Instructor Guidance Note—Amending a Bill while it is in Parliament

1 There are two ways a Bill can be amended while in Parliament: parliamentary amendments and, for minor and technical matters only, Chair's/Deputy Speaker's amendments. Timeframes are usually very short when progressing these amendments. Instructors should be on the look out for potential amendments, and will need to work quickly as soon as they become aware that amendments may be needed.

2 This document primarily discusses parliamentary amendments. Chair's/Deputy Speaker's amendments are discussed briefly at the end of this Instructor Guidance Note.

What are parliamentary amendments?

3 After a Bill has been introduced, the Parliament may decide that it wants to amend or change the Bill whilst it is in Parliament. Such amendments are known as ***parliamentary amendments*** or ***PAMs***. Parliamentary amendments that are progressed by the Government are sometimes referred to as ***government amendments***. Parliamentary amendments may also be progressed by non-government parties or independents, and these amendments are sometimes referred to as ***non-government amendments*** or ***non-government PAMs***.

4 Parliamentary amendments can deal with a variety of things, including new matters that have arisen since the introduction of the Bill, correcting defects in the Bill, or accommodating policy changes resulting from negotiations with non-government parties or independents.

5 It is important to remember that, for a Bill to become an Act, it must be passed by both Houses of the Parliament, being the House of Representatives and the Senate. Both Houses have to agree to the same version of a Bill before it can become an Act. So, if one House makes parliamentary amendments to a Bill that the other House has already passed, then the other House must consider whether it agrees to the amendments.

Role of the instructing agency in relation to government amendments

6 As soon as the instructing agency knows that government amendments may be required, they should notify the following stakeholders of the potential amendments: PM&C's Legislation Section, OPC, and Parliamentary Liaison Officers. Additionally, PM&C's Legislation Handbook advises that instructing agencies should be aware, and

brief their Ministers as appropriate, that government amendments are likely to delay the passage of a Bill.

7 If it is decided that government amendments will be progressed, the instructing agency will need to instruct OPC to prepare the amendments. Broadly, this process is a condensed version of the process for drafting a Bill and all the same requirements will generally apply. However, there is some scope for bypassing steps or speeding up the process if time is running short, and this should be discussed with OPC where necessary.

8 PM&C's Guide to parliamentary amendments (**PM&C's Guide**) provides a helpful overview of the various steps that are involved in progressing government amendments. PM&C's Guide also includes references to PM&C's Legislation Handbook, which provides more detailed information on certain matters. Instructors should refer to PM&C's Guide to help ensure they understand the various steps. Some key and additional information relating to these steps is highlighted in the paragraphs below.

9 Drafting instructions for government amendments should be sent to OPC as soon as they reasonably can. This is particularly important because government amendments often need to be progressed in very short timeframes. Sending instructions early will help ensure the amendments can be drafted in time and any difficulties can be resolved.

10 Even if the instructing agency thinks there is only a slim chance that government amendments will be needed, it is a good idea to speak with OPC early. It can be better to prepare government amendments and have them ready should they be needed, rather than having to rush at the last moment to draft them in a matter of minutes or hours. Proactively drafted amendments are sometimes referred to as ***back pocket amendments***.

11 Policy approval must be obtained for government amendments. Generally, this is obtained by the instructing agency preparing a letter from the relevant Minister to the Prime Minister seeking policy approval for the amendments. To ensure appropriate authority is sought, this letter should be settled in consultation with OPC and the relevant PM&C policy team before it is progressed to the Minister.

12 A bid for inclusion on the legislation program may also be required, depending on the nature of the amendments. Sometimes a Bill in Parliament is seen as a convenient vehicle for further material that was not ready (or that was not even contemplated) when the Bill was introduced. Material of this kind has no automatic priority just because its sponsors would like to include it in an introduced Bill. Projects involving substantial parliamentary amendments of this kind should be bid for inclusion on the legislation program (usually by seeking variation).

13 Similar to a Bill, the instructing agency must prepare supporting material for government amendments. This includes a supplementary explanatory memorandum (often referred to as ***Supp EM***) and other supporting material for the party briefing pack.

