



Instructor Guidance Note — Explanatory memorandums, explanatory statements and other supporting documents

1 Each Bill must have an explanatory memorandum. Each legislative instrument must have an explanatory statement. These are sometimes referred to as an EM or ES. They are companion documents to the Bill or instrument. Their main purpose is to help people to understand the objectives and detailed operation of a Bill or instrument. They can be considered by a court in interpreting the Bill or instrument.

Instructing agency's responsibility

2 The instructing agency is responsible for preparing the explanatory memorandum or explanatory statement.

3 The process of preparing the explanatory memorandum or explanatory statement may reveal flaws or weaknesses in policy proposals, or errors in the draft legislation. It is therefore a good idea for the instructing agency to start preparing this document early in the drafting process.

4 Information and guidance relating to the timing, form and content of explanatory memorandums for Bills is available from the following sources:

- the Legislation Handbook (available on the website of the Department of the Prime Minister and Cabinet (**PM&C**));
- guidelines published by the Senate Standing Committee for the Scrutiny of Bills (available on the Committee's website).

5 For parliamentary amendments of a Bill, there should be a supplementary explanatory memorandum. Similar considerations apply as for an explanatory memorandum.

6 Before a Bill can be introduced or parliamentary amendments moved, the instructing agency will need to submit the explanatory memorandum to PM&C as part of the Legislation Approval Process.

7 For explanatory memorandums for Bills and parliamentary amendments, instructing agencies are responsible for arranging for printing and delivery to Parliament.

8 Information and guidance relating to the timing, form and content of explanatory statements for instruments is available from the following sources:

- section 15J of the *Legislation Act 2003* (available at www.legislation.gov.au);
- the Federal Executive Council Handbook (available on PM&C's website);
- the Instruments Handbook (available on OPC's website);
- guidelines published by the Senate Standing Committee for the Scrutiny of Delegated Legislation (available on the Committee's website).

9 Instructing agencies are required to lodge explanatory statements for legislative instruments with OPC (see section 15G of the *Legislation Act 2003*).

OPC's role

10 OPC is not involved in preparing, reviewing or settling explanatory memorandums or explanatory statements.

11 The content of the explanatory memorandum or explanatory statement is the responsibility of the instructing agency. However, legislative drafters assist by including notes in draft legislation identifying particular matters that should be explained in the explanatory memorandum or explanatory statement, particularly on matters of possible concern to the Senate Standing Committee for the Scrutiny of Bills or the Senate Standing Committee for the Scrutiny of Delegated Legislation. These notes will be retained until a near final version of the draft legislation, and will be removed before the Bill is introduced or the instrument is signed.

Statements of compatibility with human rights

12 The *Human Rights (Parliamentary Scrutiny) Act 2011* requires a statement of compatibility to accompany all Bills when they are introduced into Parliament (this is usually done by incorporating the statement into the explanatory memorandum for the Bill), and to be included in the explanatory statement for all disallowable legislative instruments. A statement of compatibility is an assessment of whether the Bill or instrument is compatible with Australia's human rights obligations under 7 core international human rights treaties to which Australia is a party.

13 The instructing agency is responsible for preparing the statement of compatibility. OPC is not involved in preparing, reviewing or settling it.

14 Information and guidance relating to statements of compatibility with human rights is available from the following sources:

- tools for assessing compatibility with human rights provided by the Attorney-General's Department (available on the Department's website);

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- material issued by the Parliamentary Joint Committee on Human Rights (available on the Committee’s website).

Other documents

15 Various other documents are required to be prepared in relation to Bills (and parliamentary amendments), and Executive Council instruments. For more information, see the following documents (available on PM&C’s website):

- (a) for Bills—the Legislation Handbook;
- (b) for Executive Council instruments—the Federal Executive Council Handbook.

16 If, after looking at the material in the relevant Handbook, instructors still have questions about these requirements, the Legislation Section in PM&C may be consulted about the requirements for Bills, and the Executive Council Secretariat in PM&C may be consulted about the requirements for instruments.

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.