



Instrument Drafting Guidance Note No. 1.4

Timeframes for the development of instruments

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Purpose of this document

- 1 The purpose of this document is to assist agencies to plan for the development of instruments.
- 2 Attachment A sets out OPC’s advice about the estimated timeframes for the development of instruments based on their characteristics. It also sets out the factors that will result in a longer timeframe being needed and the risks of developing instruments within a compressed timeframe.
- 3 Agencies should contact the OPC instrument client adviser on (02) 6120 1390 if they would like to discuss the timeframe for the development of a particular instrument.

Timeframes for the development of instruments

Estimated timeframe	Characteristics	What the estimated timeframe does and does not allow for	Other factors that will result in a longer timeframe being needed	Urgent instruments
3 to 8 weeks	<ul style="list-style-type: none">• small size (up to 5 pages)• low complexity - for example:<ul style="list-style-type: none">▪ requires a small number of provisions to be drafted/amended▪ easy to identify what provisions/amendments are needed (some analysis or research may be required)▪ involves applying well-established or often used drafting precedents or practices• only 1 to 3 drafts required to finalise the instrument	<p>The estimated timeframe for the development of an instrument starts when drafting instructions are received by OPC.</p> <p>It allows for:</p> <ul style="list-style-type: none">• drafting of the instrument (for more information, see OPC's drafting services: a guide for clients)• clarification and refinement of the policy objectives by the instructing agency• the instructing agency's capacity to respond to drafts and to issue additional instructions as required• referral of provisions to other agencies for consideration (allow at least 7 business days) (for more information about the referral requirements, see Drafting Direction 4.2)• editorial checking (allow 1 business day for small instruments, 3-5 business days for medium instruments and 5-10 business days for large)• preparation of instrument for signature by maker (allow 2 business days)	<p>There are many other factors that can affect the estimated timeframe for the development of an instrument. In many cases, these factors will result in a longer timeframe being needed.</p> <p>These factors include:</p> <ul style="list-style-type: none">• an exposure draft process• consultation requirements for the instrument (whether internal or external)• requiring legal advice• competing legislative priorities and workloads for OPC and the instructing agency• how clear and well-developed the drafting instructions are (for more information about instructions, see OPC's drafting services: a guide for clients)• how clear and well developed the policy objectives are• changes in the policy objectives or approach once drafting has started• the instructing agency's timeliness in responding to drafts and issuing additional instructions as required• the need for substantial consequential amendments• the need for substantial transitional, application and saving provisions	<p>If the instrument is urgent, OPC can work with you to ensure it is developed within the required timeframe.</p> <p>However, the overall quality of the instrument may be impacted by a compressed timeframe because of the following:</p> <ul style="list-style-type: none">• reduced capacity to identify the best legislative solution and to identify and solve problems, gaps or other issues• reduced capacity to identify policy, legal or implementation issues, to seek legal advice and to consult others• reduced capacity to complete drafting and editorial checks <p>The following are some of the risks that come with developing an instrument in a compressed timeframe:</p> <ul style="list-style-type: none">• increased likelihood of unintended consequences or ineffective provisions• increased likelihood of amendments being needed in the future• increased likelihood of adverse comments from the Senate Standing Committee for the Scrutiny of Delegated Legislation, stakeholders and others• increased risk of disallowance in some cases
3 to 6 months	<ul style="list-style-type: none">• medium size (6 to 50 pages)• moderate complexity - for example:<ul style="list-style-type: none">▪ requires a reasonable number of provisions to be drafted/amended <u>or</u> a smaller number of complex provisions to be drafted/amended▪ requires a reasonable amount of analysis or research to identify what provisions/amendments are needed▪ involves a degree of original or novel drafting or the careful application of drafting precedents and practices▪ raises some constitutional or legal issues and/or some political or other sensitivities• a reasonable amount of work may be required to clarify the policy objectives• may require 12 to 15 drafts to finalise the instrument	<p>The estimated timeframe does <u>not</u> allow for:</p> <ul style="list-style-type: none">• the time needed for an exposure draft process or other consultation requirements (whether internal or external)• the time needed to obtain agency or Ministerial clearances• the time needed for any other factors mentioned in the next column <p>For more information about judging the size and complexity of an instrument, see Instrument Drafting Guidance Note 1.3.</p>		
6 to 18 months	<ul style="list-style-type: none">• large size (more than 50 pages)• high complexity - for example:<ul style="list-style-type: none">▪ requires a large number of provisions to be drafted/amended <u>or</u> a smaller number of highly complex provisions to be drafted/amended▪ requires a significant amount of analysis or research to identify appropriate legislative solution▪ involves a high degree of original or novel drafting or the careful application of drafting precedents and practices▪ raises significant constitutional or legal issues and/or significant political or other sensitivities• significant amount of work may be required to clarify the policy objectives• may require 15 or more drafts to finalise the instrument			<div><p>NOTE</p><p>If an instrument has characteristics from more than one of the estimated timeframe categories, the category with the longest timeframe will apply.</p><p>For example, if an instrument is 6 to 50 pages long (at least 3 to 6 months timeframe) but raises significant legal issues (6 to 18 months timeframe) the longer 6 to 18 months timeframe will apply.</p></div>