

PARLIAMENTARY COUNSEL

Drafting Direction No. 4.6 Legislation Approval Process

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Contents

Part 1—Introduction	3
Purpose of Legislation Approval Process	3
Policy approval for exposure drafts	3
General.....	3
Referral to federal courts	4
Part 2—Legislation Approval meetings	4
Part 3—Legislation Approval Process memorandums (LAP memos)	4
LAP memos to be cleared by statutory officer in OPC	4
OPC not obliged to “clear” LAP memos with instructors.....	4
Basic format for LAP memos	5
Authority	5
General principles.....	5
References to authority documents in the LAP memo	6
Resolving policy authority concerns.....	6
Citing authority for amounts of money in draft legislation.....	7
Approval by Attorney-General—departure from fundamental criminal law principle etc.....	8
State and Territory agreement to vary the GST base	8
Agreement of Presiding Officers to amendments of the <i>Parliamentary Service Act</i> 1999	9
Authority from other Ministers.....	9
FPC’s power to authorise statute law revision-type changes.....	9
Ministerial approval of text	9
Numbering.....	10
Optional paragraphs in LAP memo	10
Explanation.....	10
Departures from authority	10
Comments	11
Headings for optional paragraphs	11
Other matters	11
References to the Cabinet.....	11
References to Ministers	11
Abbreviated references	12
Reintroduction of lapsed Bills after an election.....	12
Part 4—Special procedures for re-introduction of Bills in same session of Parliament or for relocated measures	12
Part 5—Special procedures for urgent Bills and parliamentary amendments	12
Part 6—Approval of changes made to draft legislation after LAP	13

Attachment A—Format and contents of LAP memos	15
Authority	15
Ministerial approval.....	21
Numbering.....	22
Explanation	22
Departures from authority.....	22
Comments.....	22
Attachment B—Sample letter to designated approver	23
Attachment C—Changes that may be approved by FPC after LAP	24
Formal changes	24
Stylistic changes	24
Technical changes	25

Part 1—Introduction

Purpose of Legislation Approval Process

1 The purpose of the Legislation Approval Process (***LAP***) is to ensure that draft legislation has received all necessary government clearances before it is introduced into Parliament. All draft legislation must be cleared for introduction by the Minister designated by the Prime Minister for the purpose (the ***designated approver***). This clearance is given on advice from the Legislation Secretariat in the Department of the Prime Minister and Cabinet (***PM&C***).

2 OPC's unique role in the process is to provide independent advice that the legislation is covered by appropriate policy authority. The OPC drafter is the only independent player in the approval process who knows enough about the legislation to be able to test it against the policy authority within the usual deadlines. This is not to suggest that other players (e.g. policy officers in PM&C) could not acquire the necessary understanding of legislation, only that they may not be able to do it properly in the brief period between when the legislation is lodged with PM&C and when it is lodged with the designated approver (often less than 2 working days).

3 Further information about the significance of the Legislation Approval Process and OPC's role in it can be found in *OPC's drafting services: a guide for clients*.

4 In general, the Legislation Approval Process applies to parliamentary amendments (and requests for amendments) in the same way as it applies to Bills. See Part 5 of this Drafting Direction for special procedures for dealing with urgent Bills and parliamentary amendments.

5 Bills and parliamentary amendments are referred to collectively in this Drafting Direction as ***draft legislation***.

Policy approval for exposure drafts

General

6 The *Legislation Handbook* provides that a draft Bill should not be made public before it is introduced into Parliament unless disclosure has been authorised by the Cabinet or the Prime Minister.

7 Sometimes copies of Bills need to be provided to state and territory ministers or officials, particularly where complementary legislation has to be prepared. The *Legislation Handbook* requires the Prime Minister's approval to be obtained before the copies are made available.

8 As a general rule PM&C requires a draft Bill to have policy approval before being exposed. There is no formal process equivalent to LAP for clearing Bills for exposure, but sometimes PM&C may ask drafters for informal advice about the policy authority for a proposed exposure draft.

Referral to federal courts

9 If a draft Bill proposes to confer jurisdiction on, or alter the procedures of or otherwise affect, a federal court or tribunal, you should discuss with your instructors and the relevant area of the Attorney-General's Department according to Drafting Direction 4.2 whether the Bill should be sent to the court or tribunal on a confidential basis for comment. The Attorney-General's approval must be obtained for a Bill within his or her portfolio responsibilities. The instructing Department's Minister's approval must be obtained for a Bill that is the responsibility of another Minister. The Attorney-General's Department will arrange the consultation with the court or tribunal.

Part 2—Legislation Approval meetings

10 Legislation Approval for draft legislation to be introduced is usually given early in the week proposed for introduction. Legislation Approval meetings with the designated approver usually take place early on the first day of each sitting week. Papers that are not available for that meeting may be considered by the designated approver later in the week, without a formal meeting; this is relatively common, but urgent approval cannot be guaranteed.

11 In general, draft legislation and memorandums from OPC that are ready for Legislation Approval should be lodged with the Legislation Section in PM&C by 11 am on the Wednesday before the week proposed for introduction or being moved (see Word Note 6.9 on sending LAP memos).

12 Paragraphs 8.11 and 8.12 of the PM&C Legislation Handbook provide that, in order to enable draft legislation to be approved for introduction or circulation, Departments must electronically lodge their papers by the 11 am Wednesday deadline. Paragraph 8.13 of the Handbook provides that the Legislation Section of PM&C must be contacted by a Department at the earliest opportunity if it might miss the 11 am Wednesday deadline. If you can see any risk that draft legislation will miss that deadline, you should advise your instructors to urgently discuss the situation with officers in the PM&C Legislation Section. You should also inform your instructors that if the 11 am Wednesday deadline is not met the draft legislation might not be able to proceed in the intended week of introduction and might instead be held over to a later week.

