Australian Government
Office of Parliamentary Counsel

Instructor Guidance Note—Matters affecting timeframes for the development of Bills

1 The instructing agency is responsible for managing the timeframes for the development of the instructing agency's Bill.

2 OPC's *Timeframes for the development of Bills* sets out OPC's advice about the estimated timeframes for the development of Bills based on their characteristics. It also sets out the factors that will result in a longer timeframe being needed and the risks of developing Bills within a compressed timeframe.

3 This Instructor Guidance Note provides further information about some of the factors mentioned in that document.

Referral of provisions to other agencies

4 Draft Bills must be referred to agencies who have a right or responsibility to provide policy input in relation to one or more provisions in the draft. This generally occurs because the agency has a coordinating or whole of government responsibility for a matter dealt with in the provision.

5 The decision about when to refer a draft Bill is a matter of judgement. It should be referred when the policy and approach are reasonably well settled, but with enough time for:

- agencies to provide useful comments; and
- the instructing agency to consider those comments; and
- OPC to draft any changes required as a result of agency comments.

6 A draft Bill is required to be referred to the relevant agencies by the drafter in accordance with OPC's *Drafting Direction 4.2—Referral of drafts to agencies*. OPC recommends the instructing agency undertake consultation at an earlier stage, particularly given timeframes are usually tight. Early consultation is also recommended where the content of the Bill is, or is likely to be, complex or contentious.

7 It is not OPC's role to decide whether the policy preferences of an agency to which a draft is referred should be reflected in the final legislation. This needs to be resolved between that agency and the instructors. If agreement cannot be reached, that agency might brief its Minister, so that the matter is resolved at Ministerial level. In the

case of a Bill, the drafter would mention an outstanding issue of this kind in the memo OPC prepares for the Legislation Approval Process.

8 For further information about the referral of draft Bills, including the matters that must be referred, please see *Drafting Direction No. 4.2—Referral of drafts to agencies*.

Obtaining legal advice

9 The drafter will discuss with the instructing agency if legal advice is required or desirable. The instructing agency is responsible for obtaining and paying for legal advice on a draft Bill.

10 It is often useful if the instructing agency seeks input from OPC on a request for legal advice before it is sent. The instructing agency should also ensure the drafter is kept abreast of any legal advices, including providing the drafter with copies of draft and final advices.

Additional policy authority

11 It is not uncommon for further policy authority to be needed for a Bill. This may be because the drafting process has revealed situations or possibilities that were not contemplated when the original authority was sought.

12 Usually, any further policy authority that is needed is sought by the responsible Minister writing to the Prime Minister. Instructors are encouraged to give the drafters the opportunity to comment on a draft of any such letter before it is finalised. Doing this will ensure that both drafters and instructors are satisfied that the content of the letter is adequate.

Legislation Approval Process

13 Before introduction into Parliament, a Bill (including a government amendment to a Bill) must be cleared by a Minister or Assistant Minister who has been designated for this purpose by the Prime Minister. This process is called the Legislation Approval Process (**LAP**) and is coordinated by the Parliamentary Affairs and Legislation section at the Department of the Prime Minister and Cabinet (**PM&C**).

14 The usual timing for LAP is worked out as follows:

(a) if a Bill is to be introduced into Parliament in a particular sitting week, it will be considered by LAP on the Monday of that sitting week;

(b) to be considered by LAP on the Monday of that sitting week, the Bill (and supporting papers) will need to be lodged with PM&C by 11 am on the Wednesday of the preceding week.

15 The matters LAP deals with that have relevance to OPC are:

(a) ***policy authority***: LAP is a check on whether a Bill has sufficient policy authority; and

(b) ***text clearance by Ministers***: LAP is a check on whether:

(i) the text of a Bill has been approved by the sponsoring Minister; and

(ii) if the Bill amends any legislation administered by other Ministers—the text of those amendments has been approved by those other Ministers, or their Departments (if appropriate).

16 For further information about LAP, please see *Drafting Direction No. 4.6—Legislation Approval Process* and PM&C's Legislation Handbook.

Finalising and printing Bills

17 OPC arranges the printing of bulk copies (commonly known as supply copies) in the quantities required for introduction into the Parliament. Usually, approximately 10 copies of the Bill are printed for the instructing agency. Additional copies can be ordered at least one week before printing. The instructing agency may be charged for the additional copies. OPC will contact the instructing agency when its copies of the Bill are ready for collection from CanPrint.

18 OPC arranges for the supply copies of a Bill to be delivered to the Table Office of the House of Parliament into which the Bill is to be introduced. The copies will then be held under embargo until the Bill has been read a first time, after which copies will be circulated to members and senators.

19 A similar process applies when OPC drafts government amendments of Bills, except that OPC prints the copies of the government amendments in-house.

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.