



Instrument Drafting Guidance Note No. 1.3

Judging size and complexity for instrument projects

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Purpose of this document

1 The purpose of this document is to assist agencies in judging the anticipated size and complexity of instrument drafting projects:

- when preparing bids for ExCo instruments; and
- when seeking to engage OPC to draft non-ExCo instruments; and
- in working out timeframes for the development of instruments and the provision of initial drafting instructions.

ExCo instruments

2 The anticipated size and complexity of an ExCo instrument must be indicated in the ExCo instrument bid for the instrument (see the bid templates available on OPC's [ExCo instruments page](#)).

Non-ExCo instruments

3 The anticipated size and complexity of a non-ExCo instrument that an agency is seeking to engage OPC to draft should be indicated in the instructions or request for quote for the instrument.

Timeframes

4 Agencies must take the anticipated size and complexity of an instrument into account in planning the timeframe for developing the instrument, and must ensure that initial instructions are provided to OPC in sufficient time to enable OPC and the instructors to complete the instrument by the desired deadline for finalisation or consultation.

5 The greater the complexity involved in an instrument, and the larger it is, the longer it will take to complete. Even small, simple instruments can take at least 6 weeks to be ready for finalisation or consultation. Moderately complex instruments can take at least 4 months to be ready for finalisation or consultation. If the instrument or policy is complex, or the instrument is large, it is likely to take between 6 and 18 months to complete the draft for finalisation or consultation.

Size

6 The following table sets out OPC’s views about what the size categories cover.

Size		
Item	Category	Anticipated number of pages
1	Small	up to 5
2	Medium	6 to 15
3	Large	16 to 50
4	Very large	more than 50

Complexity—factors

7 The following table sets out OPC’s views about the factors that contribute to complexity in instrument drafting projects.

Complexity—factors		
Item	An instrument ...	is likely to be more complex than an instrument ...
<i>For all instruments</i>		
1	that has complex or detailed subject matter	that has short or simple subject matter
2	for which there is no precedent or model (eg an instrument with similar content or approach)	for which there is such a precedent or model
3	with more commencement dates	with fewer commencement dates
4	with more enabling Acts	with fewer enabling Acts
5	with enabling provisions that are hooks for single details (Enabling provisions include: <ul style="list-style-type: none"> • specific instrument-making powers • general instrument-making powers • provisions enlivening the “required or permitted” limb of a general instrument-making power • the “necessary or convenient” limb of a general instrument-making power) 	with enabling provisions that are coathangers for whole schemes
6	being made under an enabling provision that has never been used before	being made under an enabling provision that has been used before
7	for which there is doubt (legal risk) as to whether the enabling provision/s clearly authorise a matter proposed to be dealt with in the instrument	for which there is no such doubt
8	for which any of the matters proposed to be dealt with in the instrument raise constitutional or other legal issues (such as criminal law, regulatory powers, administrative law, human rights, privacy, subdelegation or incorporation by reference)	for which none of the matters raise such issues
9	that has any retrospective commencement or application	that does not
10	being made under legislation that is long, detailed or complex	being made under legislation that is short and simple
11	for which transitional, application or savings provisions are needed for any of the matters or amendments	for which no such provisions are needed
12	that relies or interacts with amendments to enabling legislation	that does not

Complexity—factors		
Item	An instrument ...	is likely to be more complex than an instrument ...
13	for which consultation with, or the agreement of, multiple areas within the instructing agency or any agencies outside the instructing agency, is required	for which no such consultation or agreement is required
14	that deals with controversial matters	that does not
15	that is of greater anticipated size	that is of lesser anticipated size
<i>For new principal instruments</i>		
16	that deals with more matters	that deals with fewer matters
<i>For a new principal instrument that is a repeal and remake</i>		
17	where the instrument being repealed is long, detailed or complex	where the instrument being repealed is short and simple
18	where policy changes are to be made as part of the remake	where no such changes are to be made
<i>For amending instruments</i>		
19	that deals with more measures	that deals with fewer measures
20	that amends more instruments	that amends fewer instruments
21	that amends the same instrument(s) on more than one date	that does not
22	that amends more provisions	that amends fewer provisions
23	that is expected to involve more amending items (eg multiple small amendments of text)	that is expected to involve fewer amending items (eg few amendments inserting big new chunks of text)
24	that requires consequential amendments (within the instruments being amended and to other instruments)	that does not
25	that has amendments that rely on or interact with other amendments to the same instruments or to amendments of other instruments	that does not
26	for which the principal instrument was drafted by OPC	for which the principal instrument was not drafted by OPC

Complexity—examples

8 The following table sets out some examples of simple, moderately complex, complex and very complex instruments.

Complexity—examples		
Item	Category	Examples
1	Simple	Aged Care (Leave from Residential Care Services) (Situation of Emergency—Human Coronavirus with Pandemic Potential) Determination 2020 Aged Care Legislation Amendment (Quality Indicator Program) Principles 2022 Australian Immunisation Register Amendment (Japanese Encephalitis Virus) Rules 2022 Product Stewardship (Oil) Amendment Regulations 2023 Renewable Energy (Electricity) Amendment (Percentages) Regulations 2023
2	Moderately complex	Aged Care Quality and Safety Commission Amendment (Commissioner Functions) Rules 2023 Health Insurance Legislation Amendment (2023 Measures No. 1) Regulations 2023

Complexity—examples		
Item	Category	Examples
		National Greenhouse and Energy Reporting Amendment (2023 Measures No. 1) Regulations 2023 National Health (Pharmaceuticals and Vaccines—Cost Recovery) Amendment (Fees) Regulations 2023 National Health (Supply of Pharmaceutical Benefits—Under Co-payment Data and Claims for Payment) Amendment (General Co-payment) Rules 2022 Renewable Energy (Electricity) Amendment (Native Forest Wood Waste) Regulations 2022
3	Complex	Aged Care Legislation Amendment (Registered Nurses) Principles 2023 Carbon Credits (Carbon Farming Initiative) Amendment (Information Requirements) Rules 2023 Energy Legislation Amendment (Information Requirements) Regulations 2023 Ozone Protection and Synthetic Greenhouse Gas Management Amendment (2023 Measures No. 1) Regulations 2023 Private Health Insurance Legislation Amendment (Prostheses—Repeal and Consequential Amendments) Rules 2023
4	Very complex	Aged Care Legislation Amendment (Improved Home Care Payment Administration) Instrument 2021 Aged Care Legislation Amendment (Residential Aged Care Funding) Instrument 2022 Private Health Insurance (Medical Devices and Human Tissue Products) Rules 2023 Offshore Electricity Infrastructure Regulations 2022 National Greenhouse and Energy Reporting (Safeguard Mechanism) Amendment (Reforms) Rules 2023