant ministers' offices. Copies of all circulated amendments are also available in the tray on the advisers' box in the chamber. The text of circulated amendments can also be accessed at a bill's homepage available on the [Parliament House website](#).
- 13.34 A running sheet is prepared by the Table Office when amendments are circulated by more than one political party. The running sheet is circulated to all senators in the chamber and is also available in the tray on the advisers' box. The PLO will provide a copy of the running sheet to LLOs, DLOs and relevant ministers' offices. The running sheet is used as a guide to working through the proposed amendments. Departmental advisers are to ensure they have the latest copy of the running sheet. Running sheets can also be accessed via the Dynamic Red on the [Parliament House website](#).

### ***Government amendments***

- 13.35 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, the Table Office and the Senate PLO (see paragraphs 9.17 to 9.21 and 13.17). The Table Office prepares the procedures and wording to be used by the minister when tabling the supplementary explanatory memorandum. This usually occurs at the beginning of the committee stage before the minister moves the Government's amendments.
- 13.36 When moving amendments, the minister will need to explain their purpose and scope. The department must ensure that the minister (or minister representing) has brief speaking points on all amendments. The briefing and speaking points are to be presented in such a way that they could quickly be reorganised if necessary. Departmental advisers also need to be prepared for amendments to be considered in detail as per the running sheet (where one is used) and also either individually, or in batches, or taken as a whole.
- 13.37 Departmental advisers could also encourage the minister's office to establish the position of the non-government parties on each amendment.

### ***Amendments moved by non-government senators***

- 13.38 The Senate PLO will distribute amendments proposed by non-government senators to relevant LLOs, DLOs and ministers' offices. The department must ensure the minister (or minister representing) has a response and brief speaking points on all proposed amendments. Ministers must seek the Prime Minister's agreement to accept non-government amendments (see paragraph 3.25).
- 13.39 Ideally, departments will seek OPC's advice on the wording of any non-government amendments that the minister proposes to accept, to ensure consistency of terminology with the bill or the principal Act and, if the amendments were accepted, on whether any further amendments would be needed to ensure that the legislation works as intended.



### ***Amendments moved on the floor***

- 13.40 Occasionally, amendments are not circulated in advance and are moved on the floor by non-government senators. Departmental advisers must be able to quickly draft clear, hand-written points where necessary, to assist the minister in responding.

### ***Adoption of the committee report***

- 13.41 When the committee of the whole has completed considering 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, namely '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**

- 13.42 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 reads out the long title of the bill. No further questions can be put on the bill. If the Senate has requested that a bill be amended in the House, the bill is not read a third time until the House has made the requested amendment and transmitted a message back to the Senate.

### **Transmission to the House of Representatives**

- 13.43 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.
- 13.44 If a bill originating in the Senate is amended in the Senate, 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. If a bill is amended in a year subsequent to its introduction, the short title of the bill is amended to reflect the current year. Departments can contact the Table Office immediately after a bill passes the Senate if they wish to obtain the third reading print of a bill, or to confirm whether a bill title has been amended.
- 13.45 It is the responsibility of the department to revise the explanatory memorandum to reflect the amendments incorporated in the third reading print, to have it cleared through the minister's office and to arrange for its printing (see paragraph 9.26). Departments must also alert the House and Senate PLOs to any urgency to ensure that relevant documents are available for resumption of the debate.
- 13.46 The cover page for the revised explanatory memorandum is to be identical to that used for the initial introduction in the Senate with the following exceptions:
- (a) the word 'SENATE' must be replaced with the words 'HOUSE OF REPRESENTATIVES';
  - (b) it must be entitled 'REVISED EXPLANATORY MEMORANDUM';
  - (c) a statement must 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'; and
  - (d) if necessary, it must reflect a change in the bill title (see paragraph 13.44)

- 13.47 If necessary, the department will also need to arrange for the revision, clearance through the minister's office and reprinting of the second reading speech to reflect the amended bill (see paragraph 9.28).
- 13.48 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 and Senate Table Offices and the House PLO of any revised explanatory memorandum or second reading speech.

