



# Instructor Guidance Note— Working with OPC drafters

1 This Instructor Guidance Note is aimed at answering questions instructors often have when starting legislative projects with OPC, such as who to contact and when drafting is likely to start. It also explains some standard features of OPC documents to assist those working with OPC draft legislation for the first time.

## When to instruct OPC

2 For each parliamentary sittings, the Parliamentary Business Committee of Cabinet sets a date by which drafting instructions for Bills to be introduced in that sittings should be sent to OPC. Legislation Liaison Officers are notified of the date. The date set is usually a date near the end of the previous sittings. For example, for a Bill for introduction in the Winter sittings, the date for providing instructions would be a date near the end of the immediately preceding Autumn sittings. An instructing agency that is having difficulty meeting this deadline should contact First Parliamentary Counsel to discuss the options. It may be viable to instead send provisional drafting instructions (clearly labelled as such) to OPC, and to provide further detailed instructions later as and when firm policy decisions are made.

3 There is no single date by which drafting instructions for instruments must be provided. Instructing agencies should provide initial instructions to OPC in sufficient time for the instrument to be developed by the deadline for finalisation. Even small, simple instruments can take 3 to 8 weeks to be ready for finalisation or consultation. Moderately complex instruments can take at least 3 to 6 months to be ready for finalisation or consultation. If the instrument or policy is complex, or the instrument is large, it is likely to take between 6 and 18 months to complete a final draft, so instructions should be given as soon as possible. See *Instrument Drafting Guidance Note No. 1.4—Timeframes for the development of instruments* for further information.

4 In working out when a finalised version of an instrument is required, agencies should take into account the following:

- for legislative instruments to be made or approved by the Governor-General (**ExCo instruments**)—the proposed ExCo meeting date, the “Cut-off for Final Papers” deadline for that meeting (as notified by an Executive Council Circular) and the timeframe for countersigning by the Minister sponsoring the instrument;
- for other instruments—the proposed date for making and the timeframe for signature by the rule-maker;

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- whether there is to be consultation on a draft of the instrument (for example, by release of an exposure draft) before it is finalised.

### How to send instructions to OPC

5 Instructions for Bills and instruments should be cleared within the instructing agency at SES level before they are sent to OPC.

6 Drafting instructions for Bills should come from the relevant administering Department. Please contact First Parliamentary Counsel if an agency other than a Department is to instruct on a Bill.

7 Drafting instructions for instruments may come from a variety of sources depending on who the rule-maker for the instrument is. If the rule-maker is the Governor-General, or the Minister or the Secretary of a Department (or a delegate), the drafting instructions for the instrument should come from the relevant area of the Department.

8 If there is any aspect of the instructions that is incomplete, or that is subject to possible change, this should be mentioned.

9 Separate instructions should generally be provided for Bills and for instruments (even on projects where both Bill and instrument drafting will be needed).

10 The preferred method for sending drafting instructions to OPC is by email as follows:

- Bills: email the instructions to [instructions@opc.gov.au](mailto:instructions@opc.gov.au);
- instruments: email the instructions to [instrument.instructions@opc.gov.au](mailto:instrument.instructions@opc.gov.au).

11 If instructions cannot be sent by email, please contact OPC to discuss delivery arrangements.

12 Receipt of instructions will be acknowledged by OPC. If instructions have been sent to OPC, and the instructors have not received an acknowledgement of receipt within 2 working days, they should contact:

- for Bills—First Parliamentary Counsel; or
- for instruments—First Parliamentary Counsel or an instrument client adviser.

## **Drafters work on Bills and instruments according to priority**

13 The primary factor determining the relative order in which OPC allocates and works on drafting instructions is the priority given to the Bill or instrument. For Bills, the priority is determined by government. For ExCo instruments, the priority is set on a portfolio basis. For more information, see *Instructor Guidance Note—Bills prioritisation and policy authority* and *Instructor Guidance Note—Instrument program and policy authority*.

14 In addition to priority, other factors may also be taken into account. These include the following:

- whether policy authority for the project has been obtained;
- political or legal significance of the project (particularly if there are a number of projects that otherwise appear to have the same priority);
- apparent commitment of the sponsoring Minister or instructing agency to the project (for example, are policy decisions delayed in the Minister's office or at senior levels in the agency, or do promised delivery dates for instructions repeatedly pass without any instructions appearing);
- date of receipt of instructions (earlier instructions take priority over later instructions);
- need to ensure that drafting resources are not wasted by being left idle waiting for particular drafting instructions to arrive.

15 For instruments other than ExCo instruments, see *Instruments Drafting Guidance Note 1.1—Deciding if a non-tied instrument should be drafted by OPC* (available on OPC's website).

