

LEGISLATION HANDBOOK



MARCH 2017

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LEGISLATION IN CONTEXT

Overview

The *ACT Government Legislation Handbook* (the Handbook) is intended as a guide for departmental officials and ministerial officers to better understand the ACT legislative process. It details legislative procedures and other practical considerations involved in making and amending legislation.

Separate guidance regarding Cabinet procedures for legislation is set out in the *Cabinet Handbook* and *Cabinet Paper Drafting Guide*.

Legislation in the ACT

Section 22 of the *Australian Capital Territory (Self-Government) Act 1988 (Cwlth)* (the Self-Government Act) gives the Legislative Assembly power to make laws ‘for the peace, order and good Government of the Territory’.

Under section 28 of the Self-Government Act, an Act of the Assembly has no effect to the extent that it is inconsistent with a law of the Commonwealth in force in the Territory.

Legislation enacted by the Legislative Assembly is an important source of law in the ACT. It is part of a body of law, which includes principles and rules of common law, decisions of courts in particular cases, and laws of the Commonwealth applying to the ACT.

ACT Executive, Cabinet and Legislative Assembly Interrelationship in the Legislative Process

A key function of Government is to make laws with most legislation introduced by the ACT Executive which has the responsibility for governing the Territory. It is therefore the ACT Executive that is responsible for executing and maintaining the Territory’s laws, and also for making subordinate legislation. In practice, the ACT Executive meets as the Cabinet comprising the Chief Minister and up to eight other ministers.

While the ACT Executive has the major role in initiating legislation, the power to make and amend laws rests with the Legislative Assembly. As the ACT Executive exercises powers conferred by the Assembly, the ACT Executive is subject to scrutiny of its performance by the Assembly. In this way, the ACT Executive is accountable to the Assembly for its actions including delivering a legislation program for each sitting period and administering and enforcing Territory laws.

Who Administers Particular Acts?

Under the Self-Government Act (section 43) and the *Public Sector Management Act 1994* (sections 13 and 14), the Chief Minister allocates responsibility to the various ministers and directorates for the execution and maintenance of legislation.

The Chief Minister makes Administrative Arrangements (AAs), under the Self-Government Act (section 43) and the *Public Sector Management Act 1994* (sections 13 and 14), that set out the matters dealt with by each directorate and the legislation administered by the minister or ministers who are allocated responsibility for each directorate. The AAs are available from the ACT Legislation Register at www.legislation.act.gov.au.

The AAs are updated from time to time when significant changes to portfolio positions and functions occur. In the period before an Act is allocated to another Minister under the AAs, responsibility for it rests with the Chief Minister. However, standard practice is to brief the Chief Minister to seek agreement to delegate functions under the Act to another Minister. An instrument is prepared under the *Legislation Act 2001*, s254A (Delegation by Minister) and signed by the Chief Minister, to make the delegation.

When is Legislation Required?

As part of the process of developing Government policy, agencies must consider whether legislation is needed. Often, policy can be implemented by non-legislative means.

There must be a significant reason for choosing to implement a policy through legislation. The Policy Division in the Chief Minister, Treasury and Economic Development Directorate (CMTEDD), the Legislation, Policy and Programs Branch in the Justice and Community Safety Directorate (JACS), the ACT Government Solicitor (ACTGS) and the Parliamentary Counsel's Office (PCO) are able to advise on the need for legislation in order to implement a proposal.

While it is not possible to list every situation where legislation is needed, the following examples should assist agencies:

- appropriations of money;
- new or amending policies which impose taxes or levies;
- new or amending policies which impose fees and charges;
- amendments to Acts;
- significant questions of policy including fundamental changes to existing policy;
- procedural matters involving legislative scheme/s;
- provisions which create offences or impose criminal or administrative penalties;

- provisions which impose obligations, or confer enforceable rights on citizens or organisations (such as to provide information or submit documentation, to prohibit an activity or impose penalties); and
- policies that have a significant impact on individual rights and liberties.

How Legislation Operates on a Matter

Legislation may have its effect for a matter by directly deciding the matter, or by authorising someone else, that is, delegating the power to someone else, to make a law about the matter or decide the matter.

Legislation may incorporate another document by reference, whether or not the other document is itself legislation.

Legislation may empower someone to make an instrument. The instrument may be legislative or administrative in character. The significance of its legislative or administrative character depends on the particular context.

CONSISTENCY WITH ACT LEGISLATIVE FRAMEWORK

ACT Statute Book and 'Framework' Acts

The ACT Statute Book has been developed over 90 years and consists of all the Acts and subordinate legislation currently in force. Each new piece of proposed legislation must be developed against this background so that it will fit cohesively and consistently with the other parts of the Statute Book.

Some Acts of general application set the framework underlying the ACT Statute Book and have a substantial influence on the way new legislative proposals must be developed. Examples are set out below.

ACT Framework Legislation

All legislation on specific areas of Government policy and activity should be consistent with existing legislation that sets out the framework for such policies and activities. Examples of legislation that sets the framework for other legislation includes the *Legislation Act 2001*, the *Financial Management Act 1996*, the *Auditor-General Act 1996*, the *Human Rights Act 2004*, the *Annual Reports (Government Agencies) Act 2004*, the *Criminal Code 2002*, the *Civil Law (Wrongs) Act 2002*, the *Civil Law (Property) Act 2006* and the *Court Procedures Act 2004*.