13 You should ensure that the OPC Bills Officer is aware of draft legislation that is likely to be available for the next LAP meeting.

Part 3—Legislation Approval Process memorandums (LAP memos)

LAP memos to be cleared by statutory officer in OPC

14 Before a LAP memo is lodged with PM&C, it should be cleared by First Parliamentary Counsel (*FPC*) or, if FPC is not available, by one of the Second Parliamentary Counsel.

OPC not obliged to “clear” LAP memos with instructors

15 The LAP memo represents OPC's independent advice to the Government, and OPC is not under any obligation to **clear** any aspect of the memo with any instructor.

16 OPC may show draft LAP memos to instructors in the interests of good government. If we have a problem with authority, it is more sensible to give people a chance to resolve it before the draft legislation goes to PM&C for clearance. In other cases, we may show the memo to instructors so that, if need be, they can brief their Minister.

Basic format for LAP memos

17 LAP memos should be set out as described in Attachment A. Word Note 5.1 contains instructions for how to use the LAP memo macro to create a LAP memo. Word Note 6.9 contains instructions for sending LAP memos to PM&C.

Authority

General principles

18 The LAP memo must identify the policy authority for the draft legislation. Depending on the contents of the legislation, the authority may be any of the following, or any combination of the following:

- a Cabinet or NSC Minute (see paragraphs 20 and 21);
- the Prime Minister's approval (or the approval of the designated approver on the Prime Minister's behalf);
- the relevant Minister's approval;
- FPC's approval (see paragraphs 44 and 45).

19 Not all decisions of standing committees of the Cabinet or of ad hoc committees of the Cabinet provide policy authority for draft legislation. If a Cabinet Minute requires endorsement from the Cabinet, it cannot be relied upon to provide policy authority. It will be marked "THIS MINUTE REQUIRES CABINET ENDORSEMENT". You should not assume that such endorsement will automatically be given.

20 An exception is decisions of the National Security Committee of Cabinet (NSC). These decisions do provide policy authority for draft legislation and do not require the endorsement of Cabinet.

21 The LAP memo should refer to the final Cabinet or NSC Minute (which will have "/CAB" or "/NSC" in the Minute number).

22 In some cases, specific agreement from other Ministers is also required (see paragraphs 35 to 43).

23 The *Legislation Handbook* and *OPC's drafting services: a guide for clients* set out more information about the authority required for different kinds of policy in different circumstances.

24 In the case of urgent parliamentary amendments, you may have trouble discovering any apparently adequate authority for the amendments. In such cases, you should simply detail whatever information you have about the source of the amendments. However,

consideration of the policy authority for non-urgent parliamentary amendments should involve the same rigour as is required for Bills.

References to authority documents in the LAP memo

25 If you have seen a copy of the document in which policy authority is recorded or requested (e.g. a Cabinet Minute, a Prime Minister's letter or a Minister's letter), your statements about that authority may be unqualified. If you have not seen the document but have been told about its existence and its contents, your statements should be qualified by "I understand that" or "I am instructed that". If the document is a Cabinet Minute, it would generally be desirable to specify as well that you have not seen the document. Attachment A sets out the form of words to use if you need to refer to a Cabinet Minute of which you have seen only extracts.

26 If the Minister has not yet requested some necessary authority, the LAP memo must either:

- identify the topics that need to be covered by the request for authority; or
- attach a copy of a draft letter that is awaiting the Minister's signature.

27 There should be an express statement in every LAP memo to the effect that the draft legislation is fully authorised, or will be if specified events occur (but see paragraphs 29 and 31).

28 Where the legislation is not yet fully authorised (including by other relevant Ministers), the express statement should identify, by reference to preceding paragraphs of the LAP memo, all of the events needed to complete the authorisation (e.g. "The Bill will have appropriate policy authority if the Prime Minister gives the authority requested by the Minister as mentioned in paragraph 2, and gives authority along the lines requested in the draft letter mentioned in paragraph 3, and the Attorney-General approves the offences mentioned in paragraph 4, and the Minister for [*specify Minister*] gives the approval mentioned in paragraph 5"). The express statement should be the last paragraph in the authority section of the LAP memo. Keep in mind that the purpose of this statement is to provide a checklist of outstanding authority for PM&C to tick off before the legislation is cleared for introduction.

Resolving policy authority concerns

29 If drafters are concerned that the policy authority obtained might not be adequate, drafters should carefully consider the policy authority documents obtained. If drafters still have concerns they should raise them with FPC. If FPC has doubts about the adequacy of policy authority, he or she may request the drafter discuss the adequacy of the policy authority with PM&C. In most cases, this should lead to concerns being resolved or further policy authority being sought.

30 Paragraph 27 is not intended to change our practice in the rare cases in which there are unresolved concerns about the required policy authority when the LAP memo needs to be lodged. In particular, it is not intended to indicate that a LAP memo may not be lodged until all authority issues are resolved to everyone's satisfaction.

31 If drafters have taken the steps in paragraph 29 and policy concerns still exist, the LAP memo will need to include:

- a qualified statement about authority; and
- a description of the aspects of the draft legislation for which there are unresolved policy authority concerns; and
- an explanation of why it is thought that those aspects require more policy authority than the Minister proposes to seek; and
- an indication of the level of policy authority that it is thought would be adequate for those aspects of the draft legislation.

