



Guide to the legislation process

This guide provides quick reference for Australian Public Service employees and ministerial advisers on the development process for primary legislation.

The Australian Parliament determines what will become law by passing legislation through the House of Representatives and the Senate. The power to make laws is vested in the Australian Parliament by the Constitution. However, the process of developing legislation goes beyond the activities of parliament. It also requires developing policy, the detailed drafting of that policy into a bill, and obtaining authority to present the bill to parliament for enactment into law.

While not every policy requires legislation, it is an essential part of the Australian policy landscape. Some objectives can only be achieved by changing the law: this is the role of legislation.

Using this guide

This guide outlines the development process for **primary legislation** – that is, bills to be introduced into parliament. It focuses on work within Australian Government departments and ministers' offices, with only a brief overview of parliamentary procedures.

Australian Public Service employees working on legislation must engage with their department's Legislation Liaison Officer (LLO), and should familiarise themselves with:

- the [Legislation Handbook](#)
- the website of the [Office of Parliamentary Counsel](#).

For more on the role of LLOs, refer to **Appendix B** of the Legislation Handbook.

For definitions of terms used in this guide, refer to the [Glossary](#).

This guide is for general reference and does not replace or supersede other official resources.

Process overview

This guide divides the legislation process into four phases:

1. **Settling the policy**

The department determines how to achieve policy objectives, and considers whether legislation is required.

2. **Settling the legislation program**

Before each parliamentary sitting period, agencies from across the government submit bid requests to their Ministers to add bills to the legislation program. The requests are considered by the Parliamentary Business Committee who assign drafting priorities for each bill.

The Australian Parliament has three sitting periods each year. This means that each year includes three legislation programs and three rounds of bids.

For guidance on requesting changes to the legislation program after it has been set, refer to the **Guide to legislation program variations**.

3. **Developing the bill**

Drafters at the Office of Parliamentary Counsel (OPC) collaborate closely with the department to draft the bill. This is a technical and meticulous process, and often needs as much time and effort as the policy development phase.

4. **Lodgement and Introduction**

The OPC lodge the bill and the department's LLO lodge supporting material with the PM&C Legislation Section for the Legislation Approval Process. The Minister briefs government members and secures support for the bill, then introduces the bill into parliament.

For guidance on amendments to bills before parliament, refer to the **Guide to parliamentary amendments**.

Step-by-step guide

Phase 1. Settling the policy

The process begins with a proposal or idea for a new policy. This may come from many places, such as a minister, a department, or a parliamentary committee or review.

In many cases, this idea may become a New Policy Proposal, which must be approved by the Cabinet.

The department then further develops the policy details and implementation plan. This includes determining whether legislation is required.

The department should have the policy settled and approved before preparing a **bid for the legislation program**.

Step 1. Develop policy details and implementation plan

The department determines how best to achieve the policy objectives, and considers its interaction with other government work.

Step 2. Consult on the policy

The department consults:

- key stakeholders and advisers, such as the Minister, peak bodies and regulators
- relevant PM&C policy teams
- other departments and ministers who may be affected by the policy.

The department incorporates feedback and seeks further input as needed.

About consultation

For guidance on which agencies may need to be consulted on proposed legislation, refer to the Office of Parliamentary Counsel's [Drafting Direction 4.2: Referral of drafts to agencies](#).

For guidance on consultation on draft legislation, **refer to Step 16**.

Step 3. Determine whether legislation is required

The department evaluates which policy objectives, if any, can only be achieved through primary legislation. The department seeks specialist advice from:

- legal counsel
- the Office of Impact Analysis.

There may also be circumstances where a new initiative can be implemented through subordinate legislation (such as through regulations or a determination). Where possible, an alternative method for implementing a policy, other than through primary legislation, should be investigated. The department engages regularly with the Minister during this process.

About the necessity and complexity of legislation

For more on determining whether legislation is necessary, refer to **Sections 1.10 to 1.12**, and **Section 1.20** of the [Legislation Handbook](#).