## **Drafting starts once the drafting instructions are allocated to a drafting team**

16 OPC generally does not become involved in a legislative project until it receives written drafting instructions from the instructing agency.

17 A drafting project will not be allocated to a drafting team until OPC receives the drafting instructions. At that point, decisions about allocation will be made in accordance with priorities and drafter availability.

18 We normally work in teams of 2 or 3, either in a Bill drafting team or an instrument drafting team. Usually 2 drafters work on each drafting project. All drafting teams are headed by a senior drafter, who is an SES Band 1 or 2, a Second

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Parliamentary Counsel or the First Parliamentary Counsel. Some projects will have multiple teams working on them at different stages.

19 OPC occasionally makes use of contract drafters. For drafting work that is tied to OPC, contract drafters can only be arranged through OPC.

### **Some assistance is available before a drafting team is allocated**

20 Advice on **programming and prioritisation** issues can be sought from:

- for Bills—First Parliamentary Counsel; or
- for instruments—the OPC instrument team leader for your agency.

21 Please see your agency's Legislation Liaison Officer for contact details.

22 For questions on the **Federal Register of Legislation, lodgement, tabling, compilations** and **publication** of legislation, contact (02) 6120 1350 or [lodge@legislation.gov.au](mailto:lodge@legislation.gov.au).

23 Our client advisers can provide **quick informal advice** on legislation issues or legislative process, for example options for legislative approaches, or matters appropriate for inclusion in legislation. Please contact:

- for Bills—the OPC SES client adviser for your agency listed on OPC's website; or
- for instruments—(02) 6120 1390 or [instrument.instructions@opc.gov.au](mailto:instrument.instructions@opc.gov.au).

24 The client adviser service is not a substitute for legal advice, or legislative expertise within agencies.

25 OPC does not generally provide in-depth advice early in development of legislative proposals. In special situations, instructors may be able to obtain access to a drafting team in advance of providing written instructions. An agency that is interested in obtaining early access to a drafting team should contact:

- for Bills—First Parliamentary Counsel; or
- for instruments—First Parliamentary Counsel or the OPC instrument team leader for your agency.

26 Examples of situations where early access could be considered are as follows:

- when complex legislation is required so urgently that there is no time for written instructions;

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- advice on legislative issues in the very early stages of a project would leave the instructors better placed to work on the project to the point at which written instructions can be sent to OPC.

27 Requests for early access will be assessed having regard to the nature and time frame of the project and the project's priority.

### **Drafters usually work in standard documents aligned with our systems**

28 Drafters generally provide their work in the form of draft legislation or in a drafting plan. Drafters often include their questions and comments in the draft legislation or plan.

29 Depending on the project, the draft legislation might be split into a number of separate documents which will be brought together at the end of the process. OPC calls the separate documents "insert documents". The title of the insert document will identify the Bill or instrument and the subject of the document content. For example, the title "Dogs Amendment Bill 2026: Little Dogs" indicates the insert contains the amendments in the Dogs Amendment Bill 2026 relating to little dogs. This approach is used for efficiency and flexibility. It allows different components of the legislation to progress in parallel, and allows different drafting teams to work on the same project. Aspects of our IT system and internal processes support this approach.

30 Drafters generally do not provide more than one version at a time. Working on multiple, parallel versions of provisions at the same time can be inefficient and gives rise to risk of errors. Procedures and IT systems do not accommodate multiple versions of a Bill or instrument with the same name.

31 Adopting a non-standard approach can add to the project timeframe.

### **Answers to frequently asked questions about OPC drafts**

#### **Why do drafters put comments in the draft in square brackets and italics below provisions?**

##### **Example**

*[Instructors: should subsection (2) refer to the Minister or the Secretary?]*

32 OPC drafters include comments for instructors in drafts using a particular style of note, known as a "drafters note". The notes have italicised font and are usually in square brackets. This is partly to make the notes easy for instructors to see in the draft. It is also done for technical reasons (so that ICT tools used by OPC can identify the notes and remove them when necessary). Any remaining drafters notes are removed before the legislation is finalised. Drafters notes highlight specific comments or questions of the drafters, but instructors should always make sure to examine the entire draft and not only respond to the drafters notes.

## How should an instructor provide comments on a draft?

33 OPC's starting position is that instructors should not provide comments on a draft by editing the text of the provisions. Please see *Instructor Guidance Note—Roles of instructors and drafters* for further information.

34 Comments should be provided in a way that makes it easy to identify the comment and the part of the draft it relates to. Comments should also be easy to read and provide sufficient detail. It is important that comments provided to OPC represent the agreed position of the instructing agency, rather than different comments on an issue from different people or areas. Our experience is that the Word comment feature does not generally support these requirements.

35 Some instructors provide comments in a separate document. A table could be used. However, care should be taken to ensure the table format does not limit the amount of information that can be included.

