



Australian Government

Office of Parliamentary Counsel

Working with the Office of Parliamentary Counsel

A guide for clients

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Part A—Who are we?

1 The Office of Parliamentary Counsel (*OPC*) is a statutory office created under the *Parliamentary Counsel Act 1970*. The Office consists of 3 statutory office-holders (First Parliamentary Counsel and 2 Second Parliamentary Counsel) and around 45 staff employed under the *Public Service Act 1999*.

A.1—The drafters

2 Of those staff, 30 or so are drafters, who all have legal qualifications. The drafters work in teams consisting of one senior drafter (SES or a Second Parliamentary Counsel) and one or more assistant (non-SES) drafters. Senior drafters must have enough drafting experience and skill to be able to take full responsibility for the drafting of legislation—the work of a senior drafter is not checked at a higher level within OPC. Assistant drafters may be relatively new recruits to OPC who are receiving intensive training as part of their work with the senior drafter, or more experienced drafters who may take substantial responsibility for parts of a legislative project.

3 Depending on staffing levels, OPC may have up to 15 drafting teams headed by senior drafters (this may include teams headed by acting SES drafters, who receive limited supervision and advice from more senior “mentors”).

A.2—Contract drafters

4 As well, OPC makes limited use of contract drafters. Currently, one former senior member of OPC is engaged on a retainer basis to draft legislation from the government’s program as allocated by First Parliamentary Counsel. Another former member of OPC is engaged from time to time to undertake specific drafting projects. The use of contract drafters can only be arranged through OPC (see paragraphs 34-37).

Part B—What do we do?

B.1—Statutory functions

5 OPC's functions are to draft Bills and parliamentary amendments of Bills, and supply them to the Parliament.

- OPC doesn't draft regulations, proclamations, ordinances, Ministerial determinations or other legislative instruments.
- OPC rarely drafts Bills or amendments for non-government parties or for government backbenchers.
- OPC doesn't draft explanatory memorandums (see paragraph 64), notes on clauses or second reading speeches.

B.2—What is OPC’s responsibility for the legislation it drafts?

6 OPC has certain responsibilities in relation to both:

- the policy authority for legislation; and
- the legal effectiveness of legislation.

Policy authority and the Legislation Approval Process (*LAP*)

7 Government legislation must pass through several processes before it is introduced. These include party clearance (by the Labor Party Caucus or the Coalition Joint Party Room), and clearance from a Minister or Parliamentary Secretary designated for this purpose by the Prime Minister. The Minister’s or Parliamentary Secretary’s clearance focuses on the policy authority for the legislation, and the relevant Minister’s approval of the final form of the Bill. This process is known as the Legislation Approval Process (*LAP*).

8 The Legislation Section in the Department of the Prime Minister and Cabinet (*PM&C*) will not submit legislation for clearance without a memorandum from OPC that deals expressly and specifically with the policy authority for the legislation. The *LAP* memorandum must:

- identify the source of policy authority (usually a Cabinet minute or a letter from or on behalf of the Prime Minister); and
- certify that the legislation is in accordance with that policy authority.

9 A drafter who believes that there is inadequate policy authority for provisions that he or she has been asked to include in draft legislation will raise this initially with the instructors. If the instructors agree with the drafter’s assessment, they will seek further policy authority (usually by a letter from their Minister to the Prime Minister). The drafter will be happy to comment on drafts of requests for further policy authority and advise whether the request covers all outstanding policy issues.

Part B—What do we do?

10 Sometimes instructors do not accept the drafter's view. In such a case discussions should be held with the Legislation Section, and often the relevant policy area, of PM&C. These discussions may be initiated by the instructors or by the drafter—if they are initiated by the instructors, the drafter may also talk to the PM&C staff involved. If the PM&C staff are satisfied that there is adequate policy authority, generally the drafter will not feel obliged to raise the matter in the LAP memorandum.

Policy Authority for exposure drafts

11 Paragraph 7.9 of the Legislation Handbook provides that a draft Bill should not be made public before it is introduced into Parliament unless disclosure has been authorised by the Cabinet or the Prime Minister.

12 In practice, most Bills are required to have the following approvals before being released to any entity other than a Commonwealth agency:

- approval from the Prime Minister or the Cabinet for exposure of the draft; and
- policy authority for the measures contained in the Bill.

13 If instructors consider that an exposure draft of the Bill will be required, it is highly desirable to advise the drafter early in the drafting process. Usually, consultation with PM&C will be necessary to ascertain what approvals are required.

Special cases for obtaining extra policy authority

14 On rare occasions, OPC advises instructors to obtain express policy authority for draft provisions that are technically already covered by existing policy authority.

15 OPC would give this advice in a case in which OPC considers that:

- the legislative method chosen to implement the authorised policy may be controversial or expose the government to criticism; and

- that legislative method, or its political consequences, would not have been contemplated when the original policy authority was given.

16 For instance, OPC might advise instructors to obtain specific approval if an approved proposal to make technical amendments to offence provisions turned out, in a particular case, to require the re-enactment of controversial offence provisions.

Expiry of policy authority

17 In certain circumstances, policy authority is regarded as having expired. The main circumstances are as follows:

- if there has been a change of government since the policy authority was given;
- if a Bill has been introduced in reliance on the policy authority.

Change of government

18 If, after an election or otherwise, a government is formed by members of a political party or parties different from the party or parties that formed the previous government, all previously given policy authorities are regarded as having expired.

19 On the other hand, if the same political party or parties form a government after an election, policy authorities current immediately before the election will generally be treated as having survived the election.

Introduction of Bill

20 Once a Bill is introduced in reliance on particular policy authority, that authority will generally be treated as spent. Any later changes to the Bill, whether by way of parliamentary amendments or revision before reintroduction, would require further authority, even if the new approach could have been adopted under the original authority.

21 The rationale for this approach is that by introducing a Bill the government has announced a position, not only in terms of policy but also in terms of implementation, and this announced position should not be changed without further authority.

Part B—What do we do?

22 The only exceptions to this rule are:

- changes or amendments to correct drafting errors or other errors which mean that the Bill as introduced would not in fact implement the approved policy (but this exception would not cover changes to provide simply for a different implementation approach which has gained favour since the original introduction of the Bill); and
- changes or amendments to add provisions implementing policy that was covered in an authority document but that had not been addressed at all in the original Bill (but this exception would not cover a case where the original Bill, or other official action, had indicated an intention not to proceed with the particular policy or to defer its implementation indefinitely).

Reintroduction of lapsed Bills

23 When an election is called, all introduced Bills before the Parliament lapse. If the previous government is returned at the election, any Bill that has lapsed in this way may be reintroduced without further policy authority if no substantive changes are made to it. New authority is not needed for formal changes such as changing the year in the Bill's short title. Any changes of substance would require new authority on the same basis as described in paragraphs 20-22.

24 A lapsed Bill proposed for reintroduction after a change of government requires comprehensive new policy authority.

The LAP memorandum

25 Negotiations on policy authority sometimes involve a drafter showing a draft LAP memorandum to the instructors, PM&C staff or both. This is merely a method of ensuring that all parties understand the drafter's concerns about the legislation; it does not imply that either the instructing agency or PM&C needs to clear the LAP memorandum.

Legal effectiveness

26 In general, OPC's submission of draft legislation for clearance for introduction implies that OPC is satisfied that the legislation is legally effective to implement government policy.

27 However, from time to time doubts may arise about the constitutional soundness of a particular project or particular legislative approach. In such a case, OPC would:

- draw these constitutional doubts to the attention of the instructors; and
- ensure that legal advice is obtained from the Australian Government Solicitor (see paragraphs 31-33); and
- if appropriate, advise on alternative approaches that might be constitutionally safer.

28 However, OPC would not, in the end, refuse to draft the constitutionally suspect provisions, and would not refuse to submit the affected legislation for clearance for introduction (although the constitutional issues would usually be raised in the LAP memorandum).

29 The same approach would be taken to provisions that may be ineffective for reasons not connected with constitutional validity.

30 In other words, the submission of legislation for clearance for introduction is not necessarily evidence that OPC asserts the constitutional validity in particular, or the legal effectiveness in general, of the legislation.