For more on the role and complexity of legislation, refer to:

- **Chapter 1** of the [Legislation Handbook](#)
- The Office of Parliamentary Counsel's [Guide to Reducing Complexity in Legislation](#)
- Guidance, forms and templates from the [Office of Impact Analysis](#).

If primary legislation is required to achieve the policy objectives, proceed to Step 4.

If subordinate legislation or administrative means can achieve the policy objectives, end here.

Step 4. Are policy details settled?

If further policy work is required, return to Step 1.

If stakeholder feedback has been adequately considered and the details of the policy are settled, proceed to Step 5.

Step 5. Obtain policy approval

The department consults the relevant PM&C policy teams to determine the appropriate approvals process for the policy, ensuring that the department's Legislation Liaison Officer is kept up-to-date. The Minister then seeks policy approval.

About policy approvals

Refer to Chapter 3 of the Legislation Handbook:

- **Sections 3.5 to 3.7** deal with Cabinet approvals
- **Sections 3.8 to 3.21** deal with minor (Prime Minister's) policy approvals.

Step 6. Prepare drafting instructions

The department prepares detailed drafting instructions for the Office of Parliamentary Counsel.

The department ensures that:

- the policy is well developed
- policy authority is in place
- legal issues, particularly constitutional matters, have been identified and addressed
- affected agencies and ministers have been consulted.

About drafting instructions

Drafting instructions should give a clear and detailed description of how the policy will be delivered, and the intent of each policy element.

For additional resources, refer to:

- **Chapters 5 and 6** of the [Legislation Handbook](#)
- **Chapter 4** of the [Office of Parliamentary Counsel's drafting services: a guide for clients](#).

Phase 2. Settling the legislation program

The Minister writes to the Prime Minister requesting the bill be included in the legislation program for an upcoming parliamentary sitting period.

The department supports this request by preparing bid documents.

The Parliamentary Business Committee (PBC) reviews bid requests from across government and determines drafting priorities for each bill in the legislation program.

About bids

For further details, refer to the following sections of the Legislation Handbook:

- **Chapter 2** deals with the bid process
- **Appendix C** provides the standard format for bids.

Step 7. Prepare bids

The department drafts a letter for the Minister to the Prime Minister, detailing the proposed bills and their categories.

The department provides advice to the Minister on the appropriate category for the bid, considering the urgency of the legislation and the complexity of the drafting.

About the Minister's letter

The Minister's letter contains:

- A list of bills which:
 - groups bills first by category, then sorts bills by priority within each category
 - indicates which bills are new bids, re-bids, or contingency bids
 - identifies any bills which require an exposure draft for consultation ahead of introduction
 - notes any bills that implement a budget measure or election commitment
- A statement certifying that the policy objectives can only be achieved through legislation
- Attaches a bid form for each bill in the appropriate format and accompanying statement of reasons for each category T status bid.

About bid categories

Ministers can bid for one of four categories. The PBC has the final decision on the category for each bill.

If the bill is for introduction in a later sitting period, categories A and B can be appended with 'for drafting only'. This suits bills which require drafting resources well in advance of intended introduction – for example, due to the size or complexity of the bill.

The four categories are:

- **Category T:** Time-critical bills for introduction and passage during the one sitting period. Bids for Category T bills must include a statement of reasons, and must be ready for introduction early in the relevant sitting period.
- **Category A:** High-priority bills
- **Category B:** Medium-priority bills
- **Category C:** Lower priority bills

The department's Legislation Liaison Officer should provide drafts of the bid documents to the PM&C Legislation Section for feedback in advance of submitting the bid.

Step 8. Submit bids

The Minister sends the bids to the Prime Minister.

The department's Legislation Liaison Officer notifies the PM&C Legislation Section of any changes to bids since the draft review in Step 7.

About deadlines for bid submissions

Refer to **Sections 2.15 and 2.16** of the [Legislation Handbook](#).

Step 9. PM&C and the Office of Parliamentary Counsel review bids

After consulting with PM&C policy teams, the PM&C Legislation Section meets with the First Parliamentary Counsel to review bids from across government. Together, they provide advice to the PBC.

