

PARLIAMENTARY COUNSEL

Drafting Direction No. 4.3 Amendments requiring consultation with States and Territories under an intergovernmental agreement

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Part 1—Preliminary

1 This Drafting Direction deals with amendments to Commonwealth legislation that, under an intergovernmental agreement, require consultation with, or consultation with and

approval of, the States and Territories. Part 2 deals with the Corporations legislation and Part 3 deals with other Commonwealth legislation.

Part 2—Corporations legislation

Preliminary

2 This Part deals with legislation that amends, or alters the effect, scope or operation of, the following legislation:

- (a) the *Corporations Act 2001*;
- (b) the *Australian Securities and Investments Commission Act 2001*;
- (c) certain related taxing legislation:
 - (i) the *Corporations (Futures Organisations Levies) Act 2001*;
 - (ii) the *Corporations (Securities Exchanges Levies) Act 2001*;
 - (iii) the *Corporations (National Guarantee Fund Levies) Act 2001*;
 - (iv) the *Corporations (Fees) Act 2001*;
 - (v) the *Corporations (Review Fees) Act 2003*;
- (d) regulations made under those Acts.

3 These are together referred to as the *Corporations legislation*.

Corporations Agreement 2002 and Corporations Amendment Agreement 2005 (No. 1)

4 On 6 December 2002 the Commonwealth, the States and the Northern Territory entered into an agreement (the *Corporations Agreement 2002*) in relation to the Corporations legislation. A copy of the Agreement can be found in the Drafting Notes database (as an attachment to the Drafting Note on the New 2001 Corporations legislation).

5 For ease of reference, clauses 506 to 518 and clause 523 of the Corporations Agreement 2002 (about altering the Corporations legislation) are extracted as Attachment A to this Drafting Direction.

6 The Corporations Agreement 2002 replaces an earlier one, in very similar terms, that governed the “applied law” regime that was in place until the States gave the Commonwealth references under paragraph 51(xxxvii) of the Constitution following the High Court’s decisions in *R v Hughes* (2000) 171 ALR 155 and *Re Wakim; Ex Parte McNally* (1999) 198 CLR 511.

7 On 13 October 2005 the Corporations Amendment Agreement 2005 (No. 1) came into operation, under which the Australian Capital Territory became a party to the Corporations Agreement 2002.

Need for consultation

Consultation, approval and notification requirements

- 8 Under the Corporations Agreement 2002, the Commonwealth is required:
- (a) in respect of a draft that **repeals or amends** the Corporations legislation—to consult, and in some circumstances obtain the approval of, the Ministerial Council for Corporations (now known as the Legislative and Governance Forum for Corporations) before the Bill is introduced or the regulation made (clause 506 of the Agreement); and
 - (b) in respect of any other legislative proposal for Commonwealth legislation that would **alter the effect, scope or operation** of the Corporations legislation—to notify the Ministerial Council (now known as the Legislative and Governance Forum for Corporations) at the earliest practicable time after the development of the proposal and, for a Bill, preferably before the introduction of the Bill concerned (clause 516 of the Agreement).

9 More limited obligations are imposed on the Commonwealth for parliamentary amendments that repeal or amend the Corporations legislation or that would alter the effect, scope or operation of the Corporations legislation (subclauses 510(2) and 516(5) of the Corporations Agreement 2002).

10 For the purposes of paragraphs 8 and 9, clause 523 of the Corporations Agreement 2002 provides that **amend** includes indirectly amending the Corporations legislation by making provisions that would significantly alter its effect, scope or operation.

11 The “applied laws” nature of the former regime made it easier to recognise and remember the need for consultations with the States and Territories. In the new regime, the need for consultations with the States and Territories may be more readily overlooked because the Commonwealth is legislating unilaterally (albeit in reliance, in part at least, on the State references).

Public exposure requirements

12 Drafts that repeal or amend the Corporations legislation are subject to varying requirements about exposure for public comment (see clauses 509 and 511 of the Corporations Agreement 2002). The normal exposure period for Bills is 3 months. There are some cases in which the Commonwealth can dispense with public exposure of Bills or shorten the exposure period but the Commonwealth Minister still needs to advise the Ministerial Council (now known as the Legislative and Governance Forum for Corporations) of the reasons for such action. In other cases, the Commonwealth can dispense with public exposure or shorten the exposure period only with the approval of at least 3 State or Territory Ministers (of whom at least 2 must be State Ministers). Regulations, on the other hand, are only to be exposed for public comment if either the Commonwealth or the Ministerial Council (now known as the Legislative and Governance Forum for Corporations) makes a decision to that effect in accordance with clause 511.