Responsibility for obtaining legal advice

31 Legal advice obtained from the Australian Government Solicitor (AGS) about draft legislation must be paid for by the agency sponsoring the legislation.

32 If a drafter believes that legal advice about any aspect of draft legislation or a drafting project should be obtained from AGS, the drafter will discuss this with the instructors. Requests for advice may be made by OPC on behalf of the instructing agency, or by the instructing agency itself. If the instructing agency is to make the request, instructors should discuss the draft request with the drafter to ensure that it properly describes the issue that is concerning the drafter.

Part B—What do we do?

33 If the drafter and the instructing agency cannot agree on the need to obtain legal advice from AGS, OPC may need to raise the matter with the Office of Legal Services Coordination (*OLSC*). If OLSC cannot resolve the matter, OPC must then raise it with the Attorney-General (through FPC).

B.3—OPC’s monopoly

34 The drafting of government Bills and amendments is “tied” government legal work and must be undertaken, or arranged, by OPC (see the Legal Services Directions issued by the Attorney-General, available on the website of the Attorney-General’s Department, www.ag.gov.au).

35 This policy is reflected in the administrative arrangements for introducing government legislation into the Parliament. Before legislation is cleared for introduction, OPC must identify the policy authority claimed for the legislation and give an assurance that the legislation is in accordance with that policy authority (see paragraphs 7-25).

36 OPC would only give this assurance about legislation if:

- the legislation had been drafted in OPC; or
- the legislation had been drafted by a contract drafter whom OPC regarded as both technically competent and capable of certifying as to the legislation’s compliance with policy authority; or
- the legislation had been reviewed by OPC in conjunction with the instructors to the point where OPC was satisfied that it could advise about the legislation’s legal effectiveness and its compliance with policy authority.

37 Thus, legislation drafted outside OPC by a drafter who was not “approved” by OPC would need to undergo intensive review in OPC before it could be submitted for clearance for introduction. Such a review could only be conducted in accordance with the priority assigned to the legislative project, and might take at least as long as OPC would have taken to draft the legislation in the first place.

B.4—OPC’s role in referring Bills

38 Various provisions included in draft legislation raise legal policy issues for which the Attorney-General has responsibility (eg provisions creating offences, imposing penalties, or conferring administrative discretions that might require review).

39 To ensure that these issues are properly considered on behalf of the Attorney-General, the provisions must be referred to the Attorney-General’s Department. OPC has a responsibility to the Attorney-General to see that the provisions are referred, even if the instructors would prefer this not to happen.

40 OPC also refers provisions in draft legislation to other Commonwealth agencies that have a right or responsibility to provide policy input in relation to the provisions (generally because the agency has a coordinating or whole-of-government responsibility for a matter dealt with in the provisions). For example, a provision that is a special or standing appropriation will be referred to the Department of Finance and Deregulation and a provision that creates or abolishes an agency will be referred to the Australian Public Service Commission.

41 This referral process is undertaken in accordance with Drafting Direction 4.2 (available at www.opc.gov.au). That Drafting Direction identifies the kinds of provisions that will be referred and the agencies to which they will be referred. Usually, a Bill is referred by the drafter, but the referral may come from instructors.

42 OPC has no right to insist that the policy preferences of an agency to which a Bill is referred be reflected in the final Bill. However, if agreement cannot be reached between instructors and such an agency, that agency might brief its Minister, so that the matter is resolved at Ministerial level. The drafter would mention an outstanding issue of this kind in the LAP memorandum (see paragraph 7).

B.5—Supply of Bills and amendments

43 When a Bill is ready for introduction, OPC arranges printing of bulk copies (“supply” copies) in the quantities required by the Parliament. Up to 10 copies of this print run are available to the sponsoring agency or other affected agencies. Further copies can be ordered from OPC’s Legislation Officer by sending an email to legis@opc.gov.au, and the copies will be charged to the requesting agency at the run-on price. These copies must be ordered at least one week before the Bill is to be introduced.

44 After a Bill is introduced, it ceases to be under OPC’s control. Copies of later versions of the Bill or resulting Act should be obtained from the Table Office in the House of Parliament in which the Bill was introduced, or from Canprint Information Services (legislation@infoservices.com.au). Introduced Bills are also available on the Parliament House web site (www.aph.gov.au).

45 OPC also supplies copies of parliamentary amendments drafted in OPC to the House in which the amendments are to be moved. Parliamentary amendments are not usually printed; instead, they are circulated as A4 photocopies.

B.6—Assent to Bills passed by the Parliament

46 When both Houses of Parliament have passed a Bill, the Bill goes to the Governor-General for the Royal Assent. Assent completes the enactment of the Bill.

47 Assent copies of the Bill are sent to the Governor-General from the House in which the Bill originated. At the same time, copies are sent to the Attorney-General, and to OPC.

48 When assent copies of the Bill reach OPC, OPC staff check various aspects of the Bill, and prepare a certificate for the Attorney-General's signature, advising the Governor-General about the Bill. Usually, the advice is to the effect that there are no amendments that the Governor-General should recommend, and that the Governor-General should not reserve the Bill for the Queen's pleasure (see section 58 of the Constitution). The Attorney-General signs this certificate on the advice of First Parliamentary Counsel. OPC is responsible for delivering this certificate to the Attorney-General's office, collecting it when it has been signed by the Attorney-General, and delivering the signed certificate to Government House.

49 From time to time Departments or their Ministers request that the assent procedures be hurried up or delayed by OPC.

50 OPC will do as much as it can to speed up assent if this is necessary. This might include making extra resources available for assent checking, arranging for assent checking to be done out of normal working hours or making special courier runs to deliver or collect relevant papers. However, OPC cannot influence the speed with which assent copies of Bills are finalised by the relevant House of the Parliament, or the availability of either the Attorney-General or the Governor-General to perform functions at other stages in the assent processes.

51 OPC will not be involved in administratively delaying assent. There may be some cases in which it is proper for the Attorney-General (on behalf of the government) to delay advising the Governor-General to assent to a Bill, or to advise the Governor-General to delay assent, at least for a limited time. Requests for assent procedures to be delayed should accordingly be referred to the Attorney-General's staff, who will seek advice from the Attorney-General's Department or the AGS if appropriate. In such circumstances, OPC will deliver the Attorney-General's certificate to the Attorney-General's office in the ordinary course of business.

Part C—How do we do our job?

52 OPC’s functions are to draft Bills and parliamentary amendments of Bills, and supply them to the Parliament. Performing these functions also involves OPC in project management work, and in the overall management of the government’s legislation program.

C.1—Drafting Bills and parliamentary amendments

53 Drafting Bills and parliamentary amendments is a value-adding activity. Instructors come to OPC with “drafting instructions” which may consist of:

- a desired outcome, with or without specific ideas about how that outcome is to be achieved through legislation; or
- a detailed list of required legislative changes, with or without a well-articulated desired outcome; or
- any combination of those options.

54 OPC’s job is to ensure that, at the end of the process, the legislative project has:

- desired outcomes that are clearly articulated; and
- a workable legislative structure within which those outcomes can be achieved; and
- detailed legislative provisions, which provide the legal basis for achieving those outcomes.

Value-adding by OPC

55 OPC’s value-adding consists of ensuring that all the gaps between the instructors’ position when they come to OPC and the final requirements for the legislative project are filled. The value-adding that OPC needs to do in any particular project thus depends on where the instructors are when they seek OPC’s help.

56 If the instructors have a clear idea of where they want to go, but not many ideas about how to get there, OPC’s job is to help them clarify and develop that idea down into successive levels of detail and eventually into a detailed legislative structure set out in a Bill.

57 For instance, instructors may start with a policy decision that a particular activity needs to be regulated, but they may have no clear ideas about what kind of regulation might be practical or effective. The drafters would draw on their experience with other regulatory schemes, and on their own creativity, and suggest a range of regulatory options, with advice about the benefits and drawbacks of each one (eg prohibition of an activity without a Commonwealth licence, or a limitation of government benefits if the activity is carried on in certain circumstances).

