

Drafting instructions template (Bills)

Instructing agency:

Instructing agencies must use this template unless otherwise agreed with First Parliamentary Counsel.

Refer to the attachment for additional guidance on how to use this template.

Summary for executive review

Proposed short title	<i>What is the proposed short title of the Bill? Note if it is different to the title used in the bid for the Bill.</i>
Kind of Bill	<input type="checkbox"/> amending Bill <input type="checkbox"/> Bill for a new principal Act <i>An amending Bill repeals or amends one or more existing Acts. A Bill for a new principal Act sets up, or is part of setting up, a new legislative scheme.</i>
Scope of instructions	<p>Are these instructions for a Bill or one or more measures for a Bill?</p> <input type="checkbox"/> Bill <input type="checkbox"/> one or more measures <i>A measure is a particular policy proposal or decision that will generally be included in a Bill with one or more other measures.</i>
Date of issue	<i>Note the date you are issuing the instructions to OPC. If you are reissuing previous instructions, note the date the previous instructions were issued to OPC.</i>
Priority	<i>Note the priority allocated by the Parliamentary Business Committee and which sittings it relates to. If priority has not been allocated, note the priority being sought and for which sittings.</i>
Policy authority	<i>Provide details of the policy authority. Or, note if authority has not been given and the authority being sought. If there have been any departures from the policy authority, provide details of the departures.</i>
Size	<input type="checkbox"/> small <input type="checkbox"/> medium <input type="checkbox"/> large <i>As determined by OPC's Judging size and complexity of Bills.</i>
Complexity	<input type="checkbox"/> low <input type="checkbox"/> moderate <input type="checkbox"/> high <i>As determined by OPC's Judging size and complexity of Bills.</i>
Exposure draft	<p><i>Is an exposure draft required?</i></p> <input type="checkbox"/> yes <input type="checkbox"/> no <p><i>If yes, has appropriate authority to release the exposure draft been obtained?</i></p> <input type="checkbox"/> yes <input type="checkbox"/> no
Timeframes	<p>Proposed week of introduction to Parliament (T and A Bills only):</p> <p>Other critical dates and why:</p> <ul style="list-style-type: none"> • <p><i>Refer to OPC's Timeframes for the development of Bills.</i></p>

Details of instructing team

Lead instructor	Name: Position/level: Branch/division: Email: Phone: Availability (note part-time hours or upcoming leave):
Secondary instructor	Name: Position/level: Branch/division: Email: Phone: Availability (note part-time hours or upcoming leave):
Responsible SES officer	Name: Position/level: Division/group: Email: Phone:

Note: The instructors nominated should be able to explain and discuss the detail of the instructions with the drafter (even if the instructions originate from another area of the agency). If there are both legal and policy instructors, please indicate who the drafter should contact in the first instance. Initial instructions should be cleared at SES level unless otherwise agreed with First Parliamentary Counsel.

Part A. Core matters

The drafter needs to understand the policy objectives of the Bill or measure and why legislation is needed to achieve them. This includes understanding the issue the legislation will address – in a big picture sense and in relation to each element of the proposal.

Please help your drafter by:

- *numbering your paragraphs;*
- *succinctly summarising any background information;*
- *using plain language, explaining any technical terms and using terms from the Act to be amended (where applicable);*
- *including examples and real-life scenarios where applicable;*
- *specifying any precedent provisions or legislative schemes used as a model when developing the instructions;*
- *not providing instructions in the form of pre-written draft legislation (instructions proposing exact words don't give the drafter the necessary information and context to help them understand why particular wording is being suggested);*
- *if the instructions are a reissue of previous instructions, making clear what the differences are between the reissued instructions and the previous instructions.*

Instructions should generally only be sent once they have been settled. If any aspects of your policy are still under consideration or subject to change, these aspects should be clearly identified, including what needs to occur before they will be settled and how long this will take.

Overview

1. **What is the policy problem?** *(e.g., there are an increasing number of dog attacks)*
2. **What is the policy solution?** *(e.g., restrict ownership of dangerous dogs)*
3. **How will the policy solution be achieved?** *(e.g., create a licencing scheme for owning dogs)*
4. **How does the current legislation operate?** *(if applicable)*
Please refer to specific provisions in your response.
5. **How does the current legislation fall short?** *(if applicable)*
Please refer to specific provisions in your response.

