



Instructor Guidance Note— Bills prioritisation and policy authority

1 This Instructor Guidance Note gives an overview of the procedures involved in determining the Government’s legislative priorities for Bills.

2 It also outlines the policy authority requirements for Bills, including for exposure drafts of Bills.

Priority process for Bills

3 The Government’s legislative priorities are formally determined by the Parliamentary Business Committee of the Cabinet (**PBC**).

4 At the end of each parliamentary sitting period, Ministers are asked to advise the Prime Minister of their legislation requirements for the next sitting period. The PBC considers Ministers’ requests and approves a legislation program for the next sitting period. The legislation program establishes the relative priority of government Bills.

5 When PBC adds a Bill to the legislation program, it decides the priority category that is given to the Bill. The priority category is relevant to the allocation of drafting resources and parliamentary time.

6 The PBC may also agree to vary the legislation program on request from a Minister.

Item	Priority category	Purpose
1	Category T	For time-critical Bills which require introduction and passage in the same sitting period. A category T Bill must be ready for introduction: (a) in the case of the Autumn or Winter sittings—in one of the first 2 sitting weeks; or (b) in the case of the Spring sittings—in one of the first 4 sitting weeks.
2	Category A	For Bills with a high priority for: (a) introduction in the next sitting period; and (b) passage in a later sitting.
3	Category A— drafting only	For Bills with a high priority for: (a) drafting in the next sitting period; and (b) introduction and passage in a later sitting.

Item	Priority category	Purpose
4	Category B	For Bills with a medium priority for: (a) introduction in the next sitting period; and (b) passage in a later sitting.
5	Category B— drafting only	For Bills with a medium priority for: (a) drafting in the next sitting period; and (b) introduction and passage in a later sitting.
6	Category C	For Bills with a lower priority for: (a) introduction in the next sitting period; and (b) passage in a later sitting.

7 To advise the PBC of their legislation requirements, Ministers have to submit a bid for each Bill they want included in the legislation program, and propose a priority category. Within each portfolio, the bidding process is usually coordinated by a Legislation Liaison Officer (**LLO**). Further information is set out in the [Legislation Handbook](#).

Variations to the legislation program

8 If a Minister wants to change the priority determined for a particular Bill, or to add new Bills to the program with a particular priority, the Minister needs to seek a variation to the program by letter to the Prime Minister. The Minister will also need to seek a variation to add new measures to a Bill already on the program.

9 Requests for variations are considered by PBC. Generally, variations are only granted in urgent or unforeseen circumstances.

10 Your LLO can provide more information about the procedures for seeking a variation. Advice on variations to the program can also be obtained from the Legislation Section in PM&C.

Priority for later sittings

11 Sometimes a Bill does not end up being introduced into Parliament in the sittings for which it has been given a priority. If this happens, and it is proposed instead to introduce the Bill in a later sittings, the Minister will need to bid for the Bill for that later sittings. The previously allocated priority does not carry over to the later sittings.

Policy authority for Bills

12 Every measure in a Bill must have policy authority at the appropriate level before the Bill can be introduced.

13 There are 4 types of policy authority for Bills:

Item	Policy authority	Type of measure
1	Cabinet	Cabinet authority is required for measures with significant policy implications.
2	Prime Minister	The Prime Minister may authorise measures with minor policy significance.
3	Responsible Minister	The Minister responsible for a particular Act may authorise technical amendments to the Act that are within the existing policy of the Act.
4	First Parliamentary Counsel (FPC)	FPC may authorise technical corrections to an Act of a kind that would be suitable for a Statute Law Revision Bill.

14 The majority of measures in a Bill will have policy authority given by the Cabinet, the Prime Minister, or both.

15 Instructors have a responsibility to:

- (a) consult PM&C to determine the appropriate level of policy authority required; and
- (b) arrange for the required policy authority to be obtained (except in the case of FPC approval, which is obtained by the drafter of the Bill).

16 As drafting progresses, instructors must monitor whether all measures in a Bill are supported by policy authority and discuss any issues with OPC. New policy issues tend to arise during the drafting process. As a result, instructors will generally need to seek further policy authority before a Bill can be introduced.

17 In rare circumstances, OPC may advise instructors to get express policy authority for a measure that appears to be covered by existing policy authority. OPC may give this advice if:

- (a) the legislative method chosen to implement the measure may be controversial or expose the Government to criticism; and
- (b) that legislative method, or its political consequences, would not have been contemplated when the original policy authority was given.

Instructor Guidance Note—Bills prioritisation and policy authority

18 Usually, further policy authority is sought by the responsible Minister writing to the Prime Minister. Instructors are encouraged to share any draft letters with OPC before they are finalised. Doing this will ensure that both drafters and instructors are satisfied that the content of the letter is adequate.

19 Having reviewed a lot of policy authority letters over the years, the following is a list of observations and tips from OPC which might be helpful in preparing a policy authority letter:

- (a) provide a strong general explanation of the reasons for the Bill and the changes proposed to be introduced;
- (b) do not include too much detail. If too much detail is included, it is much more likely that something will change and another letter will be needed to clarify the policy authority;
- (c) explain that it may be necessary to make other minor consequential changes to the relevant legislation (and perhaps to other related legislation) to implement the proposal;
- (d) include some information about when the Bill will commence. If unusual commencement, application or transitional provisions will be required, provide some information about these provisions;
- (e) if the Bill needs to be publicly exposed and there is not already earlier policy authority from the Prime Minister or the Cabinet for this, obtain specific permission for the public exposure of the Bill.

Exposure drafts

20 Generally, a Bill is required to have the following approvals before being released as an exposure draft (either for general public exposure or for any more limited release to any entity that is not a Commonwealth agency):

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

21 If in doubt, instructors should contact the Legislation Section of PM&C about the approvals that are needed.

22 The Legislation Approval Process does not apply at the exposure draft stage, but the drafters will generally seek an assurance from the instructors that the approval and authority mentioned in paragraph 20 have been obtained.

Expiry of policy authority

23 Once a Bill is introduced in reliance on particular policy authority, that authority is generally regarded as expired (or spent). Generally, any later changes to the Bill,

Instructor Guidance Note—Bills prioritisation and policy authority

whether by way of parliamentary amendments or revision before reintroduction, will require further authority, even if those later changes could have been adopted under the original authority.

24 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. But if the same political party or parties form a government after an election, policy authorities that were current immediately before the election will generally be treated as having survived the election.

More information

- *Legislation Handbook* available on the Department of the Prime Minister and Cabinet website
- *Drafting Direction 4.6—Legislation Approval Process*

The purpose of Instructor Guidance Notes is to assist agencies with general legislative drafting issues and preparing drafting instructions for Bills and instruments. The series is intended to be a starting point for instructors' own engagement with the matters covered. Instructor Guidance Notes are not statements of official policy and are not intended to be a comprehensive statement of the law. This Instructor Guidance Note should not be relied on as a substitute for legal advice.