58 Once the instructors choose an approach, the drafters would again identify the kinds of choices that need to be made at the next level of detail (eg if a Commonwealth licensing scheme is chosen, are the licences to be indefinite subject to cancellation or renewable annually?).

59 Alternatively, if the instructors “know” that they need a licensing scheme to regulate a particular activity, but haven’t clearly articulated why the activity needs to be regulated, or the details of the licensing scheme, OPC’s job would be:

- first, to establish why it is thought that the activity needs to be regulated; and
- next, to check that a licensing scheme is the appropriate method of regulation having regard to what has emerged about the reasons for regulation; and

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- finally, to help the instructors design the details of a licensing scheme which will be implemented by or under the legislation (eg identification or creation of a licensing authority, criteria for granting of licences, duration of licences, enforcement of the licensing scheme etc).

60 Sometimes, instructors are extremely grateful for OPC's value-adding work. At other times, it can create tensions between drafters and instructors. This often depends on the instructors' perceptions of progress on the legislative project before they come to OPC.

61 Where instructors have focussed on the desired outcomes rather than detailed implementation strategies, they usually welcome OPC's contribution to the process of developing the details of the necessary legislative scheme.

62 On the other hand, where instructors have decided on a legislative approach without fully articulating their desired outcomes, they may be frustrated or irritated when the drafters ask them to clarify those outcomes, especially if the drafters then suggest that the preferred legislative approach may not be the best method of achieving those outcomes. Instructors sometimes see the drafters as obstructive, or feel that the drafters are wasting valuable time interfering in things that are not relevant to the drafters' responsibilities.

63 While sometimes the drafting process can be challenging, ultimately, OPC's goal is to assist instructors to develop and refine the policy so that the legislation is effective, clear and introduced within the required timeframes.

Preparation of explanatory memorandum and other documents by instructors

64 When Bills are introduced or parliamentary amendments are moved, they are accompanied by an explanatory memorandum prepared by the instructors. Preparation of the explanatory memorandum may reveal flaws or weaknesses in policy proposals, or errors in the developing draft legislation. For this reason it is usually wise for instructors to start preparation of this document fairly early in the drafting process.

65 There are other documents that are required by PM&C to be prepared in relation to Bills and parliamentary amendments. Further details of these can be obtained from the PM&C Legislation Handbook. If instructors have further queries, then the legislation section of PM&C may be consulted.

C.2—Project management

66 OPC drafters often make a valuable contribution to the management of a legislative project, especially if the project is unusually large or urgent. Drafters can advise on matters such as:

- critical paths for the project (eg policy decisions which must be made before legislative details can be developed or before drafting can commence);
- timetables (eg realistic timeframes for finalising drafting, referring the Bill for consultation, obtaining legal policy advice, or arranging for Royal Assent to a Bill after it is passed by the Parliament);
- coordination and liaison requirements (eg ensuring that all necessary consultation is undertaken and all necessary policy authority and clearances from other Ministers are sought well before the Bill is intended for introduction);
- options for reducing the size of a project to enable an important deadline to be met (eg leaving matters of detail to be dealt with in regulations);
- time and workload implications from intended exposure of the Bill to other Commonwealth agencies, State and Territory agencies or the general public.

67 As well, drafters often find themselves participating in, or even initiating, negotiations to resolve disputes between different Ministers or agencies over the contents of proposed legislation.

C.3—Management of drafting resources

68 OPC also has a significant responsibility for the management of the government’s legislation program as a whole.

69 At the end of each parliamentary sittings, the Parliamentary Business Committee of Cabinet (*PBC*) approves a program for the next sittings. Bills for which Ministers have bid are classified as Category T (“time-critical”, requiring introduction and passage in the same sittings), or Category A, B or C (for introduction in the next sittings and passage some time later). This categorisation is initially relevant to the allocation of drafting resources and then, when Bills are drafted, to the allocation of parliamentary time.

70 A variation to the legislation program as originally approved by PBC requires further PBC approval, which should be formally sought in a letter from the Minister concerned to the Prime Minister. Advice on variations to the program can be obtained from the Legislation Section in the Department of the Prime Minister and Cabinet.

71 Instructions for all Bills for the next sittings are formally required to be lodged with OPC before the end of the previous sittings. However, some instructions are received throughout the break between sittings and into the sittings concerned. First Parliamentary Counsel allocates the available drafting instructions to drafting teams having regard to the following factors:

General factors

- The need to focus drafting resources on projects that are priorities for the government as a whole rather than priorities for individual Ministers or agencies.
- The need to ensure that drafting resources are not wasted by being left idle waiting for particular drafting instructions (however high-profile) to arrive.

Factors relevant to individual projects

- **The priority of each legislative project** (T Bills are allocated ahead of A Bills, which are allocated ahead of B Bills, and so on; the priority of parliamentary amendments usually depends on when the Bill concerned is required for parliamentary debate, but see paragraphs 73 and 74).
- **The real political or legal significance of the project** (for instance, when there are 100 projects included in Category A for a short sittings, First Parliamentary Counsel inevitably has to prioritise further).
- **The apparent commitment of the sponsoring Minister or instructing agency to the legislative project** (eg are policy decisions delayed in the Minister’s office or at senior levels in the agency, or do promised delivery dates for instructions repeatedly pass without any instructions appearing?).
- **The date of receipt of instructions** (all other things being equal, an earlier set of instructions will be allocated to a drafting team ahead of a later set).
- **The particular expertise of the available drafting teams** (while drafters need to be able to draft in any area of law, sometimes it is desirable for drafters with experience of a subject matter to draft Bills in that area—for example, a drafter with experience in taxation law may be allocated projects that involve amendments of that law in preference to other available drafters).

C.4—Implications of resource management approach

72 There are various implications of the resource management approach outlined in paragraphs 68-71 that sometimes surprise, frustrate or anger instructors:

- Even a high priority Bill may not be able to be allocated to a drafting team as soon as instructions are received, if all drafting teams are already busy on work of equally high priority.
- First Parliamentary Counsel does not usually nominate a drafting team to handle a particular project until there is a drafting team actually ready to start work on that project. Early nomination of drafting teams has no particular advantages, and various disadvantages. In particular, the original decisions may need to be changed before work is begun, for instance if a more urgent project emerges after the original decision is made or if the drafting team's previous project takes longer than expected and another drafting team becomes available before the nominated drafting team.
- A drafting team already working on a project may have to be given a higher priority project to work on in preference to the team's original project. This may interfere with the expected progress on the original project. For instance, if a drafting team is working on a category A Bill and OPC receives instructions for a new category T Bill, First Parliamentary Counsel may direct the team to work on the T Bill in preference to the A Bill, even if the instructions for the A Bill were received long before those for the T Bill and the T Bill is a recent addition to the legislation program.
- In various circumstances, First Parliamentary Counsel may have to give priority to some Bills in a category of the legislation program even at the expense of other Bills in the same category.

C.5—Priority of parliamentary amendments

73 If a Bill in the Parliament needs changes before it is passed (eg to correct errors, because the government's policy has changed or because a compromise has been negotiated with non-government parties), drafting the necessary amendments is usually treated as a high priority project, depending on when the Bill is required for debate.

74 However, sometimes a Bill in the Parliament is seen as a convenient vehicle for further material that was not ready when the Bill was introduced. Material of this kind has no automatic priority just because its sponsors would like to include it in an introduced Bill. Projects involving parliamentary amendments of this kind should be bid for inclusion on the legislation program in the normal way.

C.6—Special aspects of OPC’s work methods

Client advising arrangements

75 OPC has client advising arrangements under which client agencies can obtain quick off-the-cuff advice from nominated senior drafters about drafting matters that arise, for instance, in the course of preparing a Cabinet submission or drafting instructions. A full list of client advisers is available on OPC’s website, www.opc.gov.au.

76 Advice on programming issues should be sought from First Parliamentary Counsel rather than the agency’s nominated client adviser.

Early access to drafters

77 Traditionally, OPC has not become involved in legislative projects until it receives written instructions from the sponsoring agency. This is still the standard approach for most legislative projects. However, if a legislative project is unusually complex, large or urgent, instructors may be able to obtain early access to a drafting team.