While most of these laws are not discussed in detail in this Handbook, they do affect the way in which other laws are drafted. Any queries on legislative consistency should be directed to PCO and the agency administering the particular framework legislation.

Legislation Act 2001

The main purpose of the *Legislation Act 2001* (Legislation Act) is to make ACT legislation and statutory instruments more accessible by:

- setting out the 'machinery of Government' legal framework regarding the making, publication and operation of legislation;
- improving the legislative structure and content, and simplifying provisions where practicable;
- encouraging public access to legislation through the internet, while maintaining access to printed legislation; and
- assisting users of legislation to find, read and use legislation.

The Legislation Act brings together in a simplified form all the provisions dealing with the 'life cycle' of legislation. The 'life cycle' of legislation includes the making, notification, commencement, presentation and disallowance (where relevant), operation, interpretation, proof, republication, amendment and repeal of legislation and instruments made under legislation.

The Legislation Act rationalises and standardises a large number of provisions. These include provisions dealing with approved forms, the determination of fees, the making of appointments and the making of regulations and other statutory instruments. The Act also includes various aids to interpret legislation and the law.

ACT Human Rights Act 2004

The *Human Rights Act 2004* (HRA) came into force on 1 July 2004. From then, most of the individual civil and political rights that are guaranteed under the International Covenant on Civil and Political Rights (ICCPR) were incorporated into ACT law.

The primary aim of the Act is to establish a “dialogue model” between the Legislative, Judicial and Executive branches of Government. The long-term aim is to build a human rights culture of tolerance and respect for human rights in the Territory.

The dialogue is facilitated through various mechanisms, including:

- the *reasonable limits provision*, in which the legislature has the capacity to place justifiable and proportionate limits on the rights contained in the HRA;
- the *interpretive provision*, in which courts, tribunals and public officials must adopt, where possible, a human rights consistent approach, when making an administrative decision, or otherwise exercising power, performing a function or meeting a duty under a Territory law;
- the *declaration of incompatibility*, in which the Supreme Court is empowered to declare a law or a provision of a law incompatible with reasonable limits on human rights;
- the *statement of compatibility* by the Attorney-General, in which Government bills are assessed for HRA consistency prior to introduction into the Legislative Assembly; and
- the *pre-enactment scrutiny role* of the Legislative Assembly, in which the Standing Committee on Justice and Community Safety performing its legislative scrutiny role, reports on HRA issues raised by all bills prior to passage.

ACT Legislation Register

The ACT Legislation Register is established under section 18 of the *Legislation Act 2001*, and is maintained by PCO. It is an electronic register of all Acts and statutory instruments, and is publicly available at www.legislation.act.gov.au.

The Register contains the following material:

- current and previous authorised and unauthorised republications of laws;
- Acts as made;
- subordinate laws as made;
- disallowable instruments as made;
- notifiable instruments as made (including approved forms);
- commencement notices as made;
- resolutions passed by the Legislative Assembly to disallow or amend subordinate laws or disallowable instruments;
- bills, explanatory statements, and human rights compatibility statements presented to the Legislative Assembly; and
- explanatory statements and regulatory impact statements (RIS) for subordinate laws and disallowable instruments.

The Register also includes non-legislative material that may be used by courts in interpreting legislation and other material to assist legislation users, such as legislation tables and updates.

Notifying Legislation and Instruments on the Register

Under the Legislation Act, legislation and registrable legislative instruments are notified on the Legislation Register.

Notification on the Register involves both a statement on the Register that an Act or instrument has been made and publication on the register of the text of the Act or instrument.

Notification on another government website would be used if urgent notification on the electronic Register was not possible at the time. Subsequent notification on the Register would still be required.

Procedures for notification of legislative instruments are further outlined in the *Legislation Act 2001* and the *Legislation Regulation 2003* which are accessible on the Legislation Register. Parliamentary Councils Office has prepared guidelines for the notification of legislation to assist agencies to meet the requirements for arranging for instruments to be notified and registered. The guidelines are available on the PCO website at www.pco.act.gov.au.

TYPES OF LEGISLATION

Acts

The Legislative Assembly makes legislation or authorises the making of legislation by enacting an Act. Acts are the primary form of law in the Territory. An Act may take several forms, for example:

- a new Act dealing comprehensively with a particular topic;
- an amending Act, amending one or more other Acts or subordinate laws;
- a portfolio Act, making less significant amendments to two or more Acts administered by a particular Minister—it may allow for some policy change but not important new initiatives; or
- a Statute Law Amendment Act, making minor and technical amendments across a number of Acts.

This Handbook outlines the key considerations and requirements for developing and amending Acts, including compliance with Cabinet processes, Human Rights law, and in regard to a Regulatory Impact Statement.

Subordinate Legislation

Subordinate or delegated legislation is legislation that is authorised by the primary Act. The primary Act must delegate authority to a body or person to make the subordinate legislation.

