



Instructor Guidance Note— My Bill has passed, what happens next?

- 1 After a Bill has passed both Houses of Parliament, there are a few steps before the Bill becomes law.
- 2 First, the Bill is presented to the Governor-General for Royal Assent. This is done by the Presiding Officer of the House in which the Bill originated. Only after a Bill receives Royal Assent does it become an Act of Parliament.
- 3 After receiving Royal Assent, an Act will commence in accordance with its commencement section (see *Instructor Guidance Note—Commencement provisions* for further details).
- 4 If an Act authorises making instruments or appointments, the instructing agency will need to arrange for these to be made. Instruments and appointments can be made any time after an Act is given Royal Assent (see section 4 of the *Acts Interpretation Act 1901*). However, such instruments and appointments cannot commence any earlier than the commencement of the Act.
- 5 OPC will ensure that new Acts and compilations of any amended Acts are registered on the Federal Register of Legislation (**FRL**) after Royal Assent.

Royal Assent

- 6 Royal Assent is the process by which the Governor-General, in the name of the Sovereign, assents to a Bill that has passed both Houses of Parliament. Royal Assent is required by section 58 of the Constitution.
- 7 Instructing agencies should factor the time taken to obtain Royal Assent into their project planning. After passage, a Bill is reprinted and a check and certification of the reprinted Bill is made by officers of the House in which the Bill originated, and by OPC. This process takes time, particularly if the Bill has been amended by the second House.
- 8 Obtaining Royal Assent can take up to 10 business days after a Bill is passed by both Houses. During this time, the House in which the Bill was introduced sends “Assent copies” of the Bill to the Governor-General, the Attorney-General and OPC.

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9 After receiving the Assent copy of the Bill from the House, OPC checks various aspects of the Bill (for example, whether amendments made in Parliament have been correctly incorporated), and prepares a certificate for the Attorney-General's signature. The certificate advises the Governor-General that, for the purposes of section 58 of the Constitution:

- there are no amendments of the Bill that the Governor-General should recommend to Parliament; and
- there is no reason for the Governor-General to reserve the law for the Sovereign's pleasure.

10 Once the Governor-General has an Assent copy of the Bill and the Attorney-General's certificate, the Governor-General considers whether to give Royal Assent to the Bill.

11 The Governor-General is not required to give Royal Assent—it is a matter for the Governor-General's discretion. Instead of giving Royal Assent, the Governor-General may, under section 58 of the Constitution:

- withhold assent; or
- reserve the law for the Sovereign's pleasure; or
- recommend amendments to Parliament.

12 In practice, the Governor-General usually acts on the advice in the Attorney-General's certificate and gives Royal Assent to the Bill.

Urgent assent

13 If a Bill requires Royal Assent earlier than 10 business days after passage, the instructing agency should contact the Parliamentary Affairs and Legislation Section in the Department of the Prime Minister and Cabinet (**PM&C**) as early as possible and before the Bill has passed Parliament. If PM&C agrees that urgent Royal Assent is needed for a Bill, they will advise OPC. Once advised, OPC will coordinate an expedited Royal Assent process for the Bill.

14 Even with an expedited Royal Assent process, OPC cannot guarantee that a Bill will receive Royal Assent by a specific day. OPC will make all efforts to meet urgent Royal Assent deadlines, but it does not control when Assent copies of Bills are finalised by the relevant House, or the availability of the Attorney-General or the Governor-General. The earlier an instructing agency advises PM&C that the Bill requires urgent Royal Assent, the more likely that the requested deadline will be met.

Delayed assent

15 There are limited situations where it may be appropriate for Royal Assent to be delayed. If so, the appropriate mechanism to delay Royal Assent is for the Attorney-General to delay providing the Attorney-General's certificate for the Bill to the Governor-General.

16 Any request for delayed Royal Assent should be made to PM&C, who can refer the request to the Attorney-General's office if it is appropriate to do so. Requests should not be made directly to the Attorney-General's Office. OPC recommends that legal advice is sought before any attempt to delay Royal Assent.

17 OPC will not intentionally delay the process for obtaining Royal Assent at the request of an instructing agency.

Royal Assent and ExCo

18 The Governor-General may give Royal Assent to a Bill at any time after receiving the Bill from Parliament. The Governor-General does not need to wait for a meeting of the Federal Executive Council (**ExCo**). In giving Royal Assent, the Governor-General is exercising a discretion under section 58 of the Constitution which does not require the advice of ExCo as a precondition to its exercise.

19 If a Bill includes an instrument-making power, the Bill must receive Royal Assent before instruments can be made under the Bill. If the instruments are to be made by the Governor-General in ExCo, Royal Assent must be given to the Bill before the ExCo meeting.

20 Provided Royal Assent is expected to be given to a Bill before an ExCo meeting, the draft and final documents for any subordinate instruments to be made at ExCo meeting can be provided to the ExCo Secretariat before Royal Assent is given. If Royal Assent is not given before the meeting, the instructing agency should advise the ExCo Secretariat so the instruments can be removed from the program.

Royal Assent and commencement

21 After an Act receives Royal Assent, it can commence in accordance with its commencement section (see *Instructor Guidance Note—Commencement provisions* for more information). If the commencement section requires further action to be taken in order for commencement to occur (for example, the making of a Proclamation), it is the instructing agency's responsibility to arrange this. If a commencement Proclamation is needed, the agency will need to prepare drafting instructions and send them to OPC.

22 When instructing on a Bill, agencies should keep in mind that they cannot control the day or time of Royal Assent. If there is a need to control the time of commencement, agencies should consider instructing for commencement by Proclamation.

Registration on the Federal Register of Legislation

23 All Acts must be registered on the FRL as soon as practicable after they have received the Royal Assent.

24 If the new Act amended any other Acts, a compilation of the amended Acts must also be prepared and registered on FRL.

25 First Parliamentary Counsel is responsible for registering Acts and for the preparation and registration of compilations. No action is required by the instructing agency.

26 OPC prepares compilations of Acts without charge to agencies. However, agencies whose Acts (including subsequent compilations) are registered on the FRL are liable to pay fees to OPC to recover the cost of operating the FRL. These fees are separate from any amount charged by OPC for the drafting of an instrument or the preparation of a compilation.

More information

- *Legislation Handbook*, available from PM&C's website
- *Federal Executive Council Handbook*, available from PM&C's website

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.