These provisions should, of course, be brought to the attention of the instructors.

32 It is important to remember that OPC has no capacity to insist that any particular policy approval be obtained. Our role is simply to identify any matter we think has inadequate policy authority. Once we have done so, a policy agency may:

- seek further policy authority; or
- seek to persuade the appropriate officers of PM&C that the existing policy authority is adequate.

Citing authority for amounts of money in draft legislation

33 If amounts of money to be specified in draft legislation are not included in the relevant Cabinet Minute or other authority, you should ask the instructing agency for information about the source of the amounts. This might be the Budget Papers or other Cabinet papers that were not specifically about the draft legislation.

34 You should deal with the information as follows:

- So far as possible, check the information to see whether it adequately substantiates the figures included in the draft legislation.
- However, if the information takes the form of method statements about how to derive the figures from other data, you do not need to “crunch the numbers” yourself. Some drafters have received information from instructing agencies that is unintelligible except to specialists.
- Make sure the information is cited in the LAP memo (this citation may need to be along the lines of “I am instructed by the Department of XYZ that this Bill gives effect to paragraph x(y) of Cabinet Minute No. TA13/XXX.”).
- If you have been unable to check or interpret the information yourself, arrange for a draft of the LAP memo (together with a copy of the information supplied by instructors) to be sent to PM&C early enough for the specialists there to check that it supports the figures in the draft legislation.

Approval by Attorney-General—departure from fundamental criminal law principle etc.

35 Drafting Direction 4.2 requires OPC to refer draft legislation of a kind identified in the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (September 2011 ed.) to the Attorney-General's Department if OPC considers that the draft legislation (which may be principal or amending legislation) may:

- (a) depart from a fundamental principle of Commonwealth criminal law set out in the Guide; or
- (b) be thought likely to be sensitive or contentious; or
- (c) otherwise depart significantly from the principles in the Guide; or
- (d) contain novel or complex issues that the Guide does not address.

36 Guidance on what may constitute a departure from a fundamental principle is given by the examples in the Guide at Part 1.3.2 (for example, the retrospective application of offences, or entry, search and seizure without a warrant or consent).

37 If the Attorney-General's Department considers that the legislation falls into either category (a) (departure from a fundamental principle) or (b) (likely to be sensitive or contentious), the Division may advise the instructing Department to seek the approval of the Attorney-General for the legislation.

38 If the Attorney-General's approval is needed, the instructing Department should arrange for a letter to be sent from the responsible Minister to the Attorney-General explaining:

- (a) the grounds on which approval is required; and
- (b) why it is necessary to proceed with the legislation despite the departure from a principle or the likelihood that it will be sensitive or contentious.

39 As the Attorney-General requires a reasonable amount of time to consider these matters, the relevant letter should be sent to the Attorney-General at least a week before the proposed date for submission for LAP. The instructing Department should also contact the Attorney-General's Department for advice on specific aspects of the procedure, and be sure to inform the Division if it is anticipated that there will be any difficulty meeting the deadline.

40 The question whether a Cabinet Minute or a letter from the Prime Minister provides adequate policy authority for offences, infringement notices and enforcement powers should be approached in the same way as drafters generally approach the adequacy of policy authority.

State and Territory agreement to vary the GST base

41 Under intergovernmental agreements, the States and Territories have a role in approving variations of the GST base. The agreement of State and Territory Ministers should also be covered in the part of the LAP memo dealing with authority. PM&C intend that this requirement will be set out in each letter giving the Prime Minister's policy authority, but it

may sometimes be overlooked. Also, it is not clear whether this requirement will always be set out in relevant Cabinet Minutes. If you are unsure whether this requirement is relevant to draft legislation you are working on, you should discuss it with officers in the PM&C Legislation Section.

Agreement of Presiding Officers to amendments of the *Parliamentary Service Act 1999*

42 If draft legislation amends the *Parliamentary Service Act 1999*, the agreement of the Presiding Officers (the President of the Senate and the Speaker of the House of Representatives) must be sought to the amendments. In such cases, the agreement of the Presiding Officers needs to be dealt with in addressing whether the draft legislation has adequate policy authority. This will involve specifying that the agreement has been obtained (including references to dated letters etc.), specifying that the drafter understands that the agreement has been obtained (including references to dated letters etc., if applicable) or noting that it is yet to be obtained.

Authority from other Ministers

43 There will be some other cases in which Cabinet authority is given subject to details being agreed between specified Ministers, or in which Prime Minister's authority is given subject to the agreement of specified Ministers. In such cases the agreement of the Minister concerned needs to be dealt with in addressing whether the draft legislation has adequate policy authority. This will involve specifying that the agreement has been obtained (including references to dated letters etc.), specifying that the drafter understands that the agreement has been obtained (including references to dated letters etc., if applicable) or noting that it is yet to be obtained.

FPC's power to authorise statute law revision-type changes

44 In June 1996, the Parliamentary Business Committee of Cabinet gave FPC power to authorise technical corrections, of the kind that would otherwise be suitable for inclusion in a Statute Law Revision Bill, for inclusion in appropriate Bills in the Government's ordinary legislation program. This has been interpreted as applying also to parliamentary amendments to make technical corrections to Bills (to the extent that such amendments cannot be made as Chairman's amendments). FPC is also able to authorise the repeal of legislation that is clearly spent.