There are many different forms of subordinate or delegated legislation. According to section 8 of the Legislation Act, a 'subordinate law' is a regulation, rule or by-law (whether or not legislative in nature) made under:

- an Act;
- another subordinate law; or
- power given by an Act or subordinate law and also power given otherwise by law.

Regulations made by the ACT Executive (in this case, by two ministers) are the most common subordinate laws.

Subordinate law includes court procedures rules made under the *Court Procedures Act 2004* for both the Supreme Court and Magistrates Court. Former separate rules for each court have been repealed.

The Assembly can, by resolution, disallow a subordinate law or disallowable instrument (see Legislation Act, section 65), or amend a subordinate law or disallowable instrument (see Legislation Act, section 68). However, if a subordinate law or disallowable instrument is disallowed, there is a general prohibition on making instruments the same in substance within 6 months of the day the subordinate law or disallowable instrument was disallowed (see Legislation Act, section 67).

After presentation, the Standing Committee on Justice and Community Safety performing the role of a Scrutiny Committee considers, in addition to bills, subordinate laws and disallowable instruments to examine whether each instrument:

- meets the objective of the Act under which it is made;
- unduly trespasses on rights previously established by law;
- makes rights, liberties and/or obligations unduly dependent on non-reviewable decisions; or
- contains matter that should properly be dealt with in an Act of the Legislative Assembly.

Regulations

An Act generally includes a regulation-making power that enables the ACT Executive to make regulations¹ for the Act.

Regulations are to be compatible with the scope of the empowering legislation. Regulations may deal with any matters that a statute allows or requires to be prescribed and they may deal with any other matters that are necessary or convenient for carrying out or giving effect to the statute (see section 44(1) of the Legislation Act).

The courts will ultimately decide whether an exercise of the power is necessary or convenient. However, in general, regulations can only expand upon what is already in the empowering legislation, not introduce new issues.

Cabinet approval is generally not required for the drafting of regulations, unless there are sensitive issues, or whole of Government or cross portfolio considerations. Normally the responsible minister gives approval for the drafting of regulations.

Each draft regulation must be accompanied by an explanatory statement and if required a RIS. These documents are prepared by the responsible agency. They will be tabled in the Legislative Assembly after notification on the Legislation Register.

¹ *Subordinate law*

An explanatory statement and any RIS are made available to members of the Legislative Assembly and published on the Legislation Register to help the public understand the effect of the regulations.

Two ministers, one of whom is to be the minister responsible for the policy area determined by the AAs, must sign the regulation.

The principles for drafting bills apply generally to the drafting of regulations. The instructing officers must work out the details of the proposal, prepare the drafting instructions, and explain the precise nature and purpose of the proposed regulation.

The responsible agency must prepare the accompanying documentation and arrange for the regulation to be notified. The authorised person for an agency will request notification for the regulation.

After the regulation is notified on the ACT Legislation Register, it must be presented to the Legislative Assembly within six sitting days or it will be taken to be repealed (see Legislation Act, section 64).

The Assembly may disallow or amend a subordinate law (regulation or disallowable instrument) presented to it.

Regulatory Impact for Subordinate Law and Disallowable Instruments

A RIS may be required depending on the effect of the regulation (see Legislation Act, part 5.2).

Assistance regarding special RIS requirements for subordinate laws and disallowable instruments is available from the Economic and Financial Analysis Branch in CMTEED.

Penalties

Penalties for a breach of regulations is limited to what is set out in the empowering Act, which is generally not more than 10 penalty units.

Legislative instruments

Legislative instruments are a subset of statutory instruments. Under section 12 of the Legislation Act, each of the following is a legislative instrument:

- subordinate laws (regulations, rules and by-laws);
- disallowable instruments;
- notifiable instruments (including approved forms); and
- commencement notices.

Legislative instruments are not enforceable against the Territory or anyone else unless they are notified. They are given a number sequence as nearly as practicable in the order they are notified (see *Legislation Act 2001* part 6.4).

Samples of common legislative instruments have been prepared by PCO to assist agencies when preparing instruments. The sample instruments are available on the PCO website (www.pco.act.gov.au).

Name and Form of Legislative Instruments

A meaningful name for a legislative instrument helps to ensure effective public access to the instrument. The requirements for naming instruments are governed by the *Legislation Regulation 2003* and current legislative drafting practice. The name of an instrument must be unique and should contain each of the following, in the order listed:

- Act name, without year and without the word Act;
- brief indication of subject;
- kind of instrument;
- year of making; and
- number of instrument.

The following examples indicate the naming requirements and conventions:

- *Wombat Protection (Fence Levy) Determination 2003 (No 1)*;
- *Road Transport (Public Access) Guidelines 2004 (No 3)*; and
- *Planning and Land (Chief Planning Executive) Appointment 2003 (No 8)*.

The *Legislation Regulation 2003* sets out requirements for notification of legislative instruments.

Agency delegates should check that these requirements are met before sending requests for notification to PCO.