### **Bills returned from the House of Representatives with amendments**

- 13.49 If the House amends a Senate-initiated bill, it sends a message seeking the Senate's agreement to the amendments. 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 must be supplied to the Senate Table Office for distribution to senators to provide them with an explanation of the amendments at the same time as they are provided to the House.
- 13.50 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 (not pursued).

### **HOUSE-INITIATED BILLS**

- 13.51 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.
- 13.52 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 12.42 to 12.47 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. Departments must ensure that the revised explanatory memorandum and second reading speeches are cleared through the minister's office and provided to the Senate Table Office as soon as possible. The Senate PLO and Senate Legislation Officer in the Senate Table Office must be advised of any delays.
- 13.53 No motion is required in order to introduce a House-initiated bill in the Senate; the President reports the message received from the House. The minister (or minister representing or duty minister) then rises and, using the procedures and wording provided by the 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 13.23).

- 13.54 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.
- 13.55 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. If the bill was not amended in the House, there is no need to table the explanatory memorandum in the Senate which was tabled in the House. If the bill was amended in the House, the **revised** explanatory memorandum is tabled at this point. 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).
- 13.56 House-initiated bills may be referred to a Senate standing or select committee for inquiry and report (see paragraphs 13.27 to 13.30 for further information).
- 13.57 If a bill is an amendable bill, the committee of the whole stage is the same as for Senate-initiated bills (see paragraphs 13.31 to 13.34).
- 13.58 Where a bill cannot be amended by the Senate (i.e. it is a non-amendable bill under section 53 of the Constitution), requests for amendments may be moved during the committee stage (see paragraphs 9.13 and 11.12). 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, a message is sent to the House, requesting the House to make the amendments. The bill is not read a third time by the Senate until the House and the Senate have finished dealing with the requested amendments. Passage of a bill will be delayed for a longer period if any amendments are moved as requests.
- 13.59 If there are no requests for amendments circulated for a bill and no senator requires a bill to be considered in the committee of the whole, the minister will move 'That this bill be now read a third time'. Once this motion is agreed to, the bill is returned to the House.

## **PRESENCE OF DEPARTMENTAL ADVISERS**

- 13.60 Similar rules apply as in the House (see paragraphs 12.60 to 12.66).

## **REPORTS TABLED BY THE SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS**

- 13.61 The Senate Standing Committee for the Scrutiny of Bills reports to the Senate on all bills presented to the Parliament, pursuant to its terms of reference (see paragraphs 7.26 to 7.29).
- 13.62 A *Scrutiny 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 Committee advises the responsible minister of any concerns and seeks a timely response to any issues raised. The minister's response is included in a subsequent report of the Committee. Such reports are usually tabled every sitting Wednesday. The Committee draws the Senate's attention to concerns that fall within its terms of reference and can recommend that consideration be given to relevant amendments.

- 13.63 Ministers may respond to the Committee by:
- (a) proposing government amendments to bills (see Chapter 9); 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 7.28.)

## **REPORTS TABLED BY THE PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS**

- 13.64 The Parliamentary Joint Committee on Human Rights reports to the House of Representatives and the Senate on all bills presented to the Parliament. See paragraphs 7.30 to 7.37 for a description of the Committee's functions and processes.

## **ASSISTANCE AND ADVICE**

- 13.65 Officers are encouraged to contact the Senate Legislation Officer in the Senate Table Office to discuss any aspect of a bill for which they have responsibility, prior to its introduction and during its passage through the Senate.

# CHAPTER 14: PROCEDURES AFTER PASSAGE OF A BILL

---

## ROYAL ASSENT

- 14.1 When a bill has been passed by both Houses of Parliament in the same form, it is presented to the Governor-General for Royal Assent. 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 (Constitution, section 58). The Queen may disallow any law within one year of the Governor-General's assent (Constitution, section 59). Disallowance has never occurred.
- 14.2 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.
- 14.3 The Governor-General may return to the house in which it originated any proposed law presented for Royal Assent, with amendments recommended 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 paragraph 14.8).