45 FPC can therefore give "policy" authority for amendments to make such corrections or repeals. This means that instructing agencies do not need to approach their Ministers, and their Ministers do not need to approach the Prime Minister, for authority to include these amendments in draft legislation. However, any such amendments must still be included in the text of the draft legislation that the Minister ultimately approves. For further information on this and FPC's editorial powers see Drafting Direction No. 4.4.

Ministerial approval of text

46 The standard approach where draft legislation amends Acts administered by different Ministers is to refer to:

- the approval of the sponsoring Minister in relation to the text of the **whole** of the draft legislation; and

- the approval of other Ministers or their Departments only in relation to that part of the text that amends their Acts.

47 As above, OPC and PM&C have agreed the sponsoring Minister must approve the text of the whole of the draft legislation, not only the parts covering Acts administered by the sponsoring Minister.

48 If draft legislation sponsored by a Minister in one capacity amends an Act that is administered by the Minister in another capacity (e.g. law reform Bill that also amends an arts Act), the Minister need not separately approve the text of the amendments of the other Act. The approval by the Minister of the text of the whole of the draft legislation is sufficient.

49 Parliamentary Secretaries are able to approve text and may approve the text. If this occurs, the LAP memo should specify this.

Numbering

50 If your Bill has markers in it (^, @, # etc.), you may leave these in until preparing the Bill to send to CanPrint and include the following text in the LAP memo:

Numbering of the Bill will be finalised, and renumbering markers removed, before the Bill is introduced.

Optional paragraphs in LAP memo

51 In general, we should not feel inhibited about including constructive comments or explanations in LAP memos. On the other hand, LAP memos should not be unnecessarily long. Usually it would be desirable to aim for a memo no longer than one page, although clearly in some cases even the citation of all relevant authorities will run onto a second or third page.

Explanation

52 This paragraph will not generally be required where the relevant authority is clear. In rare cases, however, it is helpful to provide a brief explanation of the provisions. This is especially relevant to parliamentary amendments, where it may be appropriate to provide an explanation of why the amendments are required.

Departures from authority

53 Any departures should be identified, and the inclusion of provisions which depart from authority should be explained, generally using the form of words “On instructions from the Department of ...”.

54 In this context, “departures from authority” refers to provisions for which there is **no** authority and, apparently, no intention to seek authority. It does not cover, for instance, departures from Cabinet authority that have been approved by the Prime Minister or the designated approver or for which such approval has been, or will be, sought. These would be dealt with under “Authority”.

55 Departures that need to be mentioned under this heading are very rare these days.

Comments

56 Any other matters that you feel should be raised may be raised under this heading, for instance:

- You may mention any case in which instructors reject a “plain English” approach to drafting without good reason.
- You may refer to provisions that you think might cause difficulties in the Parliament.
- You may want to note that there is a risk that particular aspects of the legislation may not be constitutional.

57 Sometimes it may be appropriate to mention in the LAP memo that some elements covered by the relevant authorities have not been included in the draft. In some circumstances, for example, picking and choosing within the coverage of an authority might raise more issues than doing something completely outside the authority. A package of measures may have been carefully designed to achieve a particular balancing of interests. Material of this kind should be raised under the “Comments” heading and not under the “Authority” heading.

Headings for optional paragraphs

58 The “optional” paragraphs may be given more informative headings if this seems appropriate (for example, “Explanation—effect of granting tax rebate” or “Comments—inclusion of examples in Bill”).

Other matters

References to the Cabinet

59 The Cabinet should be referred to as *the Cabinet* and not simply as *Cabinet* (but note that “Cabinet Minute” is acceptable).

References to Ministers

60 Ministers should be identified by title (e.g. the Treasurer) rather than by surname or family name.

61 If a particular Minister has more than one ministerial title, the title on the Ministry list that is relevant for the particular Bill should be used in the LAP memo.

62 If it is necessary to refer in a LAP memo to a letter to or from a particular Minister, and the title of that Minister has changed between the time the letter was sent and the time the LAP memo is prepared, the Minister’s title as specified in the letter should be used when referring to the letter (even if the LAP memo contains another reference to the Minister using the Minister’s new title).

Abbreviated references

63 Abbreviations may sometimes be used in LAP memos. For example, if there is a Parliamentary Secretary to the Prime Minister, he or she may be referred to as the *PSPM*. This is to avoid such expressions as “a letter from the Parliamentary Secretary to the Prime Minister to the Minister for Health”. The LAP memo macro incorporates allowable abbreviations. If you think additional abbreviations should be allowable, please raise this with FPC.

Reintroduction of lapsed Bills after an election

64 The LAP requirements for lapsed Bills to be reintroduced after an election will depend on whether the election has produced a change of government. Specific advice about these requirements will be provided after each election.

Part 4—Special procedures for re-introduction of Bills in same session of Parliament or for relocated measures

65 This Part deals with procedures that are available if material to be included in a Bill or in parliamentary amendments has already cleared the legislation approval process for a different Bill. This situation may occur if:

- (a) a Bill is to be reintroduced; or
- (b) material is to be relocated from one Bill to another; or
- (c) material is to be removed from one Bill, but instead moved as parliamentary amendments to another Bill.

66 In this situation, you should consider whether there have been any changes to the policy of the Bill since the Bill’s first introduction. This will determine whether further policy authority is required. If the authority relied upon for the original introduction is being relied on and there is not something different (or additional) in the reintroduction/relocation, you should discuss the appropriate form of words for the LAP memo with FPC (see Part 4 of the table in attachment A).