Numbering Legislative Instruments

Under section 59 of the *Legislation Act*, PCO must number legislative instruments, as nearly as practicable, in the order in which they are notified under the Act. PCO may allocate different number series to different kinds of instruments, and add distinguishing letters to numbers to indicate the different kinds of instruments.

The numbering series appropriate for instruments in 2015 are:

- SL2015-for subordinate laws;

- DI2015-for disallowable instruments;
- NI2015-for notifiable instruments;
- AF2015-for approved forms (a particular kind of notifiable instrument); and
- CN2015-for commencement notices.

The number for a particular instrument is formally allocated after the instrument is made. PCO may informally allocate a number before formal allocation.

Notification of Legislative instruments

Requests for notification may be made by the instrument maker or appropriate person (see Legislation Act, section 61 and *Legislation Regulation 2003*). However, in practice, a delegate generally makes requests on their behalf. In most cases, the delegate is the ALO for each agency.

Requests should be made in the appropriate electronic form on the requests facility maintained by PCO.

Statutory Instrument

A statutory instrument is any instrument made under an Act, another statutory instrument, or any power given by an Act, by a statutory instrument or otherwise by law.

A statutory instrument does not have to be “legislative” in nature. In other words, a statutory instrument can make a determination in respect of an individual or entities, or it can establish a rule in relation to a class of individuals or entities.

Statutory instruments include all instruments made under a law (or power authorised by an Act, see Legislation Act, section 13 (1)). They include subordinate laws, disallowable instruments, notifiable instruments and commencement notices.

A statutory instrument is to be interpreted as operating to the full extent of, but not to exceed, the power given by the Act or statutory instrument under which it is made (the *authorising law*). Any clarification required in regard to validity or interpretation of a statutory instrument should be directed to the ACT Government Solicitor.

The power to make a statutory instrument includes power to amend or repeal the instrument. The power to amend or repeal the instrument is exercisable in the same way, and subject to the same conditions, as the power to make the instrument. Two examples of this are:

- if the instrument is a disallowable instrument, an amendment or repeal of the instrument is also a disallowable instrument; and

- if the instrument is a notifiable instrument, an amendment or repeal of the instrument is also a notifiable instrument.

In all instances, it is presumed, unless the contrary is proved, that all conditions and steps required for the making of a statutory instrument have been satisfied and carried out.

The statutory instrument (or the *authorising* law) may make provisions about a matter by applying ACT law, a law of another jurisdiction, or of an instrument that is in force only at a particular time.

A power given under an Act or statutory instrument may be exercised with any other power to make a single instrument. In other words, a single statutory instrument may exercise several different powers, or satisfy several requirements at the same time (see Legislation Act, section 49).

Disallowable Instrument

Disallowable instruments are:

- instruments which set fees or charges; and
- those statutory instruments that are declared to be disallowable (see *Legislation Act 2001*, section 9).

Disallowable instruments are subject to certain rules for presentation and disallowance. Advice can be sought from PCO regarding the notification requirements under the *Legislation Regulation 2003* and the drafting format.

Disallowable instruments (and accompanying explanatory statements) are generally drafted within the responsible agency and not by PCO. An assessment needs to be made whether a RIS is required for the instrument.

After a disallowable instrument has been notified, it must be presented to the Legislative Assembly within six sitting days or it is taken to have been repealed (see Legislation Act, section 64). The Legislative Assembly may disallow or amend a disallowable instrument presented to it.

Some planning legislation may have a period of disallowance of only five sitting days. See sections 80 (3) and 83 of the *Planning and Development Act 2007* for further detail.

The Legislative Assembly can pass a resolution to amend a subordinate law or disallowable instrument no later than 6 sitting days after the day it is presented to the Assembly (see Legislation Act, section 68).

If the Legislative Assembly passes a resolution to amend a subordinate law or disallowable instrument, a subordinate law or disallowable instrument the same in substance as the

amended law cannot be made within 6 months beginning on the day the amendment is made, unless the Legislative Assembly rescinds the resolution that made the amendment or, by resolution, approves the proposed new subordinate law or disallowable instrument in the new terms (see Legislation Act, section 70).

Notifiable Instrument

Notifiable instruments are those that are declared by an authorising law to be notifiable.

If a legislative instrument is made, an authorised person may make a notification request to PCO to notify the instrument (see Legislation Act sections 61, 65A and 69).

Statutory Forms

If forms are required for an Act, a provision should be included allowing the minister or delegate to approve forms for the Act. This provision is standardised across the Statute Book.

An Act may provide for an entity, for example, a minister or other stated person, to approve forms for the Act. Under the Legislation Act (see part 19.4), the entity can delegate the power to approve forms for the Act.

An Act may provide for approved forms to be notifiable instruments. The approval must be in writing because it is a notifiable instrument. Provisions on approved forms are standardised across the statute book.

Commencement Notice

A commencement notice is a notifiable instrument that fixes or otherwise determines the commencement of an Act, subordinate law, disallowable instrument or notifiable instrument. A commencement notice should be signed off by the relevant minister, and notified.

Appointments

Acts frequently include provisions to enable the making of appointments, which may be disallowable. Part 19.3 of the Legislation Act contains detailed provisions on the operation of appointments. As a result, detailed provisions on matters such as suspending or ending appointments, or acting arrangements, are no longer needed in Acts.