78 In some cases, a drafting team may work closely with instructors from an early stage in the project’s development, for instance when complex legislation is required at short notice. In such a case there might never be any written instructions (although important policy decisions may be confirmed in writing).

79 In other cases, a drafting team may be able to spend several hours or days giving advice about legislative issues in the very early stages of a project, leaving the instructors then better placed to work on the project to the point at which written instructions can be lodged with OPC. In such a case there can be no guarantee that the drafting team giving the early advice will necessarily be involved in drafting the Bill when drafting instructions are eventually lodged. This is because the drafting team concerned may not be available when the drafting project is ready to be allotted for drafting.

Part C—How do we do our job?

80 However, if instructors are sufficiently keen to continue working with the same drafters, there may be scope for the instructing agency to sacrifice its drafting priority and wait until the team concerned is available. Obviously, this will depend on the urgency of the project and the instructors' assessment of any efficiencies to be gained from continuing with the same drafters.

81 First Parliamentary Counsel can advise whether early access to drafters might be available for a particular project.

Lodging drafting instructions

82 Written drafting instructions should be addressed to First Parliamentary Counsel and sent to OPC.

83 Instructors in departments that are on FedLink can forward instructions via email to: instructions@opc.gov.au. Where instructions are sent by email, there is no need to follow them up with a signed hard-copy.

84 Instructors should check with the IT area of the instructing agency to ascertain whether the agency is on FedLink.

85 Instructions received by OPC will be acknowledged, unless they can be allocated to a drafting team immediately. If the instructions are allocated immediately, the drafters will usually make contact with the instructors within a week or so. If receipt of instructions has not been acknowledged within a week, instructors should check with First Parliamentary Counsel's Executive Assistant.

86 Email is the most commonly used means of communication in relation to Bills once drafting has commenced. However, this depends, whether or not the instructing agency is on FedLink.

Drafting instructions for consequential amendments

87 Some legislative proposals (whether for new Acts or amendments of existing Acts) require consequential amendments to other Acts or to other parts of the Act that will be amended. Instructing agencies are generally responsible for:

- identifying any necessary consequential amendments; and

- instructing on the content of those amendments.

88 In many cases, the contents of such amendments can only be resolved as the main drafting project progresses. The amendments may be worked out between the drafters and the instructors in the course of drafting. OPC would not expect to be formally instructed on matters such as new cross-references (although where there is no direct correlation between old provisions and new provisions, even the appropriate cross-references may require substantial instructor involvement).

89 Instructing agencies should have their own access to electronic databases of Commonwealth legislation (including Bills before the Parliament), and their own expertise in using these databases. In some cases, OPC may be able to help with, or advise on, electronic searches, but OPC has very limited resources, and it would rarely be appropriate to use scarce drafting resources for research work that should be able to be done by the instructing agency. However, OPC will conduct any necessary searches of its own databases to check the contents of other Bills still being drafted.

90 Some drafting proposals require significant consequential amendments, and the need for such amendments should be clear from the early stages of the project.

91 For instance, some Acts (eg the Crimes Act, the Public Service Act or the Remuneration Tribunal Act) set out general policies or procedures that have an application across a wide range of Acts dealing with particular subject matters. Replacing or substantially amending an Act of general or wide application is likely to require consequential amendments to many other Acts.

92 These consequential amendments may range from purely technical changes (eg replacing cross-references to the old Act with cross-references to equivalent provisions of the new Act) to substantial changes required by introducing new concepts or abandoning old ones. For instance, the concept of public servants holding particular offices was fundamental to the *Public Service Act 1922*, but was abandoned in the *Public Service Act 1999*. This concept was relied on in many other Acts, which all had to be amended when the concept disappeared with the repeal of the 1922 Act.

Part C—How do we do our job?

93 In cases where significant consequential amendments are required, it is even more important for instructors not to rely on OPC to work out the consequential amendments, but to plan and provide resources for identifying and instructing on those amendments.

Written v oral communications

94 In general, initial drafting instructions should be lodged with OPC in writing (but see paragraphs 77-81). In the course of a drafting project, the drafters will produce a series of drafts and, in many cases, drafting plans or blueprints for the required legislation. This written material, and other material such as letters confirming revised instructions, is important as a record of the progress of the project.

95 Apart from this, however, most drafters find oral communications, preferably in person at OPC's premises, more productive than exchanges of correspondence.

96 Instructors will often be invited to OPC's premises for a meeting to discuss the original instructions, or for further discussions about drafting plans or successive drafts of the required legislation. Producing written comments on drafting plans or draft legislation often helps instructors to clarify their views, and may also ensure that individual instructors are properly conveying the views of the instructing agency. However, drafters will often want to discuss written comments with the instructors.

Drafting plans and blueprints

97 Some drafters start producing draft provisions for inclusion in a Bill as soon as they feel they understand their instructors' basic requirements. This is the traditional way in which drafters have worked in OPC. Many instructors take some comfort from receiving draft Bills from an early stage in the instructing process, even if the draft Bills are incomplete or otherwise provisional (for instance because they contain notes setting out material of the kinds mentioned in paragraph 100).

98 Other drafters work with documents they call "drafting plans" or "blueprints". A plan or blueprint is developed through consideration of instructions and discussions with instructors, and is generally refined several times before a draft Bill is prepared.

99 Development of a plan or blueprint may involve a number of meetings between drafters and instructors. Sometimes instructors feel that they are being asked to commit too much time to these meetings. However, the policy development and refinement done at these meetings must be done at some stage in the drafting process; intensive discussion between drafters and instructors is often the most efficient way of achieving that policy development and refinement, for both drafters and instructors. This can be particularly important for Bills that are being drafted to tight deadlines.

100 Plans and blueprints take a variety of forms, depending on the drafter's preferences and the kind of Bill being prepared. They may contain any or all of the following kinds of materials (some of this material may be included as notes in a more traditional draft Bill):

- a list of concepts relevant to the Bill;
- a list of topics to be dealt with in the Bill;
- a list of required definitions;
- draft provisions (not usually formatted as Bill provisions), or shorthand descriptions of draft provisions;
- questions about instructions;
- notes about connections between different elements of the Bill;
- explanations for inclusions or exclusions (either of particular provisions or of particular cases or issues);
- explanations for particular approaches to be taken in the Bill;
- notes about consultation requirements for particular elements of the Bill;
- notes about matters requiring confirmation from instructors;
- any other information that is useful in keeping track of the development of the Bill.

Part C—How do we do our job?

101 The contents of the plan or blueprint will change during its development. Most drafters would prefer not to start to draft the Bill from the plan or blueprint while it still contains questions, or notes of matters requiring confirmation from instructors or consultation with other people or bodies.

102 If drafting of the Bill can be delayed until the plan or blueprint is finalised, the actual drafting is usually a relatively quick and straightforward task. Even when drafting has to commence before all issues have been resolved, the use of a plan or blueprint in the early stages of a drafting project can provide some of the benefits of the method.

103 Use of the plan or blueprint method has a number of advantages.

- It may produce a better-structured Bill than the traditional method. This is largely because the structure of the Bill can be determined having regard to the final (or at least a late) form of the policy. Under the traditional method, the structure of a Bill is often determined early in the drafting and policy clarification process. Tight deadlines can mean that later changes to policy are often fitted into the original structure, when a new and different structure would have been more appropriate for the new policy aims.
- It may produce a Bill with a more robust conceptual base, and better integrated provisions, than the traditional method. This is because the plan or blueprint method forces both the instructors and the drafters to focus on the content of the provisions, and does not allow them to be distracted by the form of the Bill.
- It may provide drafting efficiencies through delaying the formatting of provisions until their content is properly settled.

104 Use of the plan or blueprint method can also have disadvantages.

- Some drafters find it difficult to recognise all the ramifications of a particular policy until they try to express it as draft legislation.
- Some instructors find it difficult to consider the operation of their policies until they see those policies set out in the form of draft legislation.