67 The Prime Minister’s approval of reintroduction of a Bill is required (whether or not there have been any changes to the policy of the Bill since the Bill’s first introduction). You should discuss the matter with FPC if there is any doubt that the Prime Minister (or PM&C) is aware of the reintroduction or relocation.

68 This does not affect the general approach set out in *OPC’s drafting services: a guide for clients* that once a Bill is introduced in reliance on particular authority, that authority will generally be treated as spent.

Part 5—Special procedures for urgent Bills and parliamentary amendments

69 This Part deals with procedures that are available if draft legislation is required urgently (e.g. within hours rather than days). Before using those procedures, you should first discuss with officers in the PM&C Legislation Section how they would like the particular

urgent matter to be handled. In some cases PM&C are able to accept late documents and put them through a brief Legislation Approval Process, and in other cases it is necessary to go directly to the designated approver.

70 In an appropriate case, LAP approval can be sought directly from the designated approver by letter emailed to his or her office. The letter is usually signed by FPC, but another drafter may sign the letter if FPC is unavailable.

71 The letter should include a short paragraph:

- (a) describing the Bill or the amendments; and
- (b) briefly explaining the effect of the Bill or the amendments.

72 Sometimes, a Bill will need to be introduced, or an amendment will need to be moved, before the designated approver has time to approve it. However, an appropriate letter should still be sent to the designated approver and copied to PM&C as soon as the Bill or amendments have been cleared by the instructors.

73 Attachment B sets out a basic precedent for letters to the designated approver requesting urgent LAP approval. See Word Note 5.1 for instructions about how to use the LAP memo macro to create a letter to the designated approver.

Part 6—Approval of changes made to draft legislation after LAP

74 FPC has authority to approve certain minor changes made to draft legislation after it has been submitted for LAP. Attachment C sets out the kinds of changes that may be approved.

75 If you need to get minor changes to draft legislation approved in this way, you should email FPC a copy of the relevant pages of the draft legislation that:

- shows the changes (e.g. by revision-marking); and
- requests approval.

76 If FPC approves the proposed changes under this procedure, the approval will be recorded. FPC will let you know if your proposed changes are not suitable for approval under this procedure.

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First Parliamentary Counsel
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3.0	1 April 2008	s06rd403.v17.doc
4.0	17 February 2009	s06rd403.v22.doc
5.0	4 August 2009	s06rd403.v30.docx
5.1	7 September 2009	s06rd403.v32.docx
6.0	29 June 2010	s06rd403.v34.docx
6.1	1 October 2010	s06rd403.v38.docx
6.2	16 February 2012	s06rd403.v42.docx
6.3	2 October 2012	s06rd403.v46.docx
6.4	26 September 2013	s06rd403.v55.docx
6.5	1 July 2014	s06rd403.v57.docx
6.6	4 May 2016	s06rd403.v63.docx
6.7	15 September 2016	s06rd403.v67.docx
6.8	27 February 2017	s06rd403.v69.docx
6.9	5 February 2018	s06rd403.v71.docx
6.10	26 February 2019	s06rd403.v77.docx
6.11	26 June 2019	s06rd403.v81.docx

Note: Before the issue of the current series of Drafting Directions, this Drafting Direction was known as Drafting Direction No. 3 of 2006.

Attachment A—Format and contents of LAP memos

This Attachment sets out forms of words to cover all the usual possibilities for the “Authority” and “Ministerial approval” paragraphs of the LAP memo, and headings for the optional paragraphs in the memo. The LAP memo macro also includes methods of setting out some versions of this material in tables.

The LAP memo macro may reflect changes to the forms of words that have been approved by FPC before they are incorporated into this Attachment. Drafters should use the text generated by the macro unless they consider there is a problem that should be raised with FPC.

This Attachment also does not include details of text generated when the “Interaction with double dissolution trigger Bill” checkbox at the bottom of the macro’s dialogue box is ticked.

Authority

This paragraph sets out the authority for the policy effected by the draft legislation.

The forms of words in the following table are set out using the following conventions:

- Where words are shown in square brackets and roman font, you need to decide whether the words need to be included at all in the particular case (e.g. “I understand that” is necessary where you haven’t seen the document you are referring to), or which version of the words needs to be included (e.g. depending whether your draft legislation is a Bill or amendments).
- Where words are shown in square brackets and italics, they are an instruction to the drafter to provide information (e.g. the title of a Minister).
- Asterisks are used to indicate where the information to be inserted is a number, and this is clear from the surrounding text (e.g. “paragraphs **” requires you to insert the numbers of the paragraphs of the document referred to).

Circumstance	Form of words	Comments
Part 1—Basic cases		
1. Draft legislation completely covered by Cabinet Minute(s)	Cabinet Minute No. [<i>insert number</i>] dated [<i>insert date</i>] provides [appropriate] policy authority for the [Bill/amendments].	Cabinet Minutes should be cited by number and date.
2. Draft legislation completely covered by a PM/PS letter that you have seen	A letter from the [Prime Minister/AMPMC/AMPM/PSPM/Assistant Cabinet Secretary/Assistant Minister for Productivity (on behalf of the Prime Minister)/PSC/Acting PSPM/Minister Assisting the Prime Minister] to the [<i>specify Minister</i>] dated [<i>insert date</i>] provides [further/appropriate] policy authority for the [Bill/amendments].	There is no need to specify that approval by the designated approver was given on behalf of the Prime Minister unless the approver is the Assistant Minister for Productivity.