Instructions

6. Detailed instructions

This is where you provide detailed instructions, including instructions covering any relevant matters from the checklist in Part D.

Detailed instructions should address what is to be done and why:

- *Who will the new legislation apply to?*
- *When will it apply and what will it apply in relation to? (time, circumstances or conditions)*
- *What must or must not be done?*
- *How will any legal obligations imposed by the new legislation be enforced?*

Identify the provisions to be amended (if applicable).

Note: If the Bill will implement more than one measure, you should provide detailed instructions and consider the checklist for each measure separately. You may choose to provide one general overview or a general overview for each measure, depending on what makes most sense for your project.

It may be helpful to add your own subheadings and group the information relevant to each measure according to topic or theme.

Where individual measures are not closely interlinked or are being progressed separately (e.g. by different instructing teams), you may choose to provide instructions for each measure in separate templates.

7. Consequential amendments

Consider whether consequential amendments of any existing Acts or instruments will be needed, including those administered by other agencies.

Consequential amendments are additional amendments required as a result of the main changes being made. Consequential amendments may range from purely technical changes to substantial changes required by creating or changing concepts or rules, or by abandoning old ones.

As instructors, it is important to conduct a thorough search of all Acts and instruments, so all necessary consequential amendments are identified. This will ensure other legislation is updated to reflect the main changes being made.

To help identify consequential amendments, search the [Federal Register of Legislation](#) or other online databases for references to relevant provisions, concepts or rules. These searches are a good starting point but also consider any consequential amendments that are of a policy or legal nature and cannot be identified by textual searches.

8. Commencement

State when the proposed legislation should commence. Note that different provisions or parts of the proposed legislation can commence at different times. Several factors may need to be considered in deciding what commencement will be appropriate, such as whether:

- *the proposed legislation needs to commence as soon as possible;*
- *the proposed legislation needs to commence at the same time as another piece of legislation or the occurrence of some other event;*

- the policy authority for the proposed legislation requires a specific commencement or start date; and
- a delayed commencement is needed to ensure there is sufficient time to prepare and make any related subordinate legislation, or to ensure that affected persons or entities have sufficient time to understand the proposed legislation once it is enacted.

[OPC's Drafting Direction 1.3 – commencement provisions](#) discusses these considerations in more detail. You may also wish to discuss these considerations with the drafter.

9. Application and transitional matters

What arrangements are needed to transition from the current law to the new law? When do the changes need to apply?

Are there any circumstances where the current law should continue to apply? (e.g., to a process that has begun, but not yet been finalised, or to an offence committed before commencement).

10. Subordinate legislation

Will subordinate legislation need to be drafted as a result of the Bill or will existing subordinate legislation be affected?

New subordinate legislation might be required because the Bill will create a new power to make a legislative instrument.

Existing subordinate legislation might be affected, or new subordinate legislation might be required, because the Bill will amend or remove an existing power to make a legislative instrument.

If the subordinate legislation is to be drafted by OPC, detailed instructions for that legislation will be required separately in due course and may not be progressed by the drafters of the Bill.

11. Related projects (if applicable)

Identify any other Bills or measures that are related to this one. This provides drafters with visibility so they can consult with each other.

Another Bill or measure might be related to your Bill or measure because it will be progressed alongside your Bill or measure in Parliament, make changes consequential to your Bill or measure, or implement another aspect or tranche of the same policy.

Part B. Legal advices

Note any relevant legal advices and attach copies – e.g., from your agency's legal area or the Australian Government Solicitor. OPC will respect the confidentiality of all legal advices provided.

Part C. Consultation with other agencies

It is your responsibility to consult agencies who have whole-of-government responsibility for a matter your Bill or measure deals with or who administer the legislation being amended, particularly if they might have their own views on policy matters dealt with in the Bill. For instance, you should consult Finance at an early stage if you wish to create a new standing appropriation, special account or statutory body.

OPC will refer drafts to other agencies in accordance with [Drafting Direction 4.2](#) (see Attachments A and B of that direction for a detailed list of referrals), but this is generally done towards the end of a project and should not be viewed as a substitute for instructor consultation at an early stage.

If further guidance is needed, refer to [OPC's drafting services: a guide for clients](#) and Drafting Direction 4.2.