Provisions that amend the Corporations legislation

13 If a draft is primarily concerned with amending the Corporations legislation, it will be prepared on instructions from the area within the Treasury that is responsible for that legislation. These instructors can be expected to be aware of the need for Ministerial Council (now known as the Legislative and Governance Forum for Corporations) consultation under the Corporations Agreement 2002.

14 Problems may occur, however, when the Corporations legislation is to be amended only consequentially on some other initiative. The Ministerial Council (now known as the Legislative and Governance Forum for Corporations) consultation obligations still apply in these cases. Drafters should make sure that their instructors are aware of the need for Ministerial Council (now known as the Legislative and Governance Forum for Corporations) consultations and should refer their instructors to the relevant contact in the Treasury (see paragraphs 22 and **Error! Reference source not found.**).

15 As the obligation to consult may carry with it an obligation for public exposure (see paragraph 12), the drafter should ensure that the instructors are aware of these requirements as early as possible. In particular, the drafter should not simply rely on the fact that the Corporations legislation (being legislation administered by the Treasurer) cannot be amended without the Treasurer's agreement. Such agreement will often be sought only at a late stage in the drafting process. This will be a particular problem in cases which require the agreement of at least 3 State or Territory Ministers (of whom at least 2 must be State Ministers) for dispensing with public exposure or shortening the exposure period.

16 Note that the situation dealt with in paragraphs 14 and 15 can arise even if the instructions come from another area in the Treasury (for example, an area that is responsible for tax legislation or insurance legislation).

Provisions that alter the effect, scope, or operation of the Corporations legislation

17 Drafters will, on occasions, be asked to draft provisions that alter the effect, scope or operation of the Corporations legislation. The following table gives some examples:

Provisions that alter the effect, scope or operation of the Corporations legislation	
Item	Examples
General principle	
1	Any provision that deals with a subject in relation to which the Corporations legislation makes provision has the potential to alter that legislation's effect, scope or operation (or to "conflict with" that legislation)
Specific examples	
2	giving a Minister power to give binding directions to a company owned or controlled by the Commonwealth, or by a Commonwealth instrumentality, without incurring the duties and liabilities of a director of the company
3	dealing with who can or cannot be a director, auditor or liquidator of a particular kind of company
4	transferring assets in a way that affects the provisions of the Corporations legislation dealing with registering company charges
5	dealing with the use of names as the names of particular companies
6	dealing with the service of documents on companies

Provisions that alter the effect, scope or operation of the Corporations legislation

Item	Examples
7	converting an existing statutory corporation into a company (e.g. the <i>Commonwealth Banks Restructuring Act 1990</i>)
8	merging an existing statutory corporation and an existing company to create a new company (e.g. the <i>Australian and Overseas Telecommunications Corporation Act 1991</i>)
9	establishing a body as a company
10	winding up or dissolving a company
11	conferring a function or power on ASIC (see sections 11 and 12A of the <i>Australian Securities and Investments Commission Act 2001</i>)

18 Note that companies are not the only kind of body the Corporations legislation deals with. It also deals with:

- corporations and bodies corporate;
- disclosing entities;
- managed investment schemes;
- registrable Australian bodies;
- foreign companies;
- Part 5.1 bodies;
- Part 5.7 bodies.

19 The Corporations legislation also regulates particular kinds of business (financial service providers, financial product issuers, financial market operators, clearing house operators, liquidators and company auditors).

20 A draft may still conflict with the Corporations legislation even though the draft's provisions seem quite general.

Applying the Corporations legislation by reference

21 A provision that applies provisions of the Corporations legislation by reference does not necessarily alter its effect, scope or operation.

Examples:

A draft that defines the relationship of holding company and subsidiary by reference to the Corporations legislation. Even if the Corporations legislation tests are modified in their application for the purposes of a draft, this does not conflict with the Corporations legislation so long as the draft's substantive provisions are not themselves in conflict.