If a law provides for a maximum or minimum period of appointment, the instrument of appointment must specify the actual period for which the appointment is made. Some statutory appointments require Cabinet approval and appropriate consultation with the relevant Assembly standing committee.

Ministerial appointments to statutory positions usually require consultation with the appropriate Legislative Assembly committee, and the appointments themselves are

disallowable (see Legislation Act, division 19.3). The instrument of appointment must be notified on the Legislation Register and copies must be presented to the Assembly.

Further guidance regarding Cabinet procedures for statutory appointments is provided in both the *Cabinet Handbook* and the *Cabinet Paper Drafting Guide*.

Fees

The Legislation Act provides for a fee determination by a minister to be a disallowable instrument.

Ministerial power to determine fees needs to be set out in the Act. Part 6.3 of the Legislation Act provides comprehensive supporting provisions.

Statutory Bodies and Offices

The establishment of a statutory body or office involves complex legal and governance issues. As a general rule, statutory authorities should not be created if administrative arrangements are sufficient. Advice should be sought from JACS at an early stage in any policy consideration of such an issue.

A checklist on the steps and issues to consider in the preparation of legislative instruments is available from PCO, or their website at www.pco.act.gov.au.

DEVELOPING LEGISLATION

Consultation

Agencies should consult at the earliest stage in the development of a legislative proposal. This is especially the case where there are critical dates for parliamentary consideration (including introduction, debate or notification). In particular, early consultation will have to be made with PCO.

The preparation of well-drafted legislation requires consultation with all relevant parties. This could entail informal contact between officers of stakeholder agencies and where relevant also consulting with bodies and individuals outside the ACT Government (see the *Cabinet Handbook* for Cabinet confidentiality considerations when consulting other bodies and persons). As part of the consultation phase, it will be important to also have considered possible alternatives to legislative action or whether public policy objectives could be met with revised and reduced legislative action.

Agencies should refer to the *Cabinet Handbook* and the *Cabinet Paper Drafting Guide* for advice regarding consultation on and drafting of a Cabinet Submission seeking Cabinet's consideration of new or amending legislation. Agencies should pay particular attention to ensuring early consultation with all relevant agencies and with PCO. Where required, contact should additionally be made with the ACT Government Solicitor to obtain any necessary legal advice early in the drafting process.

Consultation with the Community and External Bodies

Properly conducted community consultations demonstrate the transparency and accountability of Government processes and could lead to better and more sustainable policy outcomes. They also contribute to good governance, the strengthening of civil society, and for building greater public trust in government.

Consideration should be given to whether there has been a previous commitment made to such consultation, and whether interested community or business organisations (such as professional associations, representative or peak bodies) or other key stakeholders should be consulted.

Cabinet papers must not be provided to organisations as part of such consultations, but it may be appropriate to seek views of stakeholders in relation to broad policy directions.

Exposure Drafts

Sometimes a minister may want to expose draft legislation for public consideration and comment as part of the consultation process. PCO will prepare a clean copy of the bill, marked

as an exposure draft and made available on the Legislation Register. An exposure draft requires Cabinet agreement to the draft bill and to its release as an exposure draft.

The provision of exposure drafts should be routinely prepared for all major pieces of government reform legislation and made available for community comment and consideration in a timely manner.

Bills Impacting on Other Minister's Legislation

When a minister proposes to sponsor a bill that contains amendments to an Act that is administered by another minister, the sponsoring minister must seek the agreement of the minister who has responsibility for administration of the Act. Agreement can be attained through written communication between the ministers involved.

Where the measures proposed in a bill may impact on the responsibilities of another minister, that minister must be consulted in writing and give agreement to the proposal.

Amendment Bills

A Government amending bill goes through the same compliance and procedural processes as a new bill. If the amendments are technical in nature, agreement at the ministerial level may be sufficient. Any impacts of the proposed amendment on other legislation should be identified. Any other legislation that needs to be amended as a consequence of the proposed amending legislation should be clearly identified in the Cabinet Submission seeking first pass approval, and in the drafting instructions.

Ministerial Approval

The relevant minister must approve the policy directions underpinning a legislative proposal. Although ministerial approval may be sought at the time of seeking first pass Cabinet approval, it should be addressed early in the process to avoid delays in the preparation of legislation.

Compliance with Cabinet Processes

Cabinet approval must be obtained for all significant policy proposals involving legislation, before they can be presented in the Legislative Assembly. This includes bills that the Chief Minister has given agreement to drafting without initial reference to Cabinet. If in doubt whether Cabinet consideration is required, the instructing officer should consult the Director, Cabinet Office. See the *Cabinet Handbook* for further details on Cabinet compliance.

All legislation proposals seeking Cabinet approval must be drafted in accordance with the *Cabinet Handbook*. Proposals for legislation are normally considered by Cabinet in two stages:

- first pass for policy approval and agreement to drafting legislation; and
- second pass for agreement to introduce the Bill.

See the *Cabinet Paper Drafting Guide* for detailed guidance on approval processes.