- Some instructors do not feel that their legislative project is progressing satisfactorily until they see results in the form of a draft Bill. Some instructors also feel more comfortable if they can describe progress to their Minister or agency head by reference to receipt of a draft Bill, and many instructors prefer to have a draft Bill, however provisional, to show their Ministers.
- Some instructors find that late production of a draft Bill makes it more difficult to deal with their responsibilities (eg preparation of the explanatory memorandum and briefing for the Minister) in a timely way.

105 Instructors are encouraged to discuss the use of plans or blueprints with the drafters before work begins on their project.

Rewriting existing legislation

106 Since the late 1980s, OPC has been involved in various projects to rewrite major pieces of Commonwealth legislation. Some rewrites have involved a whole Act or Acts, while other rewrites have focussed on specific parts of Acts. Rewrites may focus on specific areas of an Act because they are the only parts seen as needing change, or because a complete rewrite is seen as logistically difficult or impossible. Some rewrites have been aimed purely at improving the drafting of the legislation concerned, while others have reflected a sponsoring agency's view that the policy and operation of an Act require a complete reconsideration.

107 Various issues need to be addressed by an agency considering whether its legislation should be rewritten.

What is the purpose of the rewrite?

108 A rewrite to improve the drafting may be quicker and easier than a rewrite involving a complete reconsideration of the legislation, but the benefits may be correspondingly smaller. Furthermore, rewrites intended only to improve the drafting of legislation routinely turn out to raise difficult policy issues which must be resolved before the drafting can be improved. Some agencies have found that improving the drafting of their legislation simply reveals the policy deficiencies of the legislation more starkly.

Are adequate resources available?

109 Some agencies focus their attention on the availability of drafting resources for their proposed rewrite. This makes sense, because drafting resources may be difficult to obtain, especially for a rewrite not involving policy changes. However, rewrites require a substantial input of resources from the sponsoring agency as well; OPC's experience suggests that it can take up to 10 instructors to keep a single drafter occupied in a rewrite project. A project involving a whole drafting team may need 20 or more full-time staff working within the sponsoring agency.

Will the agency remain committed to the rewrite project until it's finished?

110 If the agency's long-term commitment to the project is not clear, can the project be split up into smaller projects requiring less time for completion? If this can be done, the early work on the project need not be wasted even if the agency's priorities change and the project is never finished.

Will the rewrite work remain valuable even if it's delayed in the Parliament?

111 Bills intended to replace existing Acts, but which make minimal policy changes, can have a slow passage through the Parliament. This may reduce the value of a rewrite in an area in which government policy changes frequently.

Drafters and parliamentary committees

112 Members of OPC do not normally appear before parliamentary committees, except Senate committees considering estimates. In rare cases, it may be appropriate for a drafter to appear before a parliamentary committee to address drafting issues relevant to a Bill being considered by the committee. First Parliamentary Counsel can advise on whether a particular drafter's appearance before a committee might be appropriate.

113 All requests for drafters to appear before parliamentary committees (other than estimates committees) must be referred, through First Parliamentary Counsel, to the Attorney-General.

C.7—Drafting approaches

114 OPC is committed to drafting legislation that is:

- legally effective; and
- effective in communicating its purpose and operations to its users.

115 While these are expressed as separate aims, OPC also recognises that, in many cases, legislation that is not effective in communicating its purpose and operation cannot be said to be legally effective.

116 OPC does not believe that a single set of drafting techniques (whether described as “plain English” drafting or anything else) will always be appropriate to achieve legal effectiveness and effective communication.

117 Rather, OPC has a range of different drafting techniques and tools that have been developed and refined over many years. We believe that careful use of techniques and tools appropriate to individual drafting projects will give the best results in each case. At the same time, to ensure consistency across the statute book and to ensure that the various techniques and tools are used properly, we maintain generally applicable standards and rules about when and how particular approaches may be used. To ensure continuous improvement in our drafting techniques, there is some scope for experimental use of new approaches in particular cases.

118 The main techniques and tools used in OPC are described below. See Part H for examples of most of these techniques and tools. In addition, there are also many documents that explain and prescribe the standards and rules for the way in which OPC drafts, for example, the Drafting Manual and the Drafting Directions series. Many of these are publicly available at www.opc.gov.au.

Use of plain language

119 OPC is keen to replace old-fashioned language, complex sentence structures, legalese and jargon with modern, idiomatic language. However, we recognise the need for care in abandoning legal language which has been subject to judicial consideration, and we also recognise that in some cases it is appropriate to use technical terms (even if these might be described as jargon).

Careful organisation of information

120 Understanding how readers read and absorb information has implications for drafting matters such as sentence structures and length, and the organisation of information within a draft.

General principles drafting

121 The traditional Australian drafting approach involves attempting to deal exhaustively and in detail with every possible case. This approach has a philosophical basis, in that it requires the elected Parliament to approve a detailed statement of the intended operation of the law (rather than leaving this detail to be worked out by the non-elected courts). However, this approach can lead to long and complex legislation, and it also risks the creation of loopholes (which, when discovered, tend to be filled with yet more long and complex legislation).

122 General principles drafting involves a more general and less detailed expression of the law, often more reliant on references to the purpose of the law rather than to its specific operation. The application of the law to specific cases may need to be determined in the courts. Under general principles drafting, Parliament's input consists of statements of general principle, and the courts may play a substantial role in determining the coverage and the operation of the law.

123 In some cases, a limited or even major use of general principles drafting may be appropriate or desirable; OPC can advise instructors on the issues that must be considered and the risks that might be involved, and help instructors decide whether general principles drafting is suitable for their project.

Specific aids to comprehension

124 There are various ways of helping readers understand legislation that, unlike the techniques described above, are apparent on the face of the draft legislation.

Objects provisions

125 Some objects provisions give a general understanding of the purpose of the legislation as described in paragraph 124. Other objects provisions set out general aims or principles that help the reader to interpret the detailed provisions of the legislation.

Notes

126 Notes to provisions might explain the purpose, origin or operation of the provision, or refer the reader to related provisions or to definitions of terms used in the provision.

Highlighting of defined terms

127 Defined terms can be identified in notes, or highlighted in other ways. Some legislation uses asterisks to identify defined terms, with a standard footnote on every page referring the reader to a Dictionary at the back of the Act (see for example, the *Aged Care Act 1997*, the *Income Tax Assessment Act 1997* and the *Private Health Insurance Act 2007*). Every definition used in the Act is either set out, or signposted, in the Dictionary.

Examples

128 Examples are often a good way of explaining the operation of a complex provision. Worked examples may be particularly useful for provisions requiring complex calculations.

Tables

129 Tables are a useful way of organising a large volume of information. In particular, tables allow quick recognition of the similarities and differences in different cases dealt with in the legislation, and may also reveal the conceptual basis for those similarities and differences very readily. Tables may be operative, or merely an explanation or summary of operative provisions.

Diagrams

130 Diagrams can also provide a useful method of communicating complex information. For instance, a flow chart may give a simple overview of lengthy provisions detailing a complex process; a process of pre-qualification for a grant, application for the grant and approval of grant applications might be represented in a one-page flow chart.

Method statements

131 Method statements can be used if a number of steps are needed to determine an entitlement or calculate an amount (which might otherwise be presented as a formula). Method statements can be particularly useful in cases where the calculation is not a straightforward, single process but has alternative outcomes depending on the circumstances.

C.8—Formatting of Bills

Electronic format

132 Bills introduced into the Commonwealth Parliament use a standard format, which was developed by OPC in conjunction with communications experts. The format is standard in appearance, and also in its electronic form.

133 Electronic standardisation is achieved through the use of wordprocessing “styles”, which are made available to contract drafters and to the parliamentary departments by OPC. The fact that Bills have a standard electronic form means that it is relatively easy for them to be converted into other electronic forms (eg for loading onto the Internet). It is therefore important that standardisation is maintained.

Standard commencement provisions

134 OPC uses standardised commencement provisions that are intended to make it easy for readers to ascertain the commencement details for each provision of an Act. Most commencement provisions will include a table giving as much information as possible about the commencement of each provision of the Act.