The OPC may also commence drafting of category T and A bills. This will only occur for bills likely to receive a high priority from PBC, have policy approval in place, and for which departments have provided comprehensive drafting instructions.

Step 10. Issue outstanding drafting instructions

The department issues any outstanding drafting instructions in addition to those prepared in Step 6, along with evidence of policy approval, to OPC.

Step 11. The Parliamentary Business Committee sets the legislation program

The PBC considers each legislation bid against whole-of-government priorities and assigns categories accordingly.

The finalised legislation program is recorded in Cabinet minutes and issued to Cabinet Liaison Officers.

Once PBC sets the legislation program, proceed to Phase 4.

Phase 3. Developing the bill

The Office of Parliamentary Counsel (OPC) collaborates with the department to draft the bill.

To ensure a smooth drafting process, the department should have policy approval and well-considered drafting instructions in place.

This process takes considerable time and effort. For example, very simple bills may take up to 6 weeks and 10 drafts. By contrast a more complex, 100-page bill can take up to 6 months and 30 to 50 drafts to finalise.

These timeframes assume that the department maintains active engagement throughout, and do not account for exposure drafts or clearance processes.

About the drafting process

Refer to:

- **Chapter 6** of the [Legislation Handbook](#)
- The [Office of Parliamentary Counsel's drafting services: a guide for clients](#)
- The [Office of Parliamentary Counsel's Timeframes for the development of bills](#)

Step 12. The Office of Parliamentary Counsel drafts the bill

The OPC drafter reviews the instructions provided by the department and uses these to draft the bill.

If the bill is not yet settled and the draft needs further review, proceed to Step 13.

If the bill details are settled, go to Step 14.

Step 13. Review and provide further instructions

The department reviews the draft bill, and supplies clarification, feedback and any other necessary support to the OPC drafter.

The department should address all queries from the OPC drafter in each version of the Bill. The department should provide feedback and additional instructions promptly or advise OPC if there is likely to be a delay in responding.

Return to Step 12.

Step 14. Is external consultation on the bill needed?

If the Minister determines that external consultation is necessary or if external consultation is mandatory, proceed to Step 15.

Otherwise, skip to Phase 4.

Step 15. The Office of Parliamentary Counsel prepares an exposure draft, if required

The department works with OPC to prepare an exposure draft of the bill.

About preparing exposure drafts

Refer to **paragraph 93** of [Office of Parliamentary Counsel's drafting services: a guide for clients](#).

Step 16. The Minister seeks approval to release the exposure draft

The Minister seeks agreement from either Cabinet or the Prime Minister to release the exposure draft.

About exposure drafts

Refer to **Sections 6.11 to 6.14** in the [Legislation Handbook](#).

Public announcements regarding legislation that has not yet been introduced to parliament also require agreement from Cabinet or the Prime Minister.

Once agreement is obtained, proceed to Step 17.

Step 17. The department conducts consultation on the exposure draft

The department may undertake consultation on an exposure draft. This may include consulting peak bodies and regulators on implementation details, and public consultation on impacts or readability.

Step 18. Did the consultation lead to changes in the bill?

If yes and changes fall within existing policy authority, return to Step 13

If yes and changes exceed existing policy authority, obtain new policy approval (refer to Step 5 for additional guidance), then return to Step 13.

If no, proceed to Phase 4.

Phase 4. Lodgment and Introduction

The department prepares supporting materials, and the Legislation Liaison Officer (LLO) submits documents to the PM&C Legislation Section.

The Minister builds support for the bill in Parliament. This often requires significant support from both the department and ministerial advisers.

Step 19. Finalise supporting material

The department ensures supporting documents are prepared, including the explanatory memorandum and second reading speech.

About supporting material

Refer to **Chapter 7** of the [Legislation Handbook](#).

Step 20. Lodgement process

The following steps take place the week before the Parliamentary sitting in which the bill is to be introduced.

By 11:00am Wednesday

The department's LLO lodges the explanatory memorandum and evidence of any additional ministerial clearances with the PM&C Legislation Section.