The instructing officer should ensure sufficient time for passage of legislation if Cabinet is asked to approve a commencement date, preferably by way of a practical timetable for the drafting, Cabinet and Assembly processes. If in doubt, the instructing officer, through their Cabinet Liaison Officer (CLO)/ALO should consult the Cabinet Office to discuss Cabinet or Assembly timeframes. PCO may assist with drafting timeframes.

Compliance with the Human Rights Act 2004 (HRA)

The HRA applies directly to both primary and subordinate legislation and it is important that officers ensure that regulations and instruments are also consistent with the Act to avoid unforeseen breaches of human rights standards.

Ministers and their directorates are responsible for ensuring that legislation under their administration complies with the HRA.

The Attorney-General must make a statement in writing to the Legislative Assembly as to whether the bill is consistent with human rights or, if it is not consistent, how it is not consistent with rights protected under the ACT.

Legislation and instruments that are subsequently found to be inconsistent with the HRA by the Supreme Court may be subject to a Declaration of Incompatibility issued by the Court.

If the proposed legislation is known to place limits on civil and political rights, the Cabinet Submission and explanatory statement must indicate whether the proposed restrictions meet the “reasonable limits” test in section 28 of the HRA.

Early advice should be sought from Legislation, Policy and Programs Branch, JACS, which issues draft compatibility statements on behalf of the Attorney-General in relation to all Government bills.

Regulatory Impact Statement

A RIS is required for any new or amending legislation proposals that may impact on a stakeholder group, for example, Government, community group, general public, industry or business group.

All policy and legislative proposals seeking Cabinet consideration require a RIS. The Economic and Financial Analysis Branch in CMTEDD advises agencies on the implementation of the Government’s regulatory reform agenda in the development of legislation. The Branch also provides advice in relation to the preparation of a RIS. Subordinate legislation only requires a RIS if there is an appreciable cost on the community or part of the community (see Legislation Act, section 37).

Memorandum from the Parliamentary Counsel's Office

When the instructing agency and PCO agree that the drafting of a bill is completed and ready for submission to Cabinet, PCO will issue a memorandum on the compliance of the bill with the appropriate Cabinet decision (or Chief Minister's approval).

The memorandum from PCO indicates whether the bill conforms strictly to the scope of authority approved by Cabinet or the Chief Minister. A bill that is inconsistent with policy authority should be brought forward for second pass approval in a Submission.

If the final bill departs from the policy objectives as set out at the first pass, the drafter will alert the relevant agency to the departures in policy that will be addressed in the memorandum.

Role of Parliamentary Counsel's Office

PCO may become involved with a proposal at an earlier stage - before or during preparation of the Submission. PCO welcomes earlier consultation on legislative proposals. PCO may provide comments on potential breaches of fundamental legislative principles, adequacy of the drafting instructions or inconsistency between the instructions and Government policy related to legislation and legal issues.

PCO will also refer matters arising under the HRA to the Legislation, Policy and Programs Branch, JACS. Agencies are advised to address these issues to minimise delays in the final submission and bill process.

Exceptions to the Normal Bills Process

There are two exceptions to the normal bills process outlined above:

- drafting of minor and non-controversial amendments to a bill may be authorised by the Chief Minister; and
- minor or technical amendments may be brought to Cabinet through the Technical Amendments Program (Statute Law Amendment Bill).

In these cases, a full submission is required when seeking Cabinet agreement to presentation of the bill in the Assembly.

Chief Minister's Agreement to Draft Legislation

The request should set out:

- a detailed description of the proposal, the intended effect and proposed amendments;
- why the amendments are necessary (attaching advice from JACS, if relevant);

- details of any consultation and whether there is agreement;
- why the minister considers that the matter does not require Cabinet endorsement;
- whether the proposal is included in the legislation program for the relevant current sitting period and, if so, its priority status (if the proposal is not included on the program, a request for its addition should be made);
- any impact on business and competition (attaching a RIS where applicable); and
- the impact of the proposal on human rights, as outlined in the HRA.

Post-Cabinet Changes to a Bill

The Chief Minister may authorise minor policy changes to a bill after Cabinet has agreed to presentation of the bill. If the amendments are substantial in nature, they must be referred back to Cabinet. Cabinet decisions routinely provide authority for minor changes to be made after consideration by Cabinet.

Subsequent Development of Bills after Introduction

Bills may be further developed during the debate stage of passage through the Assembly.

Different Levels of Approval

A summary of the different levels of approval agreement are set out in the following table:

Proposal	Authority
New legislation or major changes to existing legislation	Cabinet
Minor and non-controversial amendments for an amending bill for: <ul style="list-style-type: none"> • matters that involve no change in policy; or • minor policy change and responsible minister is satisfied it does not warrant Cabinet approval before drafting. 	Chief Minister
Technical amendments suitable for Statute Law Amendment Bill	Standing approval by Cabinet
Regulations	Minister ²

² Initial authority for Regulations is from the minister, however, approval requires authority from the ACT Executive (by two ministers of which one is to be the relevant responsible minister)

DRAFTING GUIDE

Drafting Instructions

The purpose of drafting instructions is to give the drafting officer in PCO all necessary information from which legislation can be prepared to meet the specified objectives.