A draft that applies some of the winding up provisions of the Corporations legislation to a body that cannot otherwise be wound up under that legislation. Consultation with the Ministerial Council would probably not be required, so long as the draft does not purport to confer particular additional functions on ASIC. (However, such a draft should be shown to Treasury in any event, in case there are resource implications for ASIC or other impacts that Treasury should be aware of.)

Procedure

22 In any case where a drafter is asked to draft a provision that the drafter thinks requires consultation, the drafter should seek an assurance that the appropriate consultation procedures have been, or are being, followed through the Secretariat to the Ministerial Council (now known as the Legislative and Governance Forum for Corporations).

Part 3—Other legislation

Specific cases

23 Amendments of other Commonwealth legislation may also require consultation with, or consultation with and approval of, the State and Territories under an intergovernmental agreement. So far as Acts are concerned, some were enacted under referrals from the States similar to the Corporations legislation. Some are parts of other Commonwealth/State co-operative legislative schemes. The following table sets out some examples of legislation affected by intergovernmental agreements:

Intergovernmental agreements	
Item	Examples
1	Amendments to the rate of the GST or the text of the GST legislation.
2	Amendments of Part IV of the <i>Competition and Consumer Act 2010</i> (the competition provisions), the Competition Code (within the meaning of section 150C of that Act) or regulations made under paragraph 51(1C)(f) of that Act.
3	Amendments of Schedule 2 to the <i>Competition and Consumer Act 2010</i> (the Australian Consumer Law) or legislative instruments made under the Australian Consumer Law.
4	Amendments of the <i>Agricultural and Veterinary Chemicals Code Act 1994</i> or regulations made under the Agvet Code established under that Act.
5	Amendments of the gene technology legislation.
6	Amendments of the <i>Research Involving Human Embryos Act 2002</i> , the <i>Prohibition of Human Cloning for Reproduction Act 2002</i> or regulations or other subordinate instruments under those Acts.
7	Amendments of Part 5.3 of the <i>Criminal Code</i> (anti-terrorism).
8	Amendments of Part 1A, 2A, 4, 4A, 10A and 11A of the <i>Water Act 2007</i> or regulations under the Act relating to those Parts or to Schedule 1 to the Act.
9	Amendments of the <i>Fair Work Act 2009</i> , the <i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i> , the <i>Fair Work (State Referral and Consequential and Other Amendments) Act 2009</i> , the <i>Fair Work (Registered Organisations) Act 2009</i> or regulations made under those Acts.
10	Amendments of the <i>National Consumer Credit Protection Act 2009</i> , the <i>National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009</i> , the <i>National Consumer Credit Protection Regulations 2010</i> or the <i>National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations 2010</i> .
11	Amendments of the <i>Personal Property Securities Act 2009</i> , subordinate legislation under that Act or determinations made by the Registrar.

24 If you are asked to draft a provision of a kind covered by the table, you should discuss with your instructors the consultation and approval processes your instructors intend to follow. You should take these processes into account in developing a timetable for the draft.

Other cases

25 If you are asked to draft a provision of a kind not covered by the table but which you think may require consultation with the States and Territories under an intergovernmental agreement, you should discuss this matter with your instructors. You should take any consultation requirements into account in developing a timetable for the draft.

26 The website of the Council of Australian Governments (www.coag.gov.au) gives a list of some intergovernmental agreements (although it is not comprehensive).

27 There may be other cases where there is an expectation that the States and Territories will be consulted on amendments of an Act even though this is not strictly required by an intergovernmental agreement (e.g. the *Classification (Publications, Films and Computer Games) Act 1995*).

Peter Quiggin
First Parliamentary Counsel
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Note: Before the issue of the current series of Drafting Directions, this Drafting Direction was known as Drafting Direction No. 19 of 2005.

Attachment A—extract of Corporations Agreement 2002

Division 2—Alteration of the national law

Commonwealth legislation relating to the national law

506. (1) The Commonwealth will not introduce a Bill that would repeal or amend the national law, or make a regulation under the national law unless, before its introduction or making, the Ministerial Council has been consulted about it and, except as provided by this Part, has approved it.
- (2) The Commonwealth is not obliged to introduce, make or support any legislation, or proceed with any legislative proposal, with which it does not concur.