36 Some instructors provide comments in a copy of the draft by adding text responding to the drafters notes and indicating the additions using track changes or different formatting. For subsequent drafts, OPC will provide a clean version and a comparison showing marked up changes from the previous draft. Comments should not be included in the OPC marked up version as this makes the instructor's changes hard to identify.

37 Instructors can discuss with their allocated drafters the most effective way of responding to a draft.

## I want to refer to a particular earlier version of a draft. What is the best way to do that?

38 OPC has strict version control procedures for draft legislation. The document and version numbers can be found in the footer of the draft. An OPC drafter will be able to locate any version of any draft legislation prepared by OPC if you tell the drafter the document and version numbers.

## Why has the drafter put words in a draft provision in square brackets and italics?

### Example

#### 85D Validity of *[contracts]*

A contravention of section *[85C]* does not affect the validity of *[a contract]*.

39 If text of a provision is in italics and square brackets, it indicates that the text is tentative or subject to confirmation. There may be a drafters note underneath the provision related to the italicised text, or the drafter may have asked a question

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elsewhere in the draft the answer to which will impact on the text of the provision, or the instructor may have advised OPC that the policy underlying the text is still being settled. A drafter may also italicise text as a reminder to themselves to review the text later for technical drafting, rather than policy, reasons (e.g. a cross reference that the drafter knows is likely to change).

### Why is there a symbol before a provision number in the draft I've received?

#### Example

#### **^50 Exceptions operate independently**

Sections ^43, ^44, ^45, ^47, ^48 and ^49 do not limit each other.

40 OPC has ICT tools that automate the renumbering of provisions in drafts. The tools require symbols to be placed in front of each provision that is to be renumbered (including cross references to those provisions). The symbols could be any of the following, depending on the type of renumbering required:

- ^ (caret);
- ~ (tilde);
- @ (at).

41 The symbols are removed before the legislation is finalised. Symbols can also be removed for a particular version (e.g. an exposure draft).

### Why do provision numbers in the draft have letters then numbers (e.g. ^IP1 and ^IP2)?

42 For some projects, different parts of the legislation will be drafted in separate documents before the final form of the legislation is settled. For example, amendments dealing with different matters may be drafted before a decision is made on the order they will appear in the final Bill or instrument. In this situation the drafters may use temporary alphanumeric provision numbering consisting of letters followed by numbers. This numbering is useful if the provisions in each document might have to interweave when the provisions are combined, and means that each draft provision can easily be given a unique provision number. It also allows the provisions relating to the particular topic, or drafted by the particular drafter, to be easily identifiable even once they are combined into a single document. The temporary numbering may reflect the topic (e.g. IP1, IP2 etc. for amendments relating to Information and Privacy) or the initials of the drafter. Provisions with this kind of numbering will be renumbered to use standard provision numbering before the legislation is finalised.

### Why do provision numbers in the draft have numbers then letters (e.g. ^3A and ^3B)?

43 Commonwealth legislation has sequentially numbered provisions. If legislation needs to be amended to insert new provisions where there is no gap in the existing numbering, alphanumeric provision numbering is used. For example, 2 new sections inserted between existing sections 3 and 4 would be numbered ^3A and ^3B. This does not mean that sections ^3A and ^3B are part of, or less important than, section 3.

44 Alphanumeric provision numbers may also temporarily be used in draft legislation if, as drafting progresses, additional provisions are added to the draft and the drafter does not consider it expedient to renumber the whole draft at that point in time. Any unnecessary alphanumeric numbering is smoothed out by renumbering the draft before the legislation is finalised.

### The draft provisions are numbered 10, 20, 30, etc. Why are there gaps in the numbering?

45 A drafter may leave gaps in provision numbers in a draft so that additional provisions can be added to the draft during the drafting process without having to either renumber the draft or use alphanumeric provision numbering (as mentioned above). If gaps in the provision numbering are used for this reason, the provisions will be renumbered to use standard provision numbering before the legislation is finalised.

### What is the table with questions on page 1 of the draft Bill or parliamentary amendments that says “OPC drafter to complete”?

46 The table is known as a “drafter’s block” and is included in all draft Bills and parliamentary amendments. It is required to be completed by the drafters to ensure that certain constitutional provisions relating to the introduction of Bills and the moving of parliamentary amendments have been considered. It is removed before the legislation is finalised.

### Why does the front page of the draft instrument have [DRAFT ONLY—NOT FOR SIGNATURE] written on it?

47 The text is to ensure that a draft (as opposed to the final) of the instrument is not inadvertently signed by the maker or countersigner. The text is removed before the instrument is finalised for signature.

### More information

- OPC offers courses for instructors. Details are available on the *Training* page of OPC’s website.

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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.