The instructing agency must give initial drafting instructions in writing. PCO will only accept initial oral instructions in exceptional circumstances. There is no set format but it is preferred if the instructions are dated and paragraphs and pages are numbered.

Provisional Drafting Instructions

Provisional drafting instructions should be prepared and circulated to PCO and interested agencies at the time of preparation of a Cabinet submission, which proposes measures involving legislation.

In many cases, the legislative scheme has to be worked out in consultation with PCO or the Legislation, Policy and Programs Branch in JACS.

Where there are matters of urgency or where only minor or technical amendments are proposed, it may be necessary to give instructions to PCO before approval has been obtained. In such instances, instructions should indicate why ministerial approval has not been obtained and when it will be sought.

If drafting must commence while some aspects of the legislation are still being developed, matters still being considered or subject to change should be clearly identified as early as possible.

Final Drafting Instructions to be provided within seven Working Days

The sponsoring agency must send the drafting instructions to PCO as soon as possible to commence drafting of the bill. PCO then allocates a drafter to the job and makes early contact with the sponsoring agency.

General Principles in Drafting

Drafting instructions should be expressed in a way that allows legislative drafters the maximum flexibility in drafting the legislation, consistent with meeting the policy objectives and outcomes sought by Cabinet.

The instructions should explain:

- the general purpose, objective or philosophy behind the legislative proposal;

- the main or basic concepts ('who and what are we talking about and why we are doing the thing proposed');
- the main rules or objectives ('what is the main thing we are trying to do'); and
- the way the proposal is intended to be given effect, in particular:
 - other rules or objectives ('what other things are necessary to make the main thing work'); and
 - the way the rules or objectives work together ('are the things that we are doing consistent and compatible with each other').

The instructions should be written in plain language, with specialised or technical jargon used only where necessary. Any technical terms should be explained. Instructions should not propose language or clauses to be included in the bill.

Drafting Instructions Check List

Relevant items for attention when preparing drafting instructions are shown in the check list below:

Key points

1	<ul style="list-style-type: none"> • The name of the instructing officer • The officer's Agency, division, branch, address, contact telephone number, fax number and e-mail address (this information will appear on the cover page of drafts of the bill)
2	The authority (the Cabinet Decision or Chief Minister's approval) to draft the bill including the responsible minister and portfolio
3	The priority status of the legislation and when the legislation is required
4	The principal objectives of the legislation (i.e. what has to be done and why)
5	Any relevant background papers or legal opinion
6	Examples of the problems the legislation is intended to overcome
7	<ul style="list-style-type: none"> • An explanation of the provisions of existing legislation, including any legislation to be amended, that needs to be understood • The relationship between the proposed legislation and the specific provisions of existing legislation
8	Any other legislative proposals that relate to the legislation and whether they have been presented in the Legislative Assembly
9	Information on similar legislation in other jurisdictions, or model legislation, if relevant
10	Mention of any aspect of the legislation that is politically sensitive
11	Any legislative policy issues
12	Information about consultation that has occurred or is still to occur

Parliamentary Counsel's Office Drafting Officers

The drafter's primary role is to ensure the proposed legislation achieves the policy objective in a legally effective way. The draft bill will be given to the instructing officer for consideration and comment. The draft may include drafter's queries or comments on the draft provisions.

All draft Government legislation is assessed by Legislation, Policy and Programs Branch, JACS for human rights compatibility and consistency in legal policy issues. Although the instructing officer may only deal with one drafter, a second drafter will also review the bill.

When a bill is settled, PCO will undertake final quality assurance checks in preparation of the bill for Cabinet and presentation to the Legislative Assembly.

Instructing Officers

Although there may be a number of policy officers involved in a bill, for practical reasons there should only be one instructing officer responsible for coordinating instructions.

An instructing officer needs to be familiar with:

- general requirements of this Handbook;
- Cabinet Handbook;
- Legislation Act and other framework legislation;
- current legislative regimes within the responsible agency;
- government legislation program and the status of proposals on the legislation program calendar; and
- similar regimes administered by other agencies and in other jurisdictions.

The instructing officer should ensure that the Agency's ALO/CLO is kept informed about the progress of legislative proposals so that the officer can assist the Legislation Steering Committee (LSC) in monitoring the Government legislation program.

The instructing officer's role is to:

- ensure the drafting instructions give effect to policy objectives;
- draft the explanatory statement and possibly test the draft against scenarios; and
- respond to drafter's queries.

Specific Matters Which May Need Consideration

The following paragraphs provide information on a number of specific matters which agency instructing officers will need to consider and on which they may need to consult the Cabinet Office, PCO, CMTEDD, JACS or the ACT Government Solicitor's Office before finalising drafting instructions.

Other substantive matters, particularly of a legal nature such as relating to the criminal code, criminal provisions, secrecy provisions or legal professional privilege should be referred to the relevant agencies for advice.

Commencement

An Act commences on the day after its notification day unless another date or time is stated in the Act. Different provisions can be commenced at different times.

