

PARLIAMENTARY COUNSEL

Drafting Direction No. 4.1 Dealings with instructors

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—Introduction

1 This Direction deals with a number of matters relating to our dealings with instructors. Office Procedural Circular 98 also deals with a number of matters relating to tax drafting processes/liaison with Treasury.

Part 2—Making contact with instructors when you receive instructions

2 On receipt of instructions, you should phone the instructors.

3 If you are not able to start work on the instructions within a couple of days, you should let your instructors know when you are likely to be able to start work on the instructions.

Part 3—“Vetting” of explanatory memoranda, explanatory statements or second reading speeches

4 Sometimes requests are made to the office to “vet” an explanatory memorandum, an explanatory statement or a second reading speech. If you receive such a request, you should inform the person making the request that the “vetting” of explanatory memoranda, explanatory statements or second reading speeches is not one of the office’s functions. Your instructors are expected to know what the draft is intended to achieve and should therefore be able to determine whether an explanatory memorandum, an explanatory statement or a second reading speech prepared in relation to the draft accurately reflects the substance of the draft.

5 However, sometimes your instructors may be concerned about whether a particular passage in an explanatory memorandum, an explanatory statement or a second reading speech accurately summarises a technical provision of the draft. You should assist your instructors in this respect if time and resources are available having regard to your other commitments.

Part 4—Disputes with instructors over content

6 In the course of drafting legislation, you may sometimes receive a request from a Minister, a member of the staff of a Minister or a person in the instructing Department or agency:

- (a) for the inclusion in the draft of a provision that you consider, for any reason, should not be included in the draft or should not be included in the terms requested; or
- (b) for the non-inclusion in, or deletion from, the draft of a provision that you consider should be included or retained in the draft; or
- (c) for the making of an alteration to a provision in the draft that you consider should not be made.

7 If a request is made and pressed, you should raise the matter with the head drafter promptly.

Part 5—Senate Standing Committee for the Scrutiny of Bills

Background

8 In June 2003 First Parliamentary Counsel attended a meeting with the Senate Scrutiny of Bills Committee. The Committee was interested in the standard of explanatory memoranda.

9 There was some discussion about OPC’s role in advising instructors to ensure that matters that are of interest to the Committee are clearly explained in the explanatory memorandum (e.g. retrospective or otherwise unorthodox commencement provisions). Committee staff mentioned a case in which a commencement provision that allowed more than 6 months for Proclamation was not explained in the explanatory memorandum. When the Committee staff contacted the sponsoring agency about this, the agency staff said that this was because OPC had not told them that they needed to explain it.

10 The Committee did not seem to have any particular sympathy with the view of the sponsoring agency that it was OPC’s responsibility to ensure that their explanatory memorandum was adequate. First Parliamentary Counsel told the Committee that OPC did try to draw to our instructors’ attention matters that are of interest to the Committee.

Advising instructors

11 You should endeavour to alert your instructors to any requested provisions that are likely to be of interest to the Committee, and advise your instructors to set out clearly in the explanatory memorandum the reasons for such provisions.

12 One member of the Committee also suggested that explanatory memoranda should more clearly identify the “mischief” being addressed by particular Bills. You may consider suggesting this to your instructors in appropriate cases.

Part 6—Senate Standing Committee on Regulations and Ordinances (SSCRO)

During drafting

13 You should endeavour to alert your instructors to any requested provisions that are likely to be of interest to SSCRO, and advise your instructors to set out clearly in the explanatory statement the reasons for such provisions.

After making

14 Occasionally you may receive a ‘SSCRO Reporting’ form about a draft that was dispatched a month or so earlier. These come from the Federal Register of Legislation team of this office, which regularly checks the SSCRO website for reports of Committee meetings where a question has been raised about an instrument scrutinised by the Committee.

15 The task of the drafter is to contact the instructing agency to see if it needs assistance to respond to the query. Sometimes the call from the drafter will be the first the agency will have heard of the query. The reports on the website do not indicate the nature of the query, only that one has been raised. It may be, for example, that SSCRO has a concern about the explanatory statement, or it may be seeking an undertaking from the Minister as a condition of not moving to disallow the instrument.

Peter Quiggin PSM
First Parliamentary Counsel
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Document History		
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Note: Before the issue of the current series of Drafting Directions, this Drafting Direction was known as Drafting Direction No. 20 of 2005.