Provisions relating to approval of Commonwealth legislation

507. (1) The approval of the Ministerial Council is not required for a Commonwealth Bill or regulation, so far as it relates to:
- (a) subject matters for which Chapters 2L, 5C, 6, 6A, 6B, 6C, 6D, 7 and 8 of the Corporations Law as in force on 1 July 2000 made provision, in particular:
 - debentures;
 - managed investment schemes;
 - takeovers, compulsory acquisitions and buy-outs, and rights and liabilities in relation to these matters;
 - information about ownership of listed companies and managed investment schemes;
 - fundraising;
 - the securities industry; and
 - the futures industry; and
 - (b) subject-matters for which Chapter 9.10 of the Corporations Law as so in force made provision; and
 - (c) subject-matters for which the other provisions of Chapter 9 of the Corporations Law as so in force made provision, to the extent that those other provisions apply to the chapters referred to in paragraph (a) or the subject-matters referred to in paragraph (f); and
 - (d) subject-matters for which Chapter 1 of the Corporations Law as so in force made provision, to the extent that Chapter 1 applies to the provisions referred to in paragraphs (a), (b), (c) and (f); and
 - (e) subject-matters for which the provisions (limited to those specified in subclause (3)) of the *Australian Securities and Investments Commission Act 1989* of the Commonwealth as so in force made provision; and
 - (f) to the extent not otherwise covered by this subclause, financial products and services, including general insurance and life insurance (but not State insurance within the meaning of paragraph 51(xiv) of the Constitution), superannuation, derivatives, retirement savings accounts, foreign exchange, means of payment and banking (but not State banking within the meaning of paragraph 51(xiii) of the Constitution); and
 - (g) other subject-matters agreed on unanimously by resolution of the Ministerial Council; and
 - (h) a tax imposed under the *Corporations (Futures Organisations Levies) Act 2001*, *Corporations (Securities Exchanges Levies) Act 2001*, *Corporations (National Guarantee Fund Levies) Act 2001*, *Corporations (Fees) Act 2001*; and
 - (i) the preservation of the operation of a State or Territory law in accordance with subclause 515(1).

- (2) The approval of at least 3 State or Territory Ministers (of whom at least 2 must be State Ministers) is required for a Commonwealth Bill to amend the national law, or for a Commonwealth regulation under the national law, to the extent that the Bill or regulation deals with any other subject-matter.
- (3) If approval is sought for amendments to a Bill which is currently before the Parliament, then State and Territory Ministers will use their best endeavours to vote within a time frame nominated by the Commonwealth.
- (4) For the purposes of subclause (1)(e), the following provisions of the *Australian Securities and Investments Commission Act 1989* of the Commonwealth are specified:
 - (a) The following provisions of Part 1 (Preliminary):
 - Section 4 (Extension to external Territories)
 - Section 6C (Presentation of papers to the Parliament)
 - Section 6D (Periodic reports).
 - (b) Part 5 (The Commission's Members).
 - (c) Part 6 (The Commission's Staff).
 - (d) The following provisions of Part 7 (Preventing Conflicts of Interest and Misuse of Information):
 - Division 1 (Disclosure of interests).
 - (e) Part 8 (Finance).
 - (f) The following provisions of Part 9 (The Advisory Committee):
 - Sections 149–155 in Division 1 (General)
 - Division 2 (Staff and finance).
 - (g) The following provisions of Part 10 (The Corporations and Securities Panel):
 - Sections 175–183 in Division 1 (General).
 - (h) The following provisions of Part 11 (Companies Auditors and Liquidators Disciplinary Board):
 - Sections 205–214 in Division 1 (Constitution of Disciplinary Board).
 - (i) The following provisions in Part 12 (Australian Accounting Standards Board):
 - Sections 227–234.
 - (j) Part 14 (The Parliamentary Committee).
 - (k) The following provision in Part 15 (Miscellaneous):
 - Section 243D (Financial Transaction Reports).

