

PARLIAMENTARY COUNSEL

Drafting Direction No. 4.10 Presentation of Bills for Royal Assent

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Contents

Part 1—Introduction	2
Part 2—Before Assent	2
House distribution of Bills	2
OPC checks	2
First Parliamentary Counsel’s minute to the Attorney-General	2
Attorney-General’s letter to the Governor-General	3
Modification of standard minutes and letters	3
Procedures	3
Timing of Royal Assent	3
Part 3—After Assent	4
Part 4—Assent and caretaker periods	4
Part 5—Constitution Alteration Bills	5
Attachment A—Minute to Attorney-General for unamended Bill	6
Attachment B—Minute to Attorney-General for amended Bill	7
Attachment C—Letter to Governor-General for House of Representatives Bill	8
Attachment D—Letter to Governor-General for Senate Bill	9

Part 1—Introduction

1 This Direction details the procedures for obtaining Royal Assent to a Bill after it is passed by both Houses of the Parliament.

Part 2—Before Assent

House distribution of Bills

2 When both Houses of Parliament have passed a Bill, the Presiding Officer in the House in which the Bill originated (the ***originating House***) sends 4 copies of the Bill to the Governor-General and requests Assent to the Bill. Usually, each of the 4 copies of the Bill bears a certificate signed by the Clerk of the originating House that the copy is a fair print of the Bill, that it originated in the House concerned and that it has been passed by both Houses.

3 At the same time, the Presiding Officer sends 2 copies of the Bill to the Attorney-General and informs him or her that the Bill is ready for presentation to the Governor-General and that the Presiding Officer proposes presenting it immediately. The Clerk's certificate is not signed on these copies, but otherwise the Bills are the same as those sent to the Governor-General. The Clerk also sends a copy of the Bill to OPC.

OPC checks

4 The Bill is checked in OPC by the Assent Checker (an assistant drafter). In reliance on the Assent Checker's comments, the legislation area in Corporate Services prepares a minute from First Parliamentary Counsel (or a Second Parliamentary Counsel, if necessary) to the Attorney-General (see paragraphs 5 to 9), and a letter from the Attorney-General to the Governor-General (see paragraphs 10 and 11).

First Parliamentary Counsel's minute to the Attorney-General

5 The Chief General Counsel has given advice (Ref: 2000057885, 6 December 2000) that, before the Governor-General assents to a Bill, the Governor-General must receive advice on whether to reserve the Bill or to suggest amendments. The Chief General Counsel concluded that the Attorney-General, as Minister responsible for the Office of Parliamentary Counsel, is the appropriate person to give that advice.

6 Consistently with that advice, First Parliamentary Counsel (or a Second Parliamentary Counsel) writes to the Attorney-General in the form shown at Attachment A or B to advise the Attorney-General:

- whether the Bill was amended in the Parliament; and
- whether OPC is aware of any amendments that the Attorney-General might wish to inform the Governor-General are amendments that should be recommended by the Governor-General under section 58 of the Constitution.

7 The purpose of a minute in the form of Attachment A (ie for a Bill that has not been amended) is to satisfy the Attorney-General that OPC is not aware of any errors or omissions of a formal kind in the Bill that should be corrected before the Bill is assented to.

8 The purpose of a minute in the form of Attachment B (ie for a Bill that has been amended) is to satisfy the Attorney-General:

- that the amendments make sense, as a matter of form and expression, when read into the text of the Bill; and
- that OPC is not aware of any errors or omissions of a formal kind in the Bill that should be corrected before the Bill is assented to.

9 If there is insufficient time for First Parliamentary Counsel to provide written advice, First Parliamentary Counsel's advice should be given orally to the Attorney-General or a member of the Attorney's office. This is a rare occurrence.

Attorney-General's letter to the Governor-General

10 The OPC minute to the Attorney-General is accompanied by the letter to the Governor-General (for the Attorney-General's signature). The letter is in the form at Attachment C (House of Representatives Bills) or Attachment D (Senate Bills).

11 In addition to the matters addressed in OPC's minute, the letter includes a statement that the Attorney-General is of the opinion that the Governor-General should not reserve the Bill for Her Majesty's pleasure to be made known.

Modification of standard minutes and letters

12 The minute and letter would be modified in the following situations:

- if the Attorney-General were to advise the Governor-General to reserve a Bill for the Queen's assent;
- if the Attorney-General were to advise the Governor-General to recommend amendments under section 58 of the Constitution (see file PC/77/1061 for material relating to previous recommendations for amendments).