<p>3. You have seen a signed letter to the PM covering all outstanding issues</p>	<p>The [<i>specify Minister</i>] has sought [further] authority by letter to the Prime Minister dated [<i>insert date</i>].</p> <p>If the authority requested in that letter is given, then the [Bill/amendments] will have [appropriate] policy authority.</p>	<p>If the request for authority is signed by a Ministerial adviser rather than the Minister, that fact should be mentioned in the LAP memo under “Authority”.</p>
<p>4. You have seen an unsigned letter only</p>	<p>I understand that the [<i>specify Minister</i>] will seek [further] authority from the Prime Minister (see the attached draft letter).</p> <p>If the authority requested in that draft letter is given, then the [Bill/amendments] will have appropriate policy authority.</p>	<p>A copy of the unsigned letter may be attached to the LAP memo, and the LAP memo should refer to authority being given as requested in the attached draft letter.</p>
<p>5. You have seen no letter at all, and authority is to be sought for final text (by submitting the final text of the draft legislation to the Cabinet or the Prime Minister)</p>	<p>I understand that the [<i>specify Minister</i>] will seek authority from the [Cabinet/Prime Minister] for the [Bill/amendments].</p> <p>If the authority is given for the [Bill/amendments] as mentioned in paragraph [<i>insert reference</i>], then the [Bill/amendments] will have appropriate policy authority.</p>	
<p>6. You have seen no letter at all and authority is to be sought by reference to a description of the matters concerned</p>	<p>I understand that the [<i>specify Minister</i>] will seek authority from the [Cabinet/Prime Minister] for the following [provisions/aspects] of the [Bill/amendments]:</p> <p>[<i>specify provisions or aspects</i>]</p> <p>If authority is given for the [provisions/aspects] mentioned in paragraph [<i>insert reference</i>], then the [Bill/amendments] will have appropriate policy authority.</p>	<p>Specify all provisions (or topics, if it is too difficult to identify specific provisions or parts of provisions) that require authority, and explain effect, or departure from existing authority, briefly.</p>
<p>7. Ministerial authority obtained</p>	<p>[I understand that] the [<i>specify Minister</i>] authorised [<i>specify provisions</i>] on [<i>insert date</i>]. These are minor technical amendments [<i>or other explanation for Ministerial authority being adequate</i>].</p>	<p>Provisions may be specified as “the remaining provisions of the Bill” or “the provisions of the Bill not covered by the Cabinet Minute(s) or the Prime Minister’s approval”</p>
<p>8. Ministerial authority not yet obtained</p>	<p>I understand that the [<i>specify Minister</i>] [has been/will be] asked to authorise [<i>specify provisions</i>]. These are minor technical amendments [<i>or other explanation for Ministerial authority being adequate</i>].</p>	<p>Provisions may be specified as “the remaining provisions of the Bill” or “the provisions of the Bill not covered by the Cabinet Minute(s) or the Prime Minister’s approval”</p>
<p>9. FPC authority</p>	<p>First Parliamentary Counsel authorised the statute law revision amendments made by [<i>specify provisions</i>] on [<i>insert date</i>].</p>	

<p>10. Approval of Attorney-General required for significant, sensitive or contentious issues</p>	<p>[I understand that] the Attorney-General [has approved by letter to <i>[specify Minister]</i> dated <i>[insert date]</i>/has been asked to approve/will be asked to approve] <i>[specify provisions or amendments]</i>. These [provisions/amendments] have been identified as raising significant, sensitive or contentious issues within the portfolio responsibilities of the Attorney-General.</p>	
<p>11. Agreement of State and Territory Ministers required</p>	<p>Authority was given by the [Cabinet/Prime Minister] subject to the States and Territories agreeing [to vary the GST base].</p> <p>[I understand that] this agreement was given in the following letters:</p> <p style="text-align: center;"><i>[identify letter by sender, recipient and date]</i>.</p> <p style="text-align: center;">OR</p> <p>[I understand that] this agreement [has been/will be] sought by the <i>[specify Minister]</i>.</p>	
<p>12. Agreement of Presiding Officers required</p>	<p>[I understand that] the Presiding Officers have agreed to the amendments of the <i>Parliamentary Service Act 1999</i> by letter to <i>[specify Minister]</i> dated <i>[specify date]</i>.</p> <p style="text-align: center;">OR</p> <p>[I understand that] the Presiding Officers [have been asked to agree/will be asked to agree] to the amendments of the <i>Parliamentary Service Act 1999</i>.</p>	
<p>13. Agreement of other Minister(s) required</p>	<p>Authority was given by the [Cabinet/Prime Minister] subject to the <i>[specify Minister(s)]</i> agreeing [specify nature of agreement if appropriate].</p> <p>[I understand that] this agreement was given in a letter <i>[identify letter by sender, recipient and date]</i>.</p> <p style="text-align: center;">OR</p> <p>[I understand that] this agreement [has been/will be] sought by the <i>[specify Minister]</i>.</p>	
<p>Part 2—Combination cases</p>		

