



## Department of the **Attorney General** **Parliamentary Counsel's Office**

# Getting Private Member's Legislation Drafted and Enacted

## Guidelines and Procedures

This document describes the legislative drafting services available from the Parliamentary Counsel's Office (PCO) to non-Government groups and parties in Parliament and private Members, explains the process by which private Member's legislation is drafted and enacted and sets out the roles and responsibilities that PCO and instructing MPs have in that process.

For an explanation of the process by which Government legislation (both Bills and subsidiary legislation) gets drafted and enacted, see *Getting Government Legislation Drafted and Enacted*, available at [http://www.department.dotag.wa.gov.au/P/parliamentary\\_counsel.aspx](http://www.department.dotag.wa.gov.au/P/parliamentary_counsel.aspx)

This document incorporates the material previously included in *Non-Government Drafting: Arrangements and Guidelines*. That publication has been discontinued.

Further inquiries about these matters can be directed to PCO. Contact details are set out on the next page.

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## **Abbreviations used in this document**

DPC	Department of the Premier and Cabinet
MP	Member of Parliament
PCO	Parliamentary Counsel's Office
SLP	State Law Publisher

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## **Part 1. Non-Government drafting services provided by PCO**

### **1. Non-Government drafting services available**

The Government makes available PCO's legislative drafting services to —

- non-Government parties and groups in Parliament;
- private MPs, that is, MPs seeking those services other than on behalf of the Government.

### **2. What drafting services are available**

The following services are available —

- the drafting of Bills;
- the drafting of amendments to Bills before Parliament (whether they are amendments to Government or non-Government Bills).

### **3. Government legislation is PCO's priority**

It is important to note that the Government's legislative programme is PCO's first priority. Non-Government drafting services are only to be provided in a way that does not interfere with that programme.

However, PCO will make every effort to ensure that non-Government drafting services are made available, and provided as promptly as practicable, taking into account the availability of legislative drafters and other resources in PCO.

### **4. Other instances where drafting services may not be provided**

Note that PCO may also decline to provide drafting services if the guidelines set out in Part 2 of this document are not being complied with, or if the time allowed for drafting is manifestly inadequate and would impose an unreasonable burden on the office.

### **5. Prioritising non-Government drafting**

Non-Government drafting services will usually be allocated on a first-come first-served basis, but regard will also be given to the need for a fair distribution of drafting resources among non-Government parties and groups and MPs.

Preference may be given to small, single-issue Bills, because large or multi-issue Bills require more resources.

As far as possible, PCO will aim to carry out non-Government Bill drafting work during non-peak periods of the year. Requests for drafting amendments to Bills in Parliament are likely to arise during busy periods when Parliament is sitting, so these drafting requests should be made as early as possible.

## **6. Legislative proposals can be discussed**

The Parliamentary Counsel is available to discuss legislative proposals for the purposes of —

- establishing whether, from a legal point of view, legislation is needed;
- determining the general form of any required legislation;
- establishing priorities and time frames.

Contact should be made initially with the Parliamentary Counsel, who may ask a senior drafter to engage in the discussions about the legislative proposal.

## **7. Confidentiality**

PCO will maintain complete confidentiality in providing non-Government drafting services.

This means that information will not be provided to the Government or elsewhere that would disclose the title, substance or originator of a Bill or that would disclose the substance or originator of amendments before the relevant document has been introduced or circulated by the originator.

The only exception to this is where PCO is authorised, in writing, by the originator to disclose the information.

Note too that it is inappropriate for an MP to identify publicly which drafter is undertaking work for them.

## **8. The drafting process**

Adequate time must be allowed for the drafting process.

PCO will follow the normal PCO drafting style and practice when doing non-Government drafting.

Generally speaking, PCO will send drafts to MPs or their staff only, unless the MP requests that PCO proceed differently in the particular case.

While MPs are free to consult with anyone they wish on drafts produced for them by PCO, initial drafts are likely to be tentative and may not accurately or adequately reflect the MP's objectives. Giving these drafts a wide circulation may therefore be unhelpful.

MPs should also be aware that the work involved in drafting a Bill is almost invariably more time-consuming and complicated than someone not used to the process might expect. This should be borne in mind particularly in making any public statement about when the Bill is to be introduced.

The aim of the drafter is to achieve a sound legislative product that satisfies the MP's objective and is legally and technically correct. In seeking to achieve this, the drafter may question fundamental aspects of the instructions or suggest alternative ways of achieving the MP's objectives. This may give the appearance that policies behind the instructions are being questioned, or unnecessary obstacles are being raised, by the drafter. This is not the case, but just part of a rigorous drafting process.

**9. Inform PCO of abandoned project**

Please ensure that PCO is informed as soon as possible if a requested drafting project is abandoned or put on hold.