## NORMAL ASSENT PROCEDURES

- 14.4 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 takes time, particularly if the bill has been amended by the second house.
- 14.5 Any consequential arrangements for commencement of the Act (e.g. 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.
- 14.6 The Presiding Officer of the house in which the bill originated writes to the Governor-General submitting copies of the bill and requesting the Governor-General's assent to the bill. Each copy of the bill bears a certificate signed by the Clerk of the originating House, noting that it originated in the House concerned and that it has been passed by both houses. The Presiding Officer also sends a 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. The relevant Table Office also provides copies to OPC.
- 14.7 In accordance with a standing request, the Governor-General is advised by the Attorney-General in respect of each bill whether, under section 58 of the Constitution, to reserve the bill for the Queen's pleasure or to suggest amendments. The Attorney-General's letter is referred to as the 'Attorney-General's certificate' and is prepared by OPC.

- 14.8 The 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.
- 14.9 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, and the other is sent to OPC. OPC advises the instructing department when Royal Assent has been obtained and the Act number.
- 14.10 Royal Assent is usually obtained within 8 to 10 working days, although the period can be longer or shorter depending on the number of bills and whether expedited Royal Assent is needed. If urgent Royal Assent is required, the department must contact the Legislation Section as soon as possible. The Legislation Section will consider the matter, in consultation with OPC and officers of the house in which the bill originated. Departments may wish to note that Royal Assent does not require a meeting of the Federal Executive Council.
- 14.11 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 is required to be sought from the Attorney-General's Department.

## **COMMENCEMENT OF ACTS BY PROCLAMATION**

- 14.12 In the case of an Act expressed to operate from a date to be proclaimed (see paragraph 5.34), departments must ensure that, after Royal Assent, there is adequate time to arrange the proclamation by the Governor-General in Council.
- 14.13 Proclamations fixing commencement dates for Acts or sections of Acts are drafted by OPC on instructions from the department responsible. The department will also need to prepare an Executive Council Minute and explanatory memorandum—to be signed by the minister and approved by the Federal Executive Council—and an explanatory statement, and to make arrangements to register the proclamation on the Federal Register of Legislation at least one day before the date fixed by the proclamation. Further details on these procedures are set out in the *Federal Executive Council Handbook* or can be obtained from the Secretary to the Federal Executive Council in PM&C.

## GLOSSARY

---

Act	a bill, when passed by both houses of the Parliament and assented to by the Governor-General, becomes an Act
addendum to an explanatory memorandum	issued when additional material is added to an explanatory memorandum, usually in response to matters raised by a parliamentary committee—see the term ‘explanatory memorandum’
Administrative Arrangements Order (AAO)	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
bill	a proposal for a new law or a change to an existing one—OPC prepares a <i>draft bill</i> which is a confidential document until it is introduced into the Parliament or otherwise approved for public circulation. When approved for introduction by the Legislation Minister, the draft is printed as a <i>bill</i> and introduced into either the House of Representatives or the Senate
bill homepages	dedicated webpages for all bills available through the Parliament House website. They provide procedural information about each bill, the primary documents relating to the bill (the bill, explanatory memorandum, circulated amendments, and schedule of amendments) and links to other resources, such as second reading speeches, committee information, and the Parliamentary Library’s bills digests. Links to bill homepages can be accessed through the Senate’s Dynamic Red, the Senate Daily Summary, the Senate Bills List, the House Daily Program, the House Live Minutes, the House Votes and Proceedings and the House Bills List
CABNET	secure network for transmission of Cabinet-related material
clause	see the term ‘parts of an Act’
correction to an explanatory memorandum	issued when a minor correction is being made to an explanatory memorandum which could be contained on one or two pages—see the term ‘explanatory memorandum’
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
explanatory memorandum	a companion document to a bill which assists members of the Parliament, officials and the public to understand the objectives and detailed operation of the clauses of the bill
Federal Executive Council	established under the Constitution to ‘advise the Governor-General in the government of the Commonwealth’. Acting on the advice of the Federal Executive Council, the Governor-General exercises powers on a range of matters, including the making of proclamations, regulations and ordinances, the making and terminating of appointments to statutory offices, and changes to the Administrative Arrangements Order

