

PARLIAMENTARY COUNSEL

Drafting Direction No. 3.14 References to the Parliament

Note: This Drafting Direction contains references to the “head drafter”. It is a reference to the senior person who is responsible for matters of drafting policy. This form is used to enable the Drafting Directions to be applied in other organisations. In OPC the head drafter is FPC for Bills and the PLC for instruments.

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Part 1—Background

1 Subsection 7(3) of the *Snowy Hydro Corporatisation Act 1997* provides in part “The Commonwealth must not dispose of or transfer shares in the Snowy Hydro Company without the approval of the Parliament”. This has led to some dispute about the process that must be followed.

2 In the absence of express statutory authority for the purpose, a legislative instrument cannot confer functions on the Parliament.

Part 2—Approach

3 You should not refer to something being done by “the Parliament” unless it is clear from the context in which that term is to be used that you intend to refer to each of the Queen or Governor-General, the Senate and the House of Representatives.

4 If you draft a provision that requires a matter to have the approval of “the Parliament” and the provision does not require that approval to be sought by the enactment of legislation, you should include in the provision details of the process that needs to be followed before the matter can be considered to have that approval. For examples, see:

- (a) subsection 5(1) of the *Parliament Act 1974*; and
- (b) subsection 31(4) of the *Great Barrier Reef Marine Park Act 1975*.

5 If you are instructed to draft a provision requiring a matter to have the approval of the Parliament, you should discuss the issue with the head drafter.

Peter Quiggin
First Parliamentary Counsel
2 October 2012

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