135 The standardised commencement table contains a column into which information about commencement dates will be inserted as it becomes available after the Act is passed. For instance, an Act with provisions commencing on proclaimed days will, after the proclamations are made, be able to be published with the proclaimed commencement dates set out in the Act itself. For more information on commencement provisions, see Drafting Direction 1.3 (available at www.opc.gov.au).

Format of amending Bills

136 One element of the standard format for Bills is the form of amending Bills. All amendments are contained in Schedules to the Bill and are made using standard amending forms set out in the Amending Forms Manual (available at www.opc.gov.au). Amendments are grouped into Schedules by reference to topics, by reference to the Acts amended, or in any other convenient way. Transitional, application and saving provisions may also be included in the Schedules.

Standard clause for amending Schedules

137 OPC uses a standard provision for the clause of the Bill that introduces the amending Schedules, as follows:

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

138 The standard provision, including the heading with the bracketed “s”, is used in all cases, even if the Bill has only one Schedule and even if there are no “other” items in the Schedules. This saves time, and removes the possibility of error, if late changes to a Bill (or changes made in the Parliament) add or remove Schedules or particular provisions.

C.9—Feedback on drafting projects

139 After a draft Bill is introduced, OPC emails the instructors a form requesting feedback on the drafting process and the draft Bill. We encourage instructors to be both frank and constructive in their responses to this request (individual drafters do not see the actual responses without the consent of the responding instructors).

140 As well, we welcome feedback in any other form. In particular, we are keen to receive information about how our legislation actually works in practice. For instance:

- Do particular legislative structures, or particular drafting approaches, make legislation especially difficult, or especially easy, to work with?
- Has the legislation been interpreted by a court or tribunal in a way that is inconsistent with the original policy intentions?

141 This kind of feedback may be given, in writing or otherwise, to First Parliamentary Counsel, to the agency's client adviser, or to the drafters of the legislation concerned.

C.10—Legislation Process courses

142 OPC runs one-day training courses for instructors and potential instructors. The courses are presented by experienced drafters, and cover a range of issues that are likely to be relevant to anyone instructing OPC on a legislative project, including the following:

- the processes of turning a policy into an Act of Parliament;
- basic features of Acts and Bills;
- Acts of general application such as the Acts Interpretation Act;
- the roles of the instructor and the drafter;
- turning policy into drafting instructions;
- matters to be addressed in drafting instructions;
- the Senate Scrutiny of Bills Committee.

143 OPC runs around 10 courses each year, usually in April, July and December. Each course caters for up to 14 participants. See OPC's website for further information about these courses.

C.11—Operations during election periods

144 OPC takes a special approach to its work during the election “caretaker” period, which runs from the calling of a federal election until the election result becomes clear.

145 During this period:

- OPC undertakes a range of “housekeeping” projects that are important to maintaining our drafting capacity (eg preparation and updating of manuals and other drafting resource material); and
- OPC may continue with some drafting work, but only in such a way as to ensure that the drafters are not drawn into the political processes.

146 First Parliamentary Counsel can advise whether particular drafting work might be able to be undertaken during a caretaker period.

Part D—The OPC Service Charter

D.1—Who are our clients?

147 On a day-to-day basis, our clients are the agencies whose Ministers are sponsoring particular legislative projects and, in particular, the staff of those agencies who are responsible for dealing with OPC on the drafting of the Bill. In OPC, these staff are known as instructors.

148 OPC is responsible to the Attorney-General for ensuring that legal policy issues arising in the course of legislative projects are drawn to the attention of the Attorney-General's Department or the AGS.

149 OPC also has a direct service-provider relationship with bodies representing the government as a whole:

- The PBC determines whole-of-government priorities for legislation, and OPC is responsible to PBC for ensuring that government drafting resources are allocated in accordance with those whole-of-government priorities (see paragraphs 68-71).
- Through the LAP, the designated Parliamentary Secretary or Minister ensures that government legislation reflects the policies of the Cabinet and the Prime Minister. OPC is responsible for advising the designated Parliamentary Secretary or Minister if legislation drafted on instructions from a sponsoring agency appears to depart from those policies (see paragraphs 7 and 8).

150 Sometimes, OPC's obligations to PBC and to the designated Parliamentary Secretary or Minister put OPC at odds with particular instructors or agencies. This potential for conflict between OPC's obligations to different clients can affect the level of service that OPC can provide to individual clients.

151 As well as the clients identified above, there are various stakeholders in respect of OPC's work. These include members of Parliament, Ministers and public servants other than the sponsors of specific legislation, members of the public who are affected by legislation, and the courts.

152 The guarantees and expectations set out below are addressed to agencies and instructors responsible for particular legislative projects. However, they are influenced by OPC's obligations to its whole-of-government clients identified above, namely PBC and the designated Parliamentary Secretary or Minister.

D.2—What can you, as our client, expect from us?

- That your written instructions will be promptly acknowledged.
- That your project will be allocated to a drafting team in accordance with its priority on the legislation program.
- That drafting resources will continue to be available for your project in accordance with its priority on the legislation program.
- That the drafters will carefully apply their drafting expertise to:
 - the purpose and rationale of your project;
 - the legislative structures required by your project;
 - the detailed legislation required for your project.
- That the drafters will raise with you all issues that they think might affect the quality or efficacy of the final legislative product.
- That the drafters will understand a situation in which political or other imperatives are in conflict with the most desirable drafting approach, and will respond creatively and constructively to help you to get the best possible result, having regard to the circumstances.
- That the drafters will, on request, explain any aspect of the drafting approach adopted.
- That the drafters will, as early as possible in the drafting process, draw to your attention any possible gaps or discrepancies in the policy authority for your project.
- That the drafters will maintain good communications with you, and will keep you informed of the progress of your project (even where it is making no progress because of the demands of higher-priority projects).

- That the drafters will be committed to achieving the best possible result for your project, and will take all reasonable steps to achieve that result (including seeking clarification of your requests and instructions).
- That the drafters will recognise that perfection is usually an impossible goal, and will not unreasonably delay your project in the search for perfection.

D.3—What do we expect from you, as our client?

- That there will be a sound conceptual basis for your legislative project.
- That you will provide well-thought-out instructions (at whatever level of detail the instructions are pitched).
- That you will be ready and willing to discuss, explain, clarify, re-examine and, if necessary, revise your instructions as the drafters work through them with you.
- That you will devote resources to your drafting project (in particular, time and attention) that accord with the urgency and importance of the project.
- That the instructors will have a knowledge of the legislative process, or have access to someone within the instructing agency who does.
- That the sponsoring agency will provide instructors of sufficient authority to make most decisions on the spot during the drafting process (OPC recognises that some decisions must be made by Ministers or agency heads—but there is no point in the drafters dealing with a junior instructor whose decisions are routinely overruled by a supervisor as soon as the supervisor is aware of them).
- That you will give proper and timely consideration to drafting plans or draft legislation when supplied by the drafters, so that you can either confirm the accuracy of the plan or draft, or request changes, before the plan or draft is used as the basis for further development or drafting work.
- In particular, that you will think carefully about plans or drafts in the context of all your subject-matter expertise, with a view to identifying unintended consequences that the drafters have no way of discovering by themselves.
- That you will take proper and timely steps to obtain any outstanding policy authority or Ministerial clearance.

- That you will maintain good communications with the drafters, and in particular that you will respond to any questions raised by the drafters and ensure that the drafters are aware of any changes in the project plans (eg that extra material may be required in a Bill or that the whole Bill is to be deferred to a later sittings).
- That you will ensure that any material you prepare to accompany the draft legislation (in particular the explanatory memorandum and the second reading speech) does not in any way misrepresent the contents of the legislation.