Federation Chamber	operates in parallel with the main chamber of the House of Representatives to deal with, among other things, the second reading and consideration in detail of any bills referred to it from the House—formerly known as the Main Committee
Fedlink	data protection system which allows the Commonwealth, state and territory governments to transmit and receive information securely
first house	the house into which a bill is first introduced
First Parliamentary Counsel (FPC)	the head of the Office of Parliamentary Counsel
first reading print	the first print of a bill which reflects the bill introduced into the first house
House-initiated bill	a bill which is first introduced in the House of Representatives
legislation approval submission	brief prepared for the legislation approval process by the Legislation Section for the Legislation Minister seeking approval for introduction of the legislation. The brief provides information on the proposed bill, including the status of policy approvals. A copy of the bill and explanatory memorandum are also attached to the brief
legislation circular	circular issued by the Legislation Section advising Legislation Liaison Officers (LLOs) on a range of matters relating to the legislation process
Legislation Liaison Officer (LLO)	departmental officer who acts as a single point of contact in a department or agency on all general matters concerning the process of preparation, approval and passage of legislation for that portfolio
Legislation Minister	minister in the Prime Minister’s portfolio nominated by the Prime Minister to consider requests for minor policy approval and approve legislation for introduction on behalf of the Prime Minister
Legislation Section	Parliamentary Affairs and Legislation Section within the Department of the Prime Minister and Cabinet—coordinates the Government’s legislation programme
Office of Best Practice Regulation (OBPR)	office within the Department of the Prime Minister and Cabinet which has a central role in assisting departments and agencies to meet the Australian Government’s regulatory impact analysis requirements
Office of Parliamentary Counsel (OPC)	statutory agency responsible for drafting proposed laws for introduction into either house of the Parliament, drafting amendments of proposed laws that are being considered by either house of the Parliament, drafting legislative instruments and publishing legislation
OPC client adviser	a senior drafter nominated to advise their department on certain matters relating to legislation. An up-to-date list of client advisers is available on the OPC website
paragraph	see the term ‘parts of an Act’
Parliamentary Business Committee of Cabinet (PBC)	a Cabinet committee which has the role of determining the legislation programme for each sitting period, endorsing the draft weekly programme of legislation for introduction and debate in each house of the Parliament and considering ministers’ requests for significant variations to the legislation programme



parliamentary counsel	the title given to a drafter within the Office of Parliamentary Counsel
Parliamentary Joint Committee on Human Rights	joint committee established by both houses and with membership consisting of both members and senators—the committee scrutinises all bills as well as all legislative instruments (including instruments that are exempt from disallowance) for compatibility with human rights
Parliamentary Liaison Officer (PLO)	the House PLO and the Senate PLO are 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
parts of an Act and parts of a bill	<p>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 subdivisions.</p> <p>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</p>
primary legislation	legislation passed by the Parliament, i.e. Acts of Parliament
procedure sheet	a procedural script for the Speaker, minister and other members involved in items of business in the House. For consideration in detail, it is printed on grey paper and referred to as a ‘Grey’; for all other business, it is printed on buff paper and referred to as a ‘Procedure’
proclamation	notice given under an Act of a particular matter, such as the commencement of the Act on a specified day
regulation impact statement (RIS)	where advised by the OBPR that a RIS is required, it must be prepared consistent with the RIS requirements
Regulatory Reform Division	a division in the Department of the Prime Minister and Cabinet—oversees the Government’s regulatory reform agenda. It has a number of oversight roles to facilitate the reduction of red tape and help the Government to reduce the cost of unnecessary regulation
regulatory reform units	units located within portfolios that are responsible for each portfolio’s regulatory reform activity and ensuring understanding of, and compliance with, regulation impact statement (RIS) requirements
replacement explanatory memorandum	issued when substantial changes are made to an explanatory memorandum or changes are made to several areas of an explanatory memorandum—see the term ‘explanatory memorandum’
revised explanatory memorandum	prepared for the second house to take account of amendments made to the bill in the first house—see the term ‘explanatory memorandum’
Royal Assent	assent provided by the Governor-General in the Queen’s name to the terms of a bill that has passed both houses of the Parliament in identical form. When a bill receives Royal Assent, it becomes an Act of Parliament
running sheet	a list of all circulated amendments prepared to guide committee of the whole proceedings in the Senate chamber. The running sheet provides a suggested order in which to consider circulated amendments and highlights amendments that conflict with one another. It also indicates where amendments are consequential on others being agreed to. The running sheet is published via a link on the Dynamic Red and can also be obtained from the Senate Table Office

