

PARLIAMENTARY COUNSEL

Drafting Direction No. 4.10 Presentation of Bills for Royal Assent

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Part 1—Introduction

1 This Direction details the procedures for obtaining Royal Assent to a Bill after it is passed by both Houses of the Parliament.

Part 2—Before Assent

House distribution of Bills

2 When both Houses of Parliament have passed a Bill, the Presiding Officer in the House in which the Bill originated (the *originating House*) sends 5 copies of the Bill to the Governor-General and requests Assent to the Bill. Usually, 2 of those copies are signed by the Clerk of the originating House to certify that the Bill originated in the House concerned and that it has been passed by both Houses.

3 At the same time, the Presiding Officer sends 2 copies of the Bill to the Attorney-General and informs him or her that the Bill is ready for presentation to the Governor-General and that the Presiding Officer proposes presenting it immediately. The Clerk's certificate is not signed on these copies, but otherwise the Bills are the same as those sent to the Governor-General. The Clerk also sends a number of copies of the Bill to OPC at the same time.

OPC checks

4 The Bill is checked in OPC by the Assent Checker (an assistant drafter). In reliance on the completed checklist prepared by the Assent Checker, the Assent Checker or an editorial officer prepares a minute from First Parliamentary Counsel to the Attorney-General (see paragraphs 5 to 9), and a letter from the Attorney-General to the Governor-General (see paragraphs 10 and 11). If First Parliamentary Counsel is not available to sign the minute, it may be signed by a Second Parliamentary Counsel on First Parliamentary Counsel's behalf.

First Parliamentary Counsel's minute to the Attorney-General

5 Before the Governor-General Assents to a Bill, the Governor-General receives advice on whether to reserve the Bill or to suggest amendments. The Attorney-General, as Minister responsible for the Office of Parliamentary Counsel, is the appropriate person to give that advice.

6 First Parliamentary Counsel (or a Second Parliamentary Counsel) writes to the Attorney-General in the form shown at Attachment A or B to advise the Attorney-General:

- whether the Bill was amended in the Parliament; and
- whether OPC is aware of any amendments that the Attorney-General might wish to inform the Governor-General are amendments that should be recommended by the Governor-General under section 58 of the Constitution.

7 The purpose of a minute in the form of Attachment A (i.e. for a Bill that has not been amended) is to satisfy the Attorney-General that OPC is not aware of any errors or omissions of a formal kind in the Bill that should be corrected before the Bill is Assented to.

8 The purpose of a minute in the form of Attachment B (i.e. for a Bill that has been amended) is to satisfy the Attorney-General:

- that the amendments have been correctly incorporated into the text of the Bill and that the amendments make sense, as a matter of form and expression, when read into the text of the Bill; and
- that OPC is not aware of any errors or omissions of a formal kind in the Bill that should be corrected before the Bill is Assented to.

9 If there is insufficient time for First Parliamentary Counsel to provide written advice, First Parliamentary Counsel's advice should be given orally to the Attorney-General or a member of the Attorney's office. This is a rare occurrence.

Attorney-General's letter to the Governor-General

10 The OPC minute to the Attorney-General is accompanied by the letter to the Governor-General (for the Attorney-General's signature). The letter is in the form at Attachment C (House of Representatives Bills) or Attachment D (Senate Bills).

11 In addition to the matters addressed in OPC's minute, the letter includes a statement that the Attorney-General is of the opinion that the Governor-General should not reserve the Bill for the Sovereign's pleasure to be made known.

Modification of standard minutes and letters

12 The minute and letter would be modified in the following situations:

- if the Attorney-General were to advise the Governor-General to reserve a Bill for the Sovereign's pleasure to be made known;
- if the Attorney-General were to advise the Governor-General to recommend amendments under section 58 of the Constitution (see file PC/77/1061 for material relating to previous recommendations for amendments).

Procedures

13 Minutes and letters are emailed directly to the Attorney-General's office. The Attorney-General's staff member responsible for receiving these minutes changes regularly, though the editorial officer with responsibility for handling the Assents process will have up to date contact details.

14 Once the Attorney-General has signed the letter the original is scanned and emailed to OPC. OPC is then responsible for forwarding the scanned version of the letter to Government House and organising the collection of the original signed copy from the Attorney-General's office and its delivery to Government House.

Timing of Royal Assent

15 From time to time Departments or their Ministers request that the Assent procedures be hurried up or delayed by OPC. Other than in exceptional circumstances, requests for

urgent Royal Assent must be raised with Legislation Section in the Department of Prime Minister and Cabinet in the first instance.

16 Where Legislation Section have advised that Royal Assent is required urgently, OPC will do as much as it can to speed up Royal Assent (this might include making extra resources available for Assent checking, arranging for Assent checking to be done out of normal working hours or arranging special courier runs to deliver or collect relevant papers).