Further consideration of Commonwealth legislation that does not require approval

508. (1) Where:
- (a) under clause 506, the Commonwealth consults the Council in relation to an express amendment of the national law that does not require the approval of the Council under clause 507; and
 - (b) within 21 days of the Commonwealth consulting the Council, the Chairperson is advised by 4 or more State Ministers that they consider the amendment is for a purpose other than the formation of corporations, corporate regulation or the regulation of financial products or services;
- the Chairperson must convene a meeting to consider the amendment.
- (2) The Commonwealth must not pursue an amendment in relation to which a meeting under subclause (1) is convened if, at the meeting, 4 or more State Ministers vote against the amendment.

Exposure of Commonwealth draft Bills

509. (1) All Commonwealth Bills referred to in clause 506(1) will be exposed for public comment for at least 3 months before introduction.
- (2) If the Bill is one referred to in clause 507(1), the Commonwealth may shorten or dispense with the period of exposure without the agreement of the Ministerial Council. In

that event, the Commonwealth Minister will advise each other member of the Ministerial Council of the reasons for this action.

- (3) If the Bill is one referred to in clause 507(2), the Commonwealth may shorten or dispense with the period of exposure, but only with the approval of at least 3 State or Territory Ministers (of whom at least 2 must be State Ministers).

Introduction and passage of Commonwealth Bills

510. (1) When introducing into a House of the Commonwealth Parliament a Bill referred to in clause 506(1), a Minister of State for the Commonwealth will inform the House of the outcome of any consultation with the Ministerial Council and, in the case of matters requiring the approval of the Ministerial Council, the outcome of voting.
- (2) If amendments to such a Bill are or are to be moved in the Commonwealth Parliament (whether or not on behalf of the Government), the Commonwealth will use its best endeavours to ensure adequate consultation with and, if the subject matter would ordinarily be required to be considered under subclause 507(2), a vote by, the Ministerial Council on those amendments.
- (3) In addition to the obligations undertaken in subclause 510(2), the Commonwealth will not move amendments to such a Bill and will oppose amendments to such a Bill which are moved by other parties if the amendments:
 - (a) rely to any extent on the reference by the States referred to in paragraph 502(a); and
 - (b) are other than for the purpose of the formation of corporations, corporate regulation and the regulation of financial products and services.

Exposure of Commonwealth draft regulations

511. (1) Except as provided by this clause, a Commonwealth regulation referred to in clause 506(1) is not required to be exposed for public comment before being made.
- (2) If the regulation is one referred to in clause 507(1), or is one referred to in clause 507(2) and relates exclusively to the imposition or alteration of fees or taxes, the Commonwealth may expose the regulation for public comment for any period it considers appropriate or may decide not to expose it for public comment at all. The Commonwealth Minister will advise each other member of the Ministerial Council whether or not it is to be exposed. The advice will include either the reasons for deciding not to expose it, or a statement of the period of exposure and the reasons for choosing the period of exposure.
- (3) The Commonwealth Minister will consult the Ministerial Council as to whether a regulation referred to in clause 507 (2) should be exposed for public comment. This subclause does not apply to a regulation that relates exclusively to the imposition or alteration of fees or taxes.
- (4) If the regulation is one to which subclause (3) applies and the Ministerial Council resolves that the regulation should be exposed for public comment, the regulations will be exposed for public comment for at least one month or a shorter or longer period not exceeding 3 months approved by the Commonwealth Minister and at least 3 State or Territory Ministers (of whom at least 2 must be State Ministers).

Concurrent State and Territory legislation

512. (1) The national law will provide that it does not exclude the operation of State and Territory legislation (whether enacted before or after the commencement of the national law) that is capable of operating concurrently with it.
- (2) Nothing in this Part is intended to impose obligations in relation to such State or Territory legislation.

Operation of existing inconsistent State and Territory legislation

513. (1) Subject to this clause, the national law will provide for the continued operation of State and Territory legislation that is in force immediately before the commencement of the national law that:
- (a) would otherwise be inconsistent with the national law; and
 - (b) has an operation that is not preserved by the provision referred to in clause 512; and
 - (c) prevailed over the Corporations Law immediately before the commencement of the national law.
- (2) The national law will provide that the State and Territory laws whose operation is continued under the provisions referred to in subclause (1) do not operate to the extent:
- (a) prescribed by regulations under the national law; and
 - (b) provided by the relevant legislation of the State or Territory concerned including a regulation made under such a law.
- (3) The Commonwealth must not make a regulation of the kind referred to in subclause (2) without the agreement of the State or Territory Minister concerned.