schedule of amendments	a list of amendments made to a bill by the second house and communicated to the first house for its consideration
schedule to an Act/ bill	where an Act or 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 or bills may contain matters of detail, the text of documents such as treaties, or other appropriate material
second house	the house into which a bill is introduced after it has been passed by the first house
second reading speech	speech made, or incorporated into Hansard, by a minister after the second reading of a bill is moved in either house. The speech explains the purpose and policy objectives of a bill
section	see the term 'parts of an Act'
Selection Committee	House of Representatives committee which: <ul style="list-style-type: none"> <li>(a) determines the programme of business for committee and delegation business and private members' business for each sitting Monday;</li> <li>(b) selects bills for referral to House or joint committees; and</li> <li>(c) sets speaking times for second reading debates</li> </ul>
Selection of Bills Committee (SoBC)	Senate committee which considers all bills introduced into the Senate or received from the House of Representatives and determines whether the bill is to be referred to a Senate legislative and general purpose standing committee or select committee
Senate-initiated bill	a bill which is first introduced in the Senate
Senate Standing Committee for the Scrutiny of Bills	Senate committee which scrutinises bills and amendments under Senate standing order 24 to report in relation to: <ul style="list-style-type: none"> <li>(a) undue trespass on personal rights and liberties;</li> <li>(b) whether administrative powers are described with sufficient precision;</li> <li>(c) whether appropriate review of decisions is available;</li> <li>(d) whether any proposed delegation of legislative powers is appropriate; and</li> <li>(e) whether the exercise of legislative powers is subject to sufficient parliamentary scrutiny</li> </ul>
Senate Standing Committee on Regulations and Ordinances	Senate committee which scrutinises subordinate or delegated legislation subject to disallowance to ensure that it: <ul style="list-style-type: none"> <li>(a) is in accordance with the statute;</li> <li>(b) does not trespass unduly on personal rights and liberties;</li> <li>(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</li> <li>(d) does not contain matter more appropriate for parliamentary enactment</li> </ul>

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 or early February to late March or early April; the Winter sittings from May to late June; and the Spring sittings from August to late November or early December. The <u>sitting pattern</u> 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'
supplementary explanatory memorandum	prepared for all government amendments, regardless of whether the amendments to the bill are being moved in the first or second house—see the term 'explanatory memorandum'
Table Offices	the offices in the Department of the Senate and the Department of the House of Representatives (the chamber departments) responsible for coordinating the documentation to enable introduction of legislation and for ensuring the progress of all legislation through its subsequent stages
third reading print	a reprint of a bill which incorporates amendments agreed to by the first house and which is sent to the second house for its consideration

## ABBREVIATIONS AND ACRONYMS

---

AAO	Administrative Arrangements Order
AGD	Attorney-General's Department
AGS	Australian Government Solicitor
DLO	Departmental Liaison Officer
FPC	First Parliamentary Counsel
JSCOT	Joint Standing Committee on Treaties
LAP	legislation approval process
LLO	Legislation Liaison Officer
OBPR	Office of Best Practice Regulation
OPC	Office of Parliamentary Counsel
PBC	Parliamentary Business Committee of Cabinet
PLO	Parliamentary Liaison Officer
PM&C	Department of the Prime Minister and Cabinet
RIS	regulation impact statement
SoBC	Selection of Bills Committee