<p>14. Draft legislation completely covered by appropriate authority</p>	<p>[Specify all sources of authority] provide appropriate policy authority for the [Bill/amendments].</p> <p>OR</p> <p>The following provide appropriate policy authority for the [Bill/amendments]:</p> <p>[List all sources of authority].</p>	<p>If the draft legislation is covered by a number of different authorities, you may, if convenient, show the authorities and the parts of the draft legislation to which they relate using a table.</p>
<p>15. Some authority outstanding</p>	<p>Subject to paragraphs **, [specify all sources of authority] provide appropriate policy authority for the [Bill/amendments].</p> <p>The [Bill/amendments] will have appropriate policy authority if:</p> <ul style="list-style-type: none"> (a) [the authority requested in the [specify date] letter is given]; and (b) [the authority requested in the attached draft letter is given]; and (c) [authority is given for the [provisions/aspects] mentioned in paragraph [insert reference]]. 	<p>Use the forms provided in Part 1 of this table to set out the authority obtained and the outstanding authority.</p> <p>If the draft legislation is covered by a number of different authorities, you may, if convenient, show the authorities and the parts of the draft legislation to which they relate using a table.</p> <p>Matters may be identified by reference to provisions, by reference to subject matter, or by reference to a letter in which the matters are described.</p> <p>Keep in mind that this paragraph should provide a checklist for PM&C to work through before putting the draft legislation to the designated approver.</p>

Part 3—Extracts of Cabinet Minute		
<p>16. If the Cabinet Minute is the sole source of authority</p>	<p>Subject to paragraphs [<i>insert reference</i>] and [<i>insert reference</i>], Cabinet Minute No. [<i>insert reference</i>] dated [<i>insert date</i>] provides [appropriate] policy authority for the [Bill/amendments].</p> <p>I have not seen the entire Cabinet Minute. Instead, I have seen extracts consisting of [<i>describe the extracts you have seen</i>].</p> <p>If the extracts of the Cabinet Minute faithfully reflect the contents of the Cabinet Minute and the Cabinet Minute contains nothing inconsistent with the extracts then the Cabinet Minute provides [appropriate] policy authority for the [Bill/amendments].</p>	<p>You should adapt the text appropriately for use in a LAP memo that contains a table setting out authority.</p>
<p>17. If the Cabinet Minute is not the sole source of authority</p>	<p>Subject to paragraphs [<i>list paragraphs</i>], Cabinet Minute No. [<i>insert number</i>] dated [<i>insert date</i>] provides appropriate policy authority for the [Bill/amendments].</p> <p>I have not seen the entire Cabinet Minute. Instead, I have seen extracts consisting of [<i>describe the extracts you have seen</i>].</p> <p>The [Bill/amendments] will have appropriate policy authority if:</p> <ul style="list-style-type: none"> (a) the extracts of the Cabinet Minute faithfully reflect the contents of the Cabinet Minute and the Cabinet Minute contains nothing inconsistent with the extracts; and (b) [<i>describe other condition, e.g. authority is given as requested in the attached draft letter</i>]; and (c) [<i>describe other condition, e.g. the amount of the appropriation referred to in a specified paragraph is in accordance with that authority</i>]. 	<p>You should adapt the text appropriately for use in a LAP memo that contains a table setting out authority.</p>
Part 4—Relocated measures (including Bills reintroduced after an election)		
<p>18. If the measures have been included in a Bill that has already cleared LAP</p>		<p>You should discuss the appropriate wording with FPC.</p>

<p>19. If the measures are being reintroduced (but not as a possible double dissolution trigger)</p>	<p>This Bill is being reintroduced. It is in the same form as the Bill [introduced into/passed by the House of Representatives] on [specify date].</p> <p>A letter from the [Prime Minister/AMPMC/AMPM/PSPM/Assistant Cabinet Secretary/PSC/Acting PSPM/Minister Assisting the Prime Minister/Assistant Minister for Productivity (on behalf of the Prime Minister)] to the [specify Minister] dated [insert date] approves reintroduction of the Bill.</p>	
<p>20. If the Bill is being reintroduced after an election without alteration</p>	<p>The Bill is the same in substance as the [insert name of earlier, similar Bill] that was introduced into the [specify relevant House of Parliament] on [insert date].</p>	
<p>21. If the Bill is being reintroduced after an election with only technical changes</p>	<p>The Bill is the same in substance as the [insert name of earlier, similar Bill] that was introduced into the [specify relevant House of Parliament] on [insert date]. Technical changes that were approved by [First Parliamentary Counsel/the Minister for [specify title]] on [specify date] have been made to the Bill.</p>	
<p>22. If the Bill is being reintroduced after an election with actual or proposed parliamentary amendments</p>	<p>The Bill is the same in substance as the [insert name of earlier, similar Bill] that was introduced into the [specify relevant House of Parliament] on [insert date]. Parliamentary amendments that were [previously made to the Bill/previously approved for introduction by the Assistant Minister to the Prime Minister and Cabinet/Assistant Minister to the Prime Minister/Parliamentary Secretary to the Prime Minister/Assistant Cabinet Secretary/Assistant Minister for Productivity (on behalf of the Prime Minister)] have been incorporated into the Bill.</p>	
<p>23. If the Bill is being reintroduced after an election with other changes</p>	<p>The [insert name of earlier, similar Bill] was introduced into the [specify relevant House of Parliament] on [insert date]. Except as mentioned below, this Bill is the same in substance as that Bill.</p> <p>Several changes have been made to the contents of the Bill since the original Bill was introduced.</p> <p>[Cabinet Minute No. [insert number] dated [insert date]/A letter from the [Prime Minister/AMPMC/AMPM/PSPM/Assistant Cabinet Secretary/Assistant Minister for Productivity (on behalf of the Prime Minister)] to the [specify Minister] dated [insert date] provides authority for these changes.</p>	