Operation of future inconsistent State and Territory legislation

514. (1) The national law will provide for the operation of State and Territory legislation that commences after the commencement of the national law that:
- (a) is inconsistent with the national law;
 - (b) has an operation that is not enabled by the provision referred to in clause 512; and
 - (c) the State or Territory legislation expressly indicates that it is inconsistent legislation in accordance with the provisions of the national law.
- (2) Subclause (3) applies to:
- (a) proposals for State and Territory legislation which is of a kind referred to in subclause (1); and
 - (b) State or Territory legislative proposals which rely on a State or Territory legislative declaration that the matter is an excluded matter in relation to the whole or specified provisions of the national law;
- and which would significantly alter the effect or operation of the national law having regard to the operation of provisions to preserve the operation of State and Territory laws unless:
- (c) the provisions are of specially limited application (such as transitional provisions relating to the corporatisation or privatisation of a government owned enterprise or entity); or
 - (d) without limiting paragraph (2)(c), the provisions are provisions of State or Territory legislation for the temporary administration of a corporation authorised by the State or Territory to provide electricity, gas, water, drainage, sewerage, railways, pipeline or other essential services.
- (3) A State or Territory must not introduce a Bill or make a regulation which subclause (2) provides is subject to this subclause unless:
- (a) the relevant State or Territory gives the Council reasonable notice of the inconsistent provisions; and
 - (b) the Council has approved the enactment or making of the inconsistent provisions in accordance with clause 410.
- (4) A State or Territory must not introduce a Bill or make a regulation which is of the kind referred to in subclause (1) or paragraph (2)(b) but which is not subject to subclause (3) unless it has notified the Ministerial Council of the legislative proposal.
- (5) The notification required by subclause (4) should ordinarily occur at the earliest practicable time after the development of a legislative proposal and preferably before the introduction of the Bill concerned, or the submission of the subordinate legislation concerned to the Governor in Council (or other appropriate body), to maximise the

opportunity for members of the Ministerial Council to comment on the proposed legislation.

- (6) It is sufficient compliance with the notification provisions of subclause (4) if the State or Territory sends to the members of the Ministerial Council a document describing fully:
- (a) the relevant provisions of the proposed Bill or subordinate legislation; and
 - (b) the manner in which each such provision would alter the effect, scope or operation of the national law.

The State or Territory will, at the earliest practicable time, provide a draft of any such provision to each member of the Council.

- (7) If, because of exceptional and unavoidable considerations of government, the requirements of subclauses (3) or (4) cannot be undertaken before the introduction of the Bill concerned or the submission of the subordinate legislation concerned, the State or Territory will, at the earliest practicable time (and, in the case of a Bill, preferably before passage of the Bill), provide copies of the Bill or subordinate legislation to members of the Ministerial Council and indicate the extent to which comments made by them may be able to be taken into account.
- (8) If amendments to a Bill are or are to be moved in the State or Territory Parliament (whether or not on behalf of the Government) and those amendments would require approval under subclause (3) or notification under subclause (4), the State or Territory will use its best endeavours to notify the Ministerial Council of those amendments at the earliest practicable time.
- (9) Where State or Territory legislation which is preserved under the mechanism referred to in clause 513 is amended after the commencement of the national law in such a manner that the inconsistency is dealt with in substantially the same terms, then the requirements of subclauses (3) and (4) do not apply but the relevant State or Territory must notify other members of the Council about the amendments, preferably before their introduction or making.

Additional mechanism

515. (1) In addition to the mechanisms referred to in subclauses 513(1) and 514(1), the national law will provide for the making of regulations to allow the effective operation of specified State or Territory laws that may otherwise be incompatible with the national law or regulations under the national law.
- (2) If a State or Territory requests a regulation of the kind referred to in subclause (1), the Commonwealth must determine that request within 6 weeks of receipt unless a longer period is approved by the Ministerial Council. The Commonwealth must not refuse the request without reasonable cause.
- (3) The Commonwealth must expose for public comment any draft regulation made in accordance with this clause for a period of 4 weeks unless a different period is approved by the Ministerial Council.
- (4) The Commonwealth must use its best endeavours to ensure that a regulation to be made under this clause is made at the earliest reasonable opportunity.