Part D. Checklist

This checklist is a prompt for you to check whether the detailed instructions provided above cover the relevant matters. You must consider each item below. If the item is relevant, you must check the box and provide details in the instructions at point 6 above. Refer to the Attachment for further guidance on each item.

Check the box if this item is relevant, and details are provided in the instructions:

- Binding the Crown**
- Application in external territories and outside Australia**
- Compliance with obligations**
- Review of administrative decisions**
- Statutory bodies and offices**
- Appropriations, spending and contracting**
- Automated decision-making**
- Powers to make instruments**
- Delegation**

Submitting this template

When this template has been completed, email it in Word format to instructions@opc.gov.au with [the appropriate security markings](#).

Attachment: Guidance on this template

About this template

This template has been designed to help instructors from Australian Public Service agencies provide OPC drafters with the information needed to produce clear and legally effective legislation.

As instructors, you are the subject matter experts and the experts in your portfolio's legislation. As drafters, we need you to provide us with all relevant information. We're especially interested in understanding the policy – its objectives, rationale and impact on existing legislation – what changes are required and why?

The instructing and drafting process is very much a team effort. It is also iterative, so your drafter will most likely reach out to you with questions.

Completing this template

To help you complete this template, explanatory text is provided below.

Further information is available in [OPC's drafting services: a guide for clients](#). You can also phone the OPC adviser for your agency – refer to the [OPC website](#) for contact details.

Guidance on specific questions

Proposed short title

What is the proposed short title of the Bill? Note if it is different to the title used in the bid for the Bill. A short title should be as informative as possible (within reason) and avoid potential confusion with other Bill titles. Numbered titles (e.g., Migration Legislation Amendments (No. 3) Bill 2049) should be avoided when possible. Information on how to construct short titles can be found in Drafting Direction 1.1. Your OPC drafter can also advise on a suitable short title.

Scope of instructions

Note if these instructions are for the whole of a Bill or for one or more measures for a Bill. A measure is a particular policy proposal or decision (e.g. a policy decision to create a licencing scheme for owning dogs). Generally, a measure will be an overarching policy decision under which there will be several more detailed policy decisions (e.g. which breeds of dog will be subject to the licencing regime).

A measure will generally be included in a Bill with one or more other measures (sometimes referred to as an omnibus Bill). Some agencies instruct on measures in a Bill together, while some instruct on individual measures and combine them into a single (omnibus) Bill before introduction. OPC can work with either approach, but it is useful to know up-front what the instructions cover.

Date of issue

Note the date you are issuing the instructions to OPC. If you are reissuing previous instructions, also note the date the previous instructions were issued to OPC and briefly state the effect of any changes that have been made since the instructions were previously issued. Any changes should also be clearly outlined in the reissued instructions (including at Part A as applicable) to help ensure the drafter understands what has changed.

Priority

Note the priority allocated by the Parliamentary Business Committee and which sittings it relates to. If different priorities have been assigned for different sittings, please include each one. If priority has not been allocated, state the priority being sought and for which sittings. For further information on

priority, see Chapter 2 of PMC's [Legislation Handbook](#).

Policy authority

Provide details of the policy authority – e.g., number and date of Cabinet Minute or name and title of the person who gave the authority, along with the date on which the authority was given. Attach copies of relevant letters seeking and giving authority.

Note that a Cabinet Minute number ending in /ERC will need to be endorsed by another Cabinet Minute (generally ending in /CAB or /NSC). Please provide the details of all relevant Cabinet Minutes.

Note if authority has not been given and the authority being sought.

If there have been any departures from the policy authority, provide details of the departures.

For further information on policy authority, see Chapter 3 of PMC's [Legislation Handbook](#).

Size

Very few Bills or measures are actually small. The size of the project may be larger than you realise.

Refer to OPC's [Judging size and complexity of Bills](#).

Please note that First Parliamentary Counsel reviews all instructions before allocating them to an appropriate drafter. It is important to accurately assess the size of your project so that OPC can deal with the instructions appropriately.

Complexity

Very few Bills or measures are actually simple. The project may be more complex than you realise.

Refer to OPC's [Judging size and complexity of Bills](#).

Please note that First Parliamentary Counsel reviews all instructions before allocating them to an appropriate drafter. It is important to accurately assess the complexity of your project so that OPC can deal with the instructions appropriately.

The common causes of complex legislation, and ways in which this can be addressed, are provided in [OPC's Guide to Reducing Complexity in Legislation](#).