Part E—Contact information

E.1—Addresses

OPC premises MTA House
 39 Brisbane Avenue
 Barton ACT

Postal address Locked Bag 30
 Kingston ACT 2604

Home page www.opc.gov.au

E.2—General phone numbers

First Parliamentary Counsel 6270 1405 (ph)
 Peter Quiggin PSM 6270 1402 (fax)

Legislation Officer 6270 1465
 Tom Manwaring

Switchboard 6270 1400

General fax 6270 1403

Part F—Further reading

Giving Written Drafting Instructions (available on OPC's web site, **www.opc.gov.au**)

OPC Annual Reports (the current report is available on OPC's web site)

The Legislation Handbook (Department of the Prime Minister and Cabinet) (this can be found on the PM&C web site, **www.pmc.gov.au**)

Part G—Glossary

AGS	=	Australian Government Solicitor
LAP	=	Legislation Approval Process
OPC	=	Office of Parliamentary Counsel
designated Parliamentary Secretary or Minister	=	The Parliamentary Secretary or Minister designated by the Prime Minister to be responsible for the Legislation Approval Process
PBC	=	Parliamentary Business Committee of Cabinet
PM&C	=	The Department of the Prime Minister and Cabinet
SES	=	Senior Executive Service

Part H—Examples of drafting approaches

General principles drafting

[Fuel Tax Act 2006, section 41-15]

41-15 No fuel tax credit if another entity was previously entitled to a credit

- (1) You are not entitled to a fuel tax credit for taxable fuel if it is reasonable to conclude that another entity has previously been entitled to a fuel tax credit, or a *decreasing fuel tax adjustment, for the fuel.
- (2) However, subsection (1) does not apply if it is also reasonable to conclude that another entity had, in respect of the credit, an *increasing fuel tax adjustment of the *amount of the credit.

Summaries and outline provisions

[Military Rehabilitation and Compensation Act 2004, section 3]

3 Simplified outline of this Act

This Act provides for compensation and other benefits to be provided for current and former members of the Defence Force who suffer a service injury or disease. The Act also provides for compensation and other benefits to be provided for the dependants of some deceased members.

Before most benefits can be paid or provided, the Commission must accept liability for an injury, disease or death of a current or former member under Chapter 2. Chapters 3 to 6 set out what the benefits are.

The procedure for dealing with claims under this Act is dealt with under Chapters 7 and 8. The Military Rehabilitation and Compensation Commission and the administration of the Act are dealt with in Chapters 9 to 11.

Provisions in this Act might be affected by the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004*.

A person who is entitled to a benefit under this Act might also be entitled to a pension, allowance or other benefit under the *Veterans' Entitlements Act 1986*. This might include the following:

- (a) a service pension under Part III of that Act;
- (b) treatment under Part V of that Act;
- (c) an allowance such as a telephone allowance, a pharmaceutical allowance, a Victoria Cross allowance or Income Support Supplement;
- (d) a funeral benefit.

Summaries and outline provisions

[Aviation Transport Security Act 2004, section 27]

27 Simplified overview of Part

The Secretary may designate an airport as a security controlled airport. A security controlled airport has an airside area and a landside area.

Airside security zones and airside event zones may be established within an airside area, and landside security zones and landside event zones within a landside area.

Regulations under Division 3 will detail the requirements applying to airside areas, airside security zones and airside event zones.

Regulations under Division 4 will detail the requirements applying to landside areas, landside security zones and landside event zones.

Regulations under Division 5 may create offences for causing disruption or interference in relation to security controlled airports.

Objects/purposes provisions

[Aviation Transport Security Act 2004, section 3]

3 Purposes of this Act

- (1) The main purpose of this Act is to establish a regulatory framework to safeguard against unlawful interference with aviation.

Note: Division 10 of Part 4 has additional purposes (see section 74J).

- (2) To achieve this purpose, this Act establishes minimum security requirements for civil aviation in Australia by imposing obligations on persons engaged in civil aviation related activities. In particular, it obliges certain aviation industry participants to develop, and comply with, aviation security programs.

- (4) Another purpose of this Act is to meet Australia's obligations under the Convention on International Aviation (also known as the Chicago Convention).

Note: The Chicago Convention is set out in the *Air Navigation Act 1920*.

- (5) It is not a purpose of this Act to prevent lawful advocacy, protest, dissent or industrial action that does not compromise aviation security.

Objects/purposes provisions

[National Health Security Act 2007, section 30]

30 Object of Part

- (1) The object of this Part is to give effect to Australia's obligations to establish controls for the security of certain biological agents that could be used as weapons.
- (2) To achieve this object, this Part provides for:
 - (a) the collection, and recording on a national register, of information about the nature and location of security-sensitive biological agents legitimately handled by entities in Australia; and
 - (b) requirements to be complied with for the secure handling of security-sensitive biological agents; and
 - (c) monitoring of compliance with reporting and handling requirements through an inspection program; and
 - (d) restrictions in relation to the handling of security-sensitive biological agents.

Notes

[Aged Care (Bond Security) Act 2006, section 15]

15 Transfer of recovery rights to Commonwealth

Immediately after the Secretary makes a refund declaration, any rights that the refund recipient had when the refund declaration was made to recover an amount equal to the refund amount from the approved provider specified in the refund declaration are, by force of this section, transferred to the Commonwealth.

Note: Any rights that the refund recipient has to receive from the approved provider any additional amounts are not transferred to the Commonwealth by force of this section.

Notes

[Anti-Money Laundering and Counter-Terrorism Act 2006, section 5]

5 Definitions

.....

registrable details, in relation to a person, means such information relating to the person as is specified in the AML/CTF Rules.

Note: A person's business name and business address are examples of information that could be specified in the AML/CTF Rules.

Highlighting of defined terms

[Income Tax Assessment Act 1997, section 6-20]

6-20 Exempt income

- (1) An amount of *ordinary income or *statutory income is ***exempt income*** if it is made exempt from income tax by a provision of this Act or another *Commonwealth law.

Note: For summary lists of provisions about exempt income, see sections 11-5, 11-10 and 11-15.

- (2) *Ordinary income is also ***exempt income*** to the extent that this Act excludes it (expressly or by implication) from being assessable income.
- (3) By contrast, an amount of *statutory income is ***exempt income*** only if it is made exempt from income tax by a provision of this Act outside this Division or another *Commonwealth law.
- (4) If an amount of *ordinary income or *statutory income is *non-assessable non-exempt income, it is not ***exempt income***.

Note: An amount of non-assessable non-exempt income is not taken into account in working out the amount of a tax loss.

*To find definitions of asterisked terms, see the Dictionary, starting at section 95-1.

Highlighting of defined terms

[Aged Care Act 1997, section 57-16]

57-16 Period for payment of accommodation bond

- (1) A care recipient must not be required to pay an *accommodation bond:
 - (a) before the end of such period as is specified in the User Rights Principles; or
 - (b) if no period is specified—before the end of 6 months; after *entry to the residential care service or flexible care service.

- (2) If the care recipient has entered a residential care service and the residential care service was not *certified at the time of the care recipient's *entry to the service, the care recipient must not be required to pay the *accommodation bond:
 - (a) before the end of such period as is specified in the User Rights Principles; or
 - (b) if no period is specified—before the end of 6 months; following the certification of the residential care service.

Note 1: However, under sections 57-18 and 57-20, amounts representing income derived and retention amounts are payable from:

- (a) the date a care recipient *enters a residential care service that is *certified or a flexible care service; or
- (b) the date on which a residential care service is certified, if it was not certified at the time a care recipient entered it.

Note 2: Paragraph 57-2(1)(e) in most cases requires the *accommodation bond agreement to have been entered into before, or within 21 days after, the care recipient's *entry to the service—this applies even if the care recipient has entered a residential care service that was not *certified at the time of the care recipient's entry to the service.

*To find definitions of asterisked terms, see the Dictionary, starting at section 95-1.

Examples

[Income Tax Assessment Act 1997, section 83-115]

83-115 Working out used days of long service leave if leave taken at less than full pay

If you used days of long service leave at a rate of pay that is less than the rate to which you are entitled, the number of days of long service leave you are taken to have used (disregarding fractions of days) is as follows:

$$\text{Actual days of long service leave} \times \frac{\text{Rate of pay at which leave was actually taken}}{\text{Rate of pay to which you were entitled when taking leave}}$$

Example: If you took 100 actual days of long service leave at a rate of pay of \$30 per hour, while the rate of pay to which you were entitled when taking leave is \$40 per hour, you are taken to have used 75 days of long service leave, worked out as follows:

$$100 \text{ actual days of long service leave} \times \frac{30}{40} = 75 \text{ days of long service leave you are taken to have used}$$

Examples

[Law Enforcement Integrity Commissioner Act 2006, subsection 110(2)]

110 Content of warrants

.....