The Office of Parliamentary Counsel lodges the bill with the PM&C Legislation Section.

By 11:00am Friday

The department emails the PM&C Legislation Section to confirm the Minister's text approval of the bill and explanatory memorandum.

About lodgement

Refer to **Chapter 8** of the [Legislation Handbook](#).

Step 21. Approve supporting material and final text

The Minister approves the supporting material and the final text of the bill and explanatory memorandum. This step often occurs within short timeframes.

Step 22. The Legislation Approval Process

During sitting week, the bill and explanatory memorandum go through the Legislation Approval Process:

1. PM&C Legislation Section and First Parliamentary Counsel brief the Legislation Minister.
2. The Legislation Minister reviews and approves the bill for introduction.
3. The bill is cleared by the government's party room, when it meets.

About the Legislation Approval Process

Refer to the following sections of the [Legislation Handbook](#):

- **Chapter 8** deals with the Legislation Approval Process
- **Chapter 10** deals with Party Clearance
- **Appendix G** lays out the requirements for documentation

Refer also to **Drafting Direction 4.6** from the [Office of Parliamentary Counsel](#).

Step 23. The Minister (or duty minister) introduces the bill to parliament

The Minister, or duty minister, introduces the bill to parliament in what is known as the first reading. During the second reading, members will debate and vote on the main idea in the bill.

One or more advisers from the department must be present during the second reading debate. These adviser(s) must have detailed knowledge of the legislation, and the authority to provide and recommend responses to the Minister.

The final vote takes place during the third reading.

If amendments are proposed, refer to the Guide to parliamentary amendments.

If the bill passes in both chambers, it is sent to the Governor-General for Royal Assent. Royal Assent is typically granted within 8 to 10 working days, after which the bill becomes an Act of Parliament.

About Parliamentary processes

For details on preparing for the second reading debate, refer to **Sections 12.18 to 12.27** of the [Legislation Handbook](#).

For a diagram of the usual path of a bill, refer to the website of the [Parliamentary Education Office](#).

For a more detailed description of relevant parliamentary processes, refer to the website of the [Parliament of Australia](#) or **Chapters 11 to 14** of the [Legislation Handbook](#).

Glossary

Term	Definition
Bill	A proposed law that becomes an Act of Parliament once approved by the House of Representatives and the Senate.
The department	The department or agency preparing the legislation
Explanatory memorandum	A document which assists members of parliament, officials and the public to understand the purpose and operation of a bill.
Legislation process	A broad term encompassing the development, drafting, and approval for laws introduced to parliament.
Legislation Liaison Officer	The principle point of contact in each department regarding legislation for that portfolio.
Legislation Minister	Minister in the Prime Minister's portfolio nominated by the Prime Minister to consider requests for minor policy and approve legislation for introduction on behalf of the Prime Minister.
The Minister	The minister(s) responsible for the department preparing the legislation (capital 'M').
Office of Parliamentary Counsel	A statutory agency responsible for drafting proposed laws, amendments and legislative instruments, and for publishing legislation.
Parliamentary Business Committee	A Cabinet sub-committee which determines the legislation program for each sitting period; endorses the weekly program of legislation for introduction and debate in Parliament; and considers ministers' requests for significant variations to the legislation program.
Parliamentary Sitting Period	A period, usually of several weeks, during which one or both Houses convene formally to debate and make decisions.
PM&C	The Department of the Prime Minister and Cabinet.
PM&C Legislation Section	The Parliamentary Affairs and Legislation Section at PM&C.
PM&C policy teams	Teams at PM&C responsible for coordinating policy for the relevant department ('shadow teams').
Policy	A general government objective or the implementation plan for achieving such an objective (context dependant).
Primary legislation	Laws that are enacted as Acts of Parliament, having passed the House of Representatives and the Senate and been given Royal Assent.
Subordinate legislation	Laws made under the authority of existing Acts, usually by a minister or the Governor-General in Council. These are variously described as rules, regulations, by-laws, orders, statutory instruments, notices, ordinances, determinations and proclamations.