<p>24. Reintroduction of Schedule</p>	<p>Schedule <i>[insert number]</i> is being reintroduced. It is in the same form as Schedule <i>[insert number]</i> to the <i>[insert short title of previously introduced Bill containing the Schedule]</i> [introduced into/passed by the House of Representatives] on <i>[insert date]</i>.</p>	
<p>25. If the Bill is being reintroduced as a possible double dissolution trigger</p>	<p>The Bill is identical to the Bill of the same name passed by the House of Representatives in <i>[insert month and/or year]</i> [, as modified by the incorporation of Senate amendments agreed to by the House of Representatives,] and rejected by the Senate in <i>[insert month and/or year]</i>.</p> <p>The Bill passed by the House of Representatives has previously received legislation approval.</p> <p>A letter from the [Prime Minister/AMPMC/AMPM/PSPM/Assistant Cabinet Secretary/PSC/Acting PSPM/Minister Assisting the Prime Minister/Assistant Minister for Productivity (on behalf of the Prime Minister)] to the <i>[specify Minister]</i> dated <i>[insert date]</i> approves reintroduction of the Bill.</p> <p><i>[Drafter: There is no need to include in the LAP memo material about Ministerial approval of the text of the Bill.]</i></p>	

Ministerial approval

This paragraph sets out the information you have about whether the Minister has approved the text of the draft legislation (as distinct from the policy).

In almost all cases your knowledge about Ministerial approval will come from your instructors and should be prefaced by “I understand that”.

Circumstance	Form of words
<p>1. Minister has approved text of the draft legislation</p>	<p>[I understand that] the <i>[specify sponsoring Minister]</i> has approved the text of the [Bill/amendments].</p>
<p>2. Minister has been asked to approve the text of the draft legislation</p>	<p>[I understand that] the <i>[specify sponsoring Minister]</i> has been asked to approve the text of the [Bill/amendments].</p>
<p>3. Minister will be asked to approve the text of the draft legislation</p>	<p>[I understand that] the <i>[specify sponsoring Minister]</i> will be asked to approve the text of the [Bill/amendments].</p>
<p>4. Act(s) in another portfolio are also amended by the draft legislation</p>	<p>[I understand that] the <i>[specify other Department/Minister]</i> [has approved/has been asked to approve/will be asked to approve] the text of the amendments of legislation administered in that portfolio.</p>
<p>5. Act(s) in another portfolio are amended by the Bill for reintroduction after an election</p>	<p>The Bill contains amendments of legislation administered in [another portfolio/other portfolios]. Those amendments were approved, before the Bill was introduced on <i>[specify date of introduction of pre-election Bill]</i>, by the [portfolio/portfolios] administering that legislation at that time. I understand that the [portfolio/portfolios]</p>

	now administering that legislation [has been/have been/will be] notified of that prior approval.
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Numbering

[see paragraph 50 of the Direction.]

Explanation

[Optional—see paragraph 52 of the Direction.]

Departures from authority

[Optional—see paragraphs 53 to 55 of the Direction.]

Comments

[Optional—see paragraphs 56 to 58 of the Direction.]

[date]

Attachment B—Sample letter to designated approver

Senator/Dr/Mr/Ms [*name*]
[*Title of designated approver*]
Parliament House
CANBERRA ACT 2600

Dear Senator/Dr/Mr/Ms [*name*]

[Parliamentary amendments of the] [*Name of Bill*]

- 1 This Bill was submitted for your approval on [insert date].
- 2 Since then, [explain what has been done to the Bill]. [If the Bill has not previously been submitted for approval, replace this paragraph and paragraph 1 with a brief description of the Bill and a brief explanation of the effect of the Bill.]
- 3 [All of the changes are within the authority for the Bill/[include statement about authority (with text generated by LAP macro or manually)]].
- 4 I ask that you approve the [altered Bill/amendments] without the normal Legislation Approval Process. [Omit “altered” if the Bill has not previously been submitted for approval.]
- 5 A copy of the [Bill/amendments] is attached. [*If the Bill has previously been submitted for approval, add the sentence “New text is underlined, and superseded text is struck through or shown in a box in the margin.”.*]

Yours sincerely

Peter Quiggin PSM
First Parliamentary Counsel
[*date*]

Approved without submission for Legislation Approval

.....

.....[*month and year*]

Attachment C—Changes that may be approved by FPC after LAP

Formal changes

- Corrections of clerical errors: e.g. incorrect spellings, typographical errors.
- Corrections of grammatical errors.
- Correction of cross-references: e.g. a reference to “section 35” might be changed to “section 43”.
- A clause may say “Australia and the external Territories”, overlooking the fact that the Bill defines “Australia” as including the external Territories.
- A clause may refer to “a State or Territory” when the policy of the Bill is to apply only to the States.
- A clause may refer to a tax year or grant year by the wrong date.
- A clause may refer to the “Commission”, when the rest of the Bill refers to “Authority” (due to a change of name during the course of the drafting).
- A clause may have words missing, or wrongly repeat words.

(There are very many different kinds of error—these are only a few examples. What they have in common is that they should be corrected to give effect to the agreed policy of the Bill.)

Stylistic changes

Changes of grammar or style that do not change the sense, e.g.:

- “in accordance with the provisions of this Act” would be changed to “under this Act”.
- “a person is a person to whom this section applies if...” would be changed to “this section applies to a person if...”.
- “shall be deemed to be” would be changed to “is taken to be”.
- “a person shall” would be changed to “a person must”.
- “There is hereby established a commission...” would be changed to “A commission is established...”.

(There are very many different ways in which the style may be changed—these are only a few examples. What they have in common is that they improve the text without changing the sense.)

Technical changes

Changes that are not simply formal but are necessary to make the draft legislation work, without changing the agreed policy (e.g. inserting a provision to avoid a constitutional problem).