Exposure draft

Producing exposure draft legislation generally takes the same amount of time as producing final legislation.

If an exposure draft is to be released, in planning your legislative project, you will also need to consider the time needed to consult on an exposure draft and address any feedback. This includes the time needed to obtain appropriate authorisation to release the exposure draft and the time needed for OPC to draft any changes following consultation.

Timeframes

Include all critical dates, including interim ones. For a T or A Bill, include the proposed week of introduction to Parliament. Other critical dates may include internal deadlines in your agency, such as for Ministerial approval. If further guidance is needed, refer to OPC's [Timeframes for the development of Bills](#).

Also note that the ability to meet deadlines will depend on when drafting resources are allocated. This will depend on when drafting instructions are issued, the priority allocated to the Bill and other

whole-of-government priorities.

Details of instructing team

As the key policy and/or legal instructors from your agency, provide your contact details, including availability.

In addition to being able to explain and discuss the detail of the instructions with the drafter, the instructors will need to be able to check whether drafts meet the agency's requirements and fulfil the policy intent. The lead instructor need not be the person with the highest level on the project.

Core matters

If further guidance is needed, refer to [OPC's drafting services: a guide for clients](#).

About each question in the checklist

Binding the Crown

Will the Bill bind the Commonwealth, State and Territory governments? Will any penalties in the Bill apply to Commonwealth, State and Territory governments? How should the Bill apply to other Commonwealth bodies like Commonwealth bodies corporate or statutory bodies that are separate from the Crown? See also [Part 1 of OPC's Drafting Direction 3.10](#) which discusses binding the Crown.

Application in external territories and outside Australia

Will the Bill apply in any of the external territories (see also [Part 3 of OPC's Drafting Direction 3.10](#))? Will the Bill have any application to persons or matters occurring outside Australia and the external territories (see also [Part 6 of OPC's Drafting Direction 3.5](#))?

Compliance with obligations

If the Bill will impose obligations, what will the consequences of non-compliance be?

What powers (if any) will be needed to monitor and enforce compliance with obligations?

Information about regulatory powers is available in [OPC's Drafting Direction 3.5A – regulatory powers](#).

Information is also available in [AGD's Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers](#).

Review of administrative decisions

If the Bill will confer a power to make administrative decisions, should merits review, judicial review or both be available?

Merits review should generally be made available where a decision will or could detrimentally affect the rights and interests of individuals.

Judicial review will generally be available unless an express exemption applies.

If a decision will be discretionary, consider whether to include criteria to guide the decision-maker in the exercise of the power.

Information about different kinds of review, and other issues to consider when creating a new decision-making power, is available in the [Australian Administrative Law Policy Guide](#).

Statutory bodies and offices

Are you establishing a new Commonwealth body or amending legislation that establishes a Commonwealth body? If so, what arrangements will apply to the new body – e.g., functions, composition, remuneration for any office holders?

Information about these arrangements is available in [OPC's Drafting Direction 3.6 – Commonwealth bodies](#).

Appropriations, spending and contracting

Will the Bill involve expenditure by the Commonwealth?

Will the expenditure be budget-funded or will it be covered by a standing appropriation? (The Department of Finance must be consulted about any proposed new standing appropriations.)

Will the Bill need to specifically authorise spending and contracting?

Automated decision-making

Will automated decision-making be used under the proposed legislation? If so, this will need to be expressly authorised in the legislation.

Only certain kinds of decisions are suitable for automated decision-making – i.e., ones that do not involve discretion or the application of subjective criteria.

Please consult AGD at an early stage if you propose to include automated decision-making.

Powers to make instruments

If the Bill will confer power to make an instrument, several issues need to be addressed in the instructions. Refer to [OPC's drafting services: a guide for clients](#).

Information about when it is appropriate to use subordinate legislation, and when matters should instead be dealt with in the Bill itself, is available in the [Legislation Handbook](#).

Information about subordinate legislation is available in [OPC's Drafting Direction 3.8 – subordinate legislation](#).

Delegation

If the Bill will confer functions or powers on a person or body, should they be able to delegate those functions or powers, and if so, to whom?

The range of functions or powers to be delegated, and the class of persons to whom they may be delegated, should be specified and as limited as practicable.

Note that the Senate Scrutiny of Bills Committee generally prefers delegation to be confined to specified office holders or members of the SES.