Commonwealth to notify Ministerial Council of other legislation

516. (1) Subject to this clause, the Commonwealth will notify the Ministerial Council of all other legislative proposals for Commonwealth legislation (including Commonwealth legislation for the Capital Territory) that would alter the effect, scope or operation of the national law.
- (2) The notification required by subclause (1) should ordinarily occur at the earliest practicable time after the development of a legislative proposal and preferably before the introduction of the Bill concerned, or the submission of the subordinate legislation concerned to the Governor-General in Council, to maximise the opportunity for members of the Ministerial Council to comment on the proposed legislation.

- (3) It is sufficient compliance with the notification provisions of subclause (1) if the Commonwealth sends to the members of the Ministerial Council a document describing fully:
 - (a) the relevant provisions of the proposed Bill or subordinate legislation; and
 - (b) the manner in which each such provision would alter the effect, scope or operation of the national law.

The Commonwealth will, at the earliest practicable time, provide a draft of any such provision to each member of the Council.
- (4) If, because of exceptional and unavoidable considerations of government, the notification required by subclause (1) cannot be undertaken before the introduction of the Bill concerned or the submission of the subordinate legislation concerned, the Commonwealth will, at the earliest practicable time (and, in the case of a Bill, preferably before passage of the Bill), provide copies of the Bill or subordinate legislation to the members of the Ministerial Council and indicate the extent to which comments made by them may be able to be taken into account.
- (5) If amendments to a Bill are or are to be moved in the Commonwealth Parliament (whether or not on behalf of the Government) and those amendments would require to be notified under subclause (1) because they would alter the effect, scope or operation of the national law, the Commonwealth will use its best endeavours to notify the Ministerial Council of those amendments at the earliest practicable time.
- (6) The approval of the Ministerial Council is not required for any such legislative proposals or amendments.

Alterations to legislation

517. (1) The purpose of this clause is to make provision in regard to alterations made to a Commonwealth Bill or regulation referred to in clause 506 (1) before it is introduced or made.
- (2) A Commonwealth Bill or regulation requiring the approval of the Ministerial Council has to be approved in the form in which it is to be introduced or made.
 - (3) However, the approval of the Ministerial Council to such a Bill or regulation may be given so as to permit the making of alterations of a drafting nature, or alterations of other kinds or for other purposes, as specified in the approval, without the need for further approval.
 - (4) The exposure provisions of this Division do not apply again to a Commonwealth Bill or regulation merely because it has been altered. However, those provisions do apply again if the alteration amounts to the inclusion in the Bill or regulation of a substantially new subject-matter.
 - (5) The Commonwealth will provide to the members of the Ministerial Council a statement of and commentary on alterations made to a Commonwealth Bill or regulation after the Council was consulted about the Bill or regulation.
 - (6) The statement and commentary referred to in subclause (5) will be provided as follows:
 - (a) If the Bill or regulation is one to which clause 507(1) applies, the statement and commentary will be provided not later than the day when the Bill or regulation is first introduced or made.
 - (b) If the Bill or regulation is one to which clause 507(2) applies and the alterations all fall within subclause (3) of this clause, the statement and commentary will be provided not later than the day when the Bill or regulation is first introduced or made.
 - (c) If the Bill or regulation is one to which clause 507(2) applies and the alterations do not all fall within subclause (3) of this clause, the statement and commentary will be provided when the Bill or regulation is submitted or re-submitted for the approval of the Ministerial Council.

Exceptions

518. (1) This Part does not apply to the re-enactment of Commonwealth legislation, so long as the matters are dealt with in substantially the same terms.
- (2) This Part does not apply to Commonwealth legislation that is, or is of a class, approved by a resolution of the Ministerial Council supported by the Commonwealth Minister.

Division 4–Miscellaneous

Meaning of amendment

523. Except as provided in clause 508, in this Part, “amend” the national law means:
- (a) directly amend the text of the national law by the insertion, omission or substitution of matter; or
 - (b) indirectly amend the national law by making provisions that would significantly alter its effect, scope or operation, unless the provisions are of specially limited application (such as transitional provisions relating to the corporatisation or privatisation of a government owned enterprise or entity).