## **Part 2. Guidelines for getting private Member's legislation drafted**

### **A. Acts of Parliament**

#### **1. Developing a proposal for a Bill**

This involves —

- considering whether the proposed Bill is necessary, bearing in mind the purpose of legislation is to —
  - regulate the affairs, rights and liabilities of people;
  - impose duties on people;
  - give people powers they do not already have;
- researching the legislation of other places;
- seeking legal advice where appropriate;
- consulting with interested people or bodies;
- considering the financial and resource implications;
- considering accountability issues;
- considering whether the *Constitution Acts Amendment Act 1899* s. 46(8) would prevent the proposed Bill from being passed.

#### **2. Drafting instructions for the proposed legislation**

An MP wanting a private Member's Bill drafted by PCO must prepare drafting instructions for PCO for the Bill. PCO may be able to assist in preparing them.

Drafting instructions for PCO —

- must be in writing;
- necessitate the MP (or any staff member who is to liaise with PCO on the drafting of the Bill) being totally conversant with the legislative proposal and its background and able to make decisions on policy;
- must explain in specific terms and in detail the matters to be dealt with by the proposed Bill.

#### **DOs**

Useful drafting instructions —

- use ordinary plain narrative English to explain in detail what is wanted;
- refer to other WA legislation\*, or legislation from other places, if it may assist in the drafting;
- deal with the effects of the proposed legislation on —
  - existing WA legislation (e.g. consequential amendments);
  - existing situations (e.g. need for transitional or saving provisions).

\*There is no need to include copies of WA legislation with your instructions.

## **DON'Ts**

Drafting instructions in the following form are not helpful, and usually lengthen the time taken to complete a drafting project —

- instructions in the form of a lay draft of legislative provisions or that otherwise attempt to draft the legislation wanted;
- instructions that consist of preliminary or incomplete instructions in the hope that they can be completed orally.

### **3. PCO to be requested to draft**

When the drafting instructions are complete, the MP concerned must send them to PCO by email to [pco@pco.wa.gov.au](mailto:pco@pco.wa.gov.au) with a formal request to draft the necessary Bill.

The formal request must —

- include the name, address, telephone number and email address of the instructing MP and of any staff member who is to liaise with PCO on the drafting of the Bill;
- include the proposed time frame for the introduction of the Bill;
- attach —
  - drafting instructions (see 2 above);
  - background material that will assist the drafter to understand the subject matter involved;
  - any legal opinion that may assist;
- attach or, if it is available on the Internet, refer to —
  - legislation from other places if it is to be used as a model;
  - any decision of a court that may assist;
  - any material that is to be referred to in the legislation, or that affects the legislation, and that the drafter might need to consult during the drafting process (e.g. Australian Standards).

On receiving the formal request, PCO will notify the instructing MP by email of the name of the drafter who will do the drafting.

### **4. The proposed legislation is drafted by PCO**

Drafts of the proposed Bill are produced for comment until the Bill is acceptable to the instructing MP and the drafter is satisfied that the Bill is suitable to be introduced to Parliament.

In the drafting process, contact between the instructing MP and the drafter may be face to face or by telephone, email or letter, as suits both.

How quickly a proposed Bill is drafted depends on —

- how well thought out and written the drafting instructions are;
- how conversant the instructing MP is with the subject matter;
- how quickly the instructing MP answers questions by the drafter and comments on drafts produced for comment;

- how complex the subject matter is and how long the proposed legislation needs to be;
- how much work with a higher priority PCO has.

Drafts provided by PCO must not be edited by the instructing MP or their staff. If changes are required, ask the drafter to make them.

## 5. Role of the instructing MP in the drafting process

It is the responsibility of an instructing MP (or any staff member who is to liaise with PCO on the drafting of the Bill) —

- to respond to requests for clarification or further information made by the drafter;
- to carefully and methodically examine and check each draft in detail to see that it accurately reflects the drafting instructions and to see that it will work in practice;
- to constructively criticise each draft;
- if additional or revised instructions are required by the drafter or are thought necessary by the instructing MP, to give them in writing.

## 6. Printing the Bill

When drafting is complete, the instructing MP must decide if the Bill is to be printed so that it can be introduced to Parliament.

To get a Bill printed, the instructing MP must send PCO a written request to print the Bill.

The request must allow sufficient time for PCO to prepare the notice of motion required to introduce the Bill and to prepare the Bill for introduction.

On receiving the request, PCO —

- arranges for the Bill to be printed by SLP;
- sends the instructing MP a notice of motion to introduce the Bill to the House of Parliament in which the instructing MP sits;
- will, unless instructed otherwise by the instructing MP, send a copy of the notice of motion and message\* to the Clerk of the House in which the Bill is to be introduced.

\*A Governor's message may be required for a Bill under the *Constitution Acts Amendment Act 1899* s. 46(8) (because it would appropriate revenue or moneys). If PCO thinks a message is required, it will only provide a copy of a message after the MP has persuaded the Government to request PCO to do so.