Procedures

13 The procedures for delivery and collection of minutes and letters are set out in the Legislation Team Manual.

14 The current Governor-General (and her recent predecessors) have been willing to accept letters from the Attorney-General that have been faxed at some stage during their progress.

15 The Attorney-General's letter to the Governor-General may be emailed to the Attorney-General's Departmental Liaison Officer responsible for OPC. If you need to consider special arrangements to obtain the letter, you should first discuss this with the Attorney-General's staff.

Timing of Royal Assent

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

17 My view is that OPC should do as much as it can to speed up Royal Assent if this is requested by a client (this might include making extra resources available for assent checking, arranging for assent checking to be done out of normal working hours or arranging special courier runs to deliver or collect relevant papers).

18 On the other hand, I am firmly of the view that OPC should not be involved in delaying Royal Assent. The Chief General Counsel has given advice (Ref: 95150809, 22 December 1995, copy on file PC/91/76, Royal Assent Procedures) that 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, 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 Department if appropriate. In such circumstances OPC's procedures should continue and the letter and certificate should be delivered to the Attorney-General's office in the ordinary course of business.

Part 3—After Assent

19 The Governor-General assents by signing 2 copies of the Bill (which are then numbered). One signed copy is sent to the originating House. The other signed copy is sent to OPC. Our Assent copies are kept in the Library (which staff may access).

Part 4—Assent and caretaker periods

20 If an election is to be called shortly after the end of a parliamentary sittings period, there may be Bills that have been passed by both Houses of the Parliament that are still being prepared for Royal Assent. In the past, questions have arisen whether it would be proper for such Bills to be assented to after the House of Representatives is dissolved (in preparation for the issue of the writs for the election).

21 My own view is that it would be improper for such Bills not to receive assent.

22 However, the Department of the Prime Minister and Cabinet's view is that all Bills that have been passed by both Houses of Parliament should be assented to before the House of Representatives is dissolved (*Guidance on Caretaker Conventions* at www.dpmc.gov.au). There does not appear to be any particular constitutional basis for this latter view, and it is not clear what approach would be taken if it happened that a Bill was still awaiting assent when the House was dissolved.

23 Clearly, however, it is preferable to avoid such questions arising, so in such cases OPC will do everything within its power to ensure that all such Bills are assented to before the dissolution of the House.

Part 5—Constitution Alteration Bills

24 Precedents relating to Constitution Alteration Bills are in file PC/77/1268
(*Constitution Alteration (Aboriginals) 1967*).

Peter Quiggin
First Parliamentary Counsel
14 December 2009

Attachment A—Minute to Attorney-General for unamended Bill

Attorney-General

[Short title of unamended Bill]

I understand that the abovementioned Bill has been passed by both Houses of the Parliament without amendment and is to be presented to the Governor-General for Assent.

In my opinion there are no amendments that the Governor-General should recommend.

Peter Quiggin PSM
First Parliamentary Counsel

Attachment B—Minute to Attorney-General for amended Bill

Attorney-General

[Short title of Bill that has been amended]

I understand that the abovementioned Bill has been passed by both Houses of the Parliament and is to be presented to the Governor-General for Assent. The Bill was amended during its passage through the Parliament. The amendments have been read in this Office and checked against the text of the Bill.

In my opinion there are no amendments that the Governor-General should recommend.

Peter Quiggin PSM
First Parliamentary Counsel

Attachment C—Letter to Governor-General for House of Representatives Bill

Your Excellency,

I enclose a copy of a Bill received by me from the Speaker of the House of Representatives entitled—

[Short title of Act]

The Speaker has informed me that the Bill is now ready for presentation to you for the Royal Assent and that he proposes presenting the Bill to you immediately.

In my opinion there are no amendments that you should recommend. I am also of the opinion that you should not reserve the Bill for Her Majesty's pleasure to be made known.

Yours sincerely

[ATTORNEY-GENERAL'S NAME]

Her Excellency the Governor-General
Government House
CANBERRA A.C.T. 2600

Attachment D—Letter to Governor-General for Senate Bill

Your Excellency,

I enclose a copy of a Bill received by me from the President of the Senate entitled—

[Short title of Act]

The President has informed me that the Bill is now ready for presentation to you for the Royal Assent and that he proposes presenting the Bill to you immediately.

In my opinion there are no amendments that you should recommend. I am also of the opinion that you should not reserve the Bill for Her Majesty's pleasure to be made known.

Yours sincerely

[ATTORNEY-GENERAL'S NAME]

Her Excellency the Governor-General
Government House
CANBERRA A.C.T. 2600