17 Delaying Assent procedures is problematic for a variety of reasons, including that:

- (a) although OPC, the relevant House of Parliament and staff at Government House can endeavour to meet these requests, a guarantee that Royal Assent will occur on a particular date can never be given because of factors including the time needed to complete the necessary paperwork, and the Governor-General's availability;
- (b) it would be inappropriate to assume that the Government can direct the Governor-General to give Assent on a particular day; and
- (c) actively ensuring that a Bill does not get Royal Assent for a significant period after passage might be seen as an inappropriate delay of Assent.

18 Therefore I am firmly of the view that OPC should not be involved in delaying Royal Assent.

19 There may be some cases in which it is proper for the Attorney-General (on behalf of the government) to delay advising the Governor-General to Assent to a Bill, at least for a limited time. Requests for Assent procedures to be delayed should be brought to First Parliamentary Counsel's attention then may be referred to the Attorney-General's staff, who will seek advice from the Department if appropriate. In such circumstances OPC's procedures should continue and the letter and certificate should be delivered to the Attorney-General's office in the ordinary course of business.

Part 3—After Assent

20 The Governor-General Assents by signing 2 copies of the Bill (which are then numbered). One signed copy is sent to the originating House. The other signed copy is sent to OPC.

Part 4—Assent and caretaker periods

21 If an election is to be called shortly after the end of a parliamentary sittings period, there may be Bills that have been passed by both Houses of the Parliament that are still being prepared for Royal Assent. In the past, questions have arisen whether it would be proper for such Bills to be assented to after the House of Representatives is dissolved (in preparation for the issue of the writs for the election).

22 My own view is that it would be improper for such Bills not to receive Assent.

23 However, the Department of the Prime Minister and Cabinet's view is that all Bills that have been passed by both Houses of Parliament should be Assented to before the House

of Representatives is dissolved (*Guidance on Caretaker Conventions* at www.pmc.gov.au). There does not appear to be any particular constitutional basis for this latter view, and it is not clear what approach would be taken if it happened that a Bill was still awaiting Assent when the House was dissolved.

24 Clearly, however, it is preferable to avoid such questions arising, so in such cases OPC will do everything within its power to ensure that all such Bills are Assented to before the dissolution of the House.

Part 5—Constitution Alteration Bills

25 Precedents relating to Constitution Alteration Bills are in file PC/77/1268 (*Constitution Alteration (Aboriginals) 1967*).

Meredith Leigh
First Parliamentary Counsel
24 October 2022

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Note: Before the issue of the current series of Drafting Directions, this Drafting Direction was known as Drafting Direction No. 16 of 2001.

Attachment A—Minute to Attorney-General for unamended Bill

Attorney-General

[Short title of unamended Bill]

I understand that the abovementioned Bill has been passed by both Houses of the Parliament without amendment and is to be presented to the Governor-General for Assent.

In my opinion there are no amendments that the Governor-General should recommend.

[FPC's name]
First Parliamentary Counsel

Attachment B—Minute to Attorney-General for amended Bill

Attorney-General

[Short title of Bill that has been amended]

I understand that the abovementioned Bill has been passed by both Houses of the Parliament and is to be presented to the Governor-General for Assent. The Bill was amended during its passage through the Parliament. The amendments have been read in this Office and checked against the text of the Bill.

In my opinion there are no amendments that the Governor-General should recommend.

[FPC's name]
First Parliamentary Counsel

Attachment C—Letter to Governor-General for House of Representatives Bill

Your Excellency,

I enclose a copy of a Bill received by me from the Speaker of the House of Representatives entitled—

[Short title of Act]

The Speaker has informed me that the Bill is now ready for presentation to you for the Royal Assent and that he proposes presenting the Bill to you immediately.

In my opinion there are no amendments that you should recommend. I am also of the opinion that you should not reserve the Bill for His Majesty's pleasure to be made known.

Yours sincerely

[ATTORNEY-GENERAL'S NAME]

His Excellency the Governor-General
Government House
CANBERRA A.C.T. 2600

Attachment D—Letter to Governor-General for Senate Bill

Your Excellency,

I enclose a copy of a Bill received by me from the President of the Senate entitled—

[Short title of Act]

The President has informed me that the Bill is now ready for presentation to you for the Royal Assent and that he proposes presenting the Bill to you immediately.

In my opinion there are no amendments that you should recommend. I am also of the opinion that you should not reserve the Bill for His Majesty's pleasure to be made known.

Yours sincerely

[ATTORNEY-GENERAL'S NAME]

His Excellency the Governor-General
Government House
CANBERRA A.C.T. 2600