- (2) The time stated in the warrant as the time at which the warrant expires must be a time that is not later than the end of the seventh day after the day on which the warrant is issued.

Example: If a warrant is issued at 3 pm on a Monday, the expiry time specified in the warrant must not be later than midnight on Monday in the following week.

Tables

[Criminal Code Act 1995, section 314.1]

314.1 Controlled drugs

(1) The following table lists controlled drugs and sets out quantities:

Controlled drugs and quantities				
	Controlled drug	Trafficable quantity (grams)	Marketable quantity (grams)	Commercial quantity (kilograms)
1	Amphetamine	2.0	250.0	0.75
2	Cannabis (in any form, including flowering or fruiting tops, leaves, seeds or stalks, but not including Cannabis resin or Cannabis fibre)	250.0	25,000.0	125.0
3	Cannabis resin	20.0	25,000.0	125.0
4	Cocaine	2.0	250.0	2.0
5	Gammabutyrolactone (GBL)	0.5	250.0	1.0
6	4-Hydroxybutanoic acid (GHB)	0.5	250.0	1.0
7	Heroin (diacetylmorphine)	2.0	250.0	1.5
8	Lysergide (LSD)	0.002	0.05	0.002
9	Methamphetamine	2.0	250.0	0.75
10	3,4-Methylenedioxyamphetamine (MDA)	0.5	100.0	0.75
11	3,4-Methylenedioxymethamphetamine (MDMA)	0.5	100.0	0.5
12	Opium	20.0	10,000.0	20.0
13	Psilocine	2.0	1,000.0	2.0
14	Psilocybine	2.0	1,000.0	2.0
15	Tetrahydrocannabinol (THC)	2.0	1,000.0	5.0

Tables

[Aged Care Act 1997, section 5-2]

5-2 Which approvals etc. may be relevant

The following table shows, in respect of each kind of payment under Chapter 3, which approvals and similar decisions under this Chapter may be relevant.

Which approvals etc. may be relevant				
	Approvals or decisions	Kind of payment		
		Residential care subsidy	Community care subsidy	Flexible care subsidy
1	Approval of providers	Yes	Yes	Yes
2	Allocation of places	Yes	Yes	Yes
3	Approval of care recipients	Yes	Yes	Yes
4	Classification of care recipients	Yes	No	Yes
5	Decisions relating to extra service places	Yes	No	No
6	Certification of residential care services	Yes	No	No

Note 1: Classification of care recipients is relevant to *flexible care subsidy only in respect of some kinds of flexible care services.

Note 2: Allocation of funding for *residential care grants and *community care grants is dealt with in Parts 5.1 and 5.2 respectively, and not in this Chapter.

Tables

[Offshore Petroleum Act 2006, section 12]

12 Vacated area

For the purposes of this Act, the table has effect:

Vacated area		
Item	In the case of ...	the <i>vacated area</i> is ...
1	an exploration permit, retention lease or production licence that has expired	the area constituted by the blocks over which the permit, lease or licence was in force but has not been renewed.
2	an exploration permit, retention lease or production licence that has been wholly revoked or partly revoked	the area constituted by the blocks as to which the permit, lease or licence was so revoked.
3	an exploration permit or production licence that has been wholly cancelled or partly cancelled	the area constituted by the blocks as to which the permit or licence was so cancelled.
4	a retention lease that has been cancelled	the lease area.
5	a production licence that has been terminated	the licence area.
6	an infrastructure licence that has been cancelled or terminated	the licence area.
7	a pipeline licence that has been wholly or partly terminated	the part of the offshore area in which the pipeline or the part of the pipeline was constructed.
8	a pipeline licence that has been wholly cancelled or partly cancelled	the part of the offshore area in which the pipeline or the part of the pipeline was constructed.
9	a special prospecting authority that: (a) has been surrendered or cancelled; or (b) has expired	the authority area.
10	an access authority that: (a) has been revoked or surrendered; or (b) has expired	the authority area.

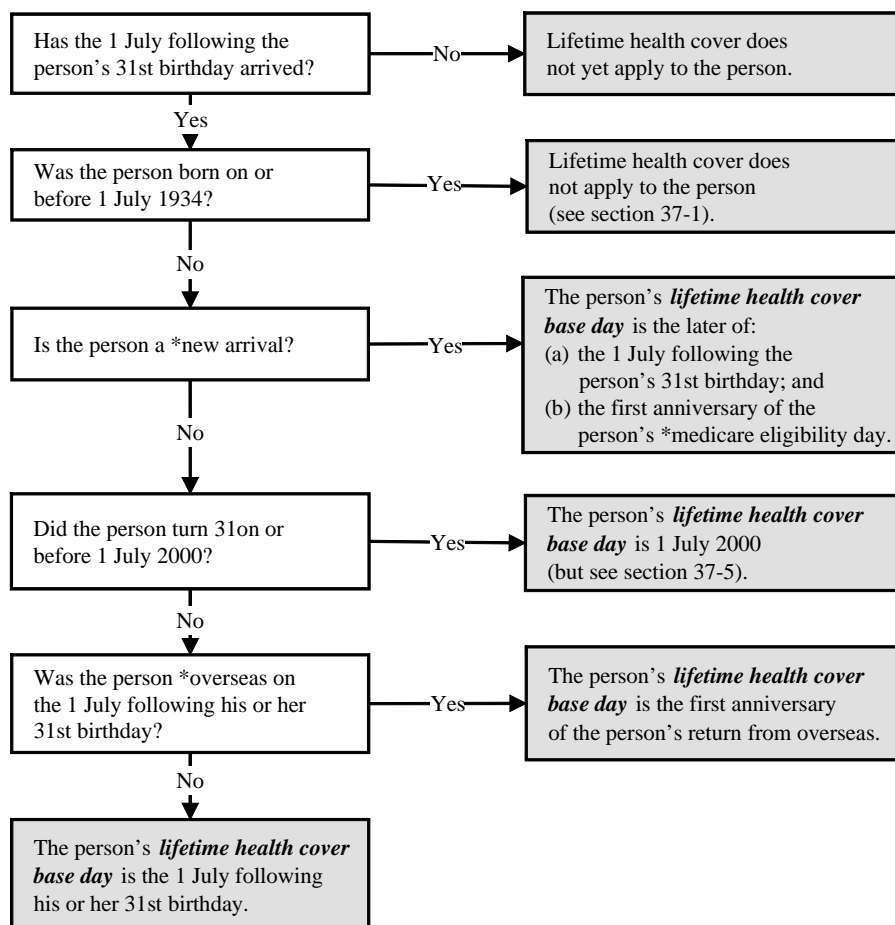
Diagrams

[Private Health Insurance Act 2007, section 34-25]

34-25 Meaning of *lifetime health cover base day*

(1) A person's *lifetime health cover base day* is the day worked out by using this diagram:

Working out a person's lifetime health cover base day



Method statements

[Renewable Energy (Electricity) Act 2000, section 38]

38 Determination of renewable energy certificate shortfall

The following method statement shows how to work out a liable entity's renewable energy certificate shortfall for a year.

Method statement—working out the renewable energy certificate shortfall

Step 1. Work out the total amount, in MWh, of electricity acquired by the liable entity during the year under relevant acquisitions.

Step 2. Multiply the total electricity acquired by the renewable power percentage for the year and round the result to the nearest MWh (rounding 0.5 upwards). Add to the result any carried forward shortfall from the previous year or subtract any carried forward surplus for the previous year. The result is the liable entity's **required renewable energy** for the year.

Step 3. Subtract the total value, in MWh, of renewable energy certificates surrendered to the Regulator for that year by the liable entity from the required renewable energy for the year.

Result: If the result is greater than zero, the liable entity has a **renewable energy certificate shortfall** for the year equal to the result.

If the result is zero, the liable entity does not have a renewable energy certificate shortfall for the year.

If the result is less than zero, the liable entity has a **carried forward surplus** for the year.