The instructing MP must notify PCO immediately if there is any reason why printing of the Bill should be delayed.

When printed, copies of the Bill are sent by SLP to the instructing MP and, in confidence, to either the Legislative Assembly Office or to the Legislative Council Procedure Office, as the case requires.

## **7. Introduction and passage through Parliament**

The instructing MP is responsible for —

- preparing an explanatory memorandum for the Bill (required by each House of Parliament's Standing Orders) explaining the background to and the reasons for each clause of the Bill and, if necessary, the relationship of a clause to other clauses in the Bill;
- preparing the second reading speech for the Bill (a copy is to be made available to Chamber staff for printing);
- giving the notice of motion to introduce the Bill to the Clerk of the House in which the Bill is to be introduced.

The drafter, if requested to do so and if PCO's resources permit —

- will attend Parliament to assist the instructing MP with drafting matters when the Bill is being considered by Parliament;
- will draft any amendments to the Bill that the instructing MP may require.

## **8. Assent**

If both Houses of Parliament pass the Bill, copies of the Bill incorporating all amendments that were made to it by the Houses are prepared by the Clerk of the Parliaments and forwarded through PCO and DPC to the Governor for assent.

Executive Council is not involved in the assent procedure.

When assented to, a Bill becomes an Act of Parliament.

## **9. Printing and publication of an Act**

SLP prints and sells copies of an Act once it has been assented to.

As soon as practicable after an Act is assented to, a copy of it is made available on the WA legislation website ([www.legislation.wa.gov.au](http://www.legislation.wa.gov.au)).

## **10. Commencement of an Act**

When an Act comes into operation depends on what it says —

- if the Act is silent about commencement, it will operate 28 days after assent;
- otherwise the Act might say that it comes into operation —
  - on the day after the date of assent;
  - on a stated date before assent (i.e. retrospectively — this is rare);
  - on proclamation;
  - a combination of the above.

If an Act is to come into operation on proclamation it is often because matters have to be attended to before the Act can come into operation, e.g. —

- subsidiary legislation (regulations etc.) may have to be drafted and made;
- administrative structures may have to be set up;
- people may have to be appointed to statutory positions.

The commencement of Acts drafted for private Members needs to take into account that private Members are not in a position to obtain a proclamation to commence an Act, or to have subsidiary legislation drafted and made.

## **11. Proclamation**

A proclamation for the commencement of an Act —

- is a document drafted by PCO on written instructions from the Minister to whom the Governor has allocated the administration of the Act;
- is made by the Governor with the advice and consent of Executive Council;
- states when the Act or some of it comes into operation;
- must be published in the *Government Gazette* before it has effect.

## **B. Amendments to Bills before Parliament**

### **1. Proposal to amend a Bill before Parliament**

An MP may want amendments to a Bill before Parliament to be drafted by PCO. The amendments may be to a Government or non-Government Bill.

The MP must develop the proposal for the amendments and prepare drafting instructions in much the same way as for a Bill, though this will be a shorter and quicker process and there will probably be less consultation.

See A1 and A2.

Note that proposals will not generally be accepted to draft amendments to Bills that are merely released or tabled in Parliament for exposure purposes or that are known not to be proceeding further in the legislative process in their current form.

### **2. PCO to be requested to draft**

When the drafting instructions are complete, the MP concerned must send them to PCO by email to [pco@pco.wa.gov.au](mailto:pco@pco.wa.gov.au) with a formal request to draft the necessary amendments.

However, if amendments to a Bill are urgent, the request to draft the amendments can be made by telephone to the Parliamentary Counsel or Deputy Parliamentary Counsel.

If urgent amendments are required outside working hours, the MP can contact the Parliamentary Counsel (Geoff Lawn mob. 0438 337 004) or the Director, Legislation Services (Hugh McGinlay mob. 0402 327 743).

A3 sets out what needs to be included in the formal request. A formal request for amendments must also clearly identify the Bill that is to be amended and the House in which the amendments will be moved.

PCO will notify the instructing MP by email of the name of the drafter who will do the drafting.

### **3. Drafting process**

The drafting process is similar to that for the drafting of Bills.

See A4 and A5.

However, contact between the instructing MP and the drafter allocated to the task would normally be by telephone or email if the amendments are required urgently.

As with Bills, PCO drafts amendments to Bills in confidence and keeps drafting instructions confidential.

Amendments will not be drafted if they are clearly inadmissible or out of order under the Standing Orders or rulings of the relevant House.

**4. Notice of amendments to Clerks**

When the amendments are finalised, the instructing MP should print them out, sign them and give them to the Clerk of the Legislative Assembly or Legislative Council, as appropriate, to enable processing to take place.

PCO will provide a Microsoft Word version to the relevant Clerk when requested to do so.