Generally, the Legislation Liaison Officer (***LLO***) should provide the draft Supp EM to PM&C's Legislation Section by 11am on the Wednesday before the sitting week in which the Bill is scheduled for debate.

14 Final text approval for the amendments and supporting material should generally be obtained from the relevant Minister by 11am on the Friday before the sitting week in which the Bill is scheduled for debate. The LLO should notify PM&C's Legislation Section once text approval is secured.

Issues relating to amendments in the Senate

15 Generally, a Bill can originate in either House of the Parliament, and both Houses have full power to amend any Bill. However, there are some important exceptions to this that are set out in section 53 of the Constitution:

(a) Bills appropriating money or imposing taxation must originate in the House of Representatives.

(b) The Senate cannot amend Bills imposing taxation or appropriating money for the ordinary annual services of Government.

(c) The Senate cannot amend a Bill so as to increase any proposed charge or burden on the people.

16 The Senate can request the House of Representatives to make most amendments that the Senate cannot actually make itself.

17 If the instructing agency suspects that parliamentary amendments will engage one or more of the above exceptions, then they should discuss this with OPC.

Drafting of non-government amendments

18 OPC generally does not draft legislation for non-government parties or backbenchers. One exception to this can be where the government negotiates a compromise with non-government members to get their agreement to a government Bill. In this situation, the instructing agency may decide to instruct OPC to draft parliamentary amendments to the Bill, with the expectation that the government would provide the amendments to the relevant non-government member for them to move.

19 If an instructing agency has a copy of non-government amendments that are not drafted by OPC and there is a real possibility that they may be passed, it is generally a good idea to let the OPC drafter who drafted the Bill have a look at them. The drafter may be able to point out possible problems with draft or suggest better ways of achieving the same result, which could involve preparing an alternative draft of the amendments. How much assistance OPC can provide will depend on the time left before the Bill is to be debated and other priorities. Whether the drafter's suggestions are adopted is ultimately up to the member who will be moving the amendment.

20 Policy approval is required for government members to vote in favour of non-government amendments. This process involves the instructing agency preparing a letter from the relevant Minister to the Prime Minister seeking approval for the amendments to be accepted. The LLO must provide PM&C's Legislation Section with a draft of the Minister's letter as soon as possible. The Minister then signs the letter and sends it to the Prime Minister. The LLO must provide PM&C's Legislation Section with a copy of the signed letter as soon as possible, aiming for at least 48 hours before any vote on the amendments.

21 PM&C's Guide also provides a helpful overview of the process for progressing non-government amendments.

Responsibility for updating the Bill after amendment

22 After a Bill is introduced, control of the Bill moves from OPC to the House of Parliament into which the Bill was introduced (known as the originating House). If the Bill is amended in Parliament, the amendments will be incorporated into new prints of the Bill prepared by the Table Office of the originating House as follows:

(a) If the Bill is amended in the originating House, the effect of the amendments will be incorporated into a new print (known as a third reading print) that is prepared for the purpose of introduction in the other House.

(b) If the Bill is amended in the other House, and the amendments are agreed to by the originating House, the effect of the amendments will be incorporated into a new print (known as an Assent print) that is prepared for the purpose of obtaining Royal Assent.

23 Versions of Bills and amendments can be obtained from Parliament's website.

Chair's/Deputy Speaker's amendments

24 There is a procedure for fixing minor and technical errors in introduced Bills without the need for formal parliamentary amendments. This procedure can only be used to fix obvious technical errors—it cannot be used to make changes with any policy significance.

25 For Bills originating in the Senate, the power to fix such errors is given to the Senate's Chair of Committees and, for Bills originating in the House of Representatives, the power is given to the Clerk of the House acting with the authority of the Deputy Speaker.

26 Fixing errors this way is generally known as ***Chair's amendments*** (for fixes in the Senate) or ***Deputy Speaker's amendments*** or ***Clerk's amendments*** (for fixes in the House of Representatives). Chair's/Deputy Speaker's amendments are generally

arranged by OPC writing to the Clerk of the House in which the Bill was originally introduced.

27 If an instructing agency wishes to explore whether an obvious technical error in an introduced Bill can be fixed by Chair's/Deputy Speaker's amendments, then they should discuss this with OPC.

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.