An Act or provision may be expressed to commence in accordance with a commencement notice or a statutory instrument that fixes or otherwise determines the commencement of a law (see Legislation Act, sections 11 and 77). If such notice is not issued within 6 months after the Act's notification, the Act or relevant provision automatically commences on the next day (see Legislation Act, section 79).

For practical reasons, the timetable for commencement should be determined at the earliest possible stage. If possible, the commencement time or times should be stated in the Act rather than be fixed later by commencement notice.

Notes on the commencement clauses should provide an explanation of the commencement provisions and the timing involved and in particular the rationale for any staged commencement.

Retrospectivity

As a matter of general principle, provisions should not be commenced retrospectively if they operate to the disadvantage of a person (other than the Territory) by adversely affecting the person's rights or imposing liabilities on the person. Exceptions to these rules for Acts generally require the authority of Cabinet.

Financial Provisions

Provisions that involve the allocation, use or control of Territory moneys should be determined in consultation with CMTEDD.

Delegation

The class of potential delegates should be as limited as practicable.

If an Act empowers a person or body to make subordinate law or regulations about a particular subject matter, it is usually not lawful to sub-delegate the power to another person or body. Any sub-delegation of legislative power must be authorised by the authorising law.

The class of delegates should be defined; delegation to “any person” is not an appropriate delegation of power.

- part 19.4 of the Legislation Act contains extensive provisions that apply if a law authorises or requires an entity to delegate (or sub-delegate) a function;
- section 254A of the Legislation Act enables the delegation of functions conferred on Ministers; and
- section 36 of the *Public Sector Management Act 1994* allows a Director-General to delegate, and sub-delegate, any or all of his or her powers to a public sector officer.

While not strictly a form of delegation, section 52 of the Legislation Act allows a statutory instrument to deal with a matter by authorising or requiring a stated entity to make provision for the matter, or any aspect of the matter.

Incorporation by Reference

The Legislation Act contains special provisions about making legislation by reference to other material. The focus of the provisions is to ensure that incorporated material is accessible, particularly on the Legislation Register. PCO may be consulted on the limitations that apply to incorporation by reference.

Incorporation by reference refers to provisions made on a particular matter, by applying requirements set elsewhere, for example, in law or instrument of another jurisdiction, whether as made or as in force from time to time (see Legislation Act, section 47).

The text of such a law or instrument is taken to be a notifiable instrument, and if the law or instrument is adopted as in force from time to time, the text must be notified every time it is amended or remade.

Administrative Discretion

A law may confer authority on an individual to use his or her discretion in the development of a policy or guideline, or in the application of a rule to the facts of a given case.

It is generally inappropriate to provide for unfettered administrative decision making in an Act or subordinate legislation. Invariably, courts and tribunals will impose boundaries on administrative discretion, based on the language and structure of the relevant provisions and the scope, purpose and object of law as a whole.

The authorising law should state the criteria for the decision, provide for the making of guidelines, and unless there are contrary reasons, provide for a merits-based review.

Drafting Explanatory Statements - Bills and Disallowable Instruments

An explanatory statement assists Members of the Legislative Assembly (MLAs) and the public to understand the objectives and intention of the operative clauses of a bill. It describes the policy objectives and the intended operation of the bill and its provisions. It is important that the explanatory statement is well drafted and that the minister has sufficient time to scrutinise the documents. It may also be used in a court to determine the intention of an Act and clauses in the Act.

The instructing officer is responsible for preparing an explanatory statement to accompany the bill or subordinate legislation. The policy area must ensure that the minister's office is informed and involved in the development of this material. An explanatory statement should not contain confidential material or state that Cabinet has considered the proposal.

An explanatory statement should explain but not simply paraphrase. It should outline the policy objectives and intended operation of the bill and its provisions, or the operation and provisions of the disallowable instrument.

If a bill places a limit on a right protected by the HRA, the explanatory statement must include an explanation of whether those limitations comply with the "reasonable limits" test (section 28). Legal advice on the application of the reasonableness limits test must be obtained from Legislation, Policy and Programs Branch, JACS.

As ministers are not required to initial explanatory statements, provision should be made in the covering submission to the minister for his/her approval of the explanatory statement.

An explanatory statement for a bill and disallowable instrument consists of a cover sheet, a general outline and a detailed explanation of the content.

Combined Explanatory Statement

Normally each bill will have its own explanatory statement. A combined explanatory statement is acceptable only where all the bills are closely related and where a single outline will adequately explain the operation and effect of all the bills in the package.

Supplementary Explanatory Statement

A supplementary explanatory statement should be additionally prepared, if possible, where Government amendments are to be moved during debate of a bill in the Legislative Assembly. Minor or technical amendments will not require a supplementary explanatory statement

Revised Explanatory Statement

A revised explanatory statement should be additionally prepared, if possible, where Government amendments are to be moved during debate of a bill, should the amendments substantially change the bill from when it was introduced in the Legislative Assembly.

Revised and supplementary explanatory statements are usually prepared in conjunction with one another and presented in the Assembly by the responsible minister during debate of the bill.

Drafting Explanatory Statements - Regulations

The explanatory statement for a regulation should include the following matters:

- the legislative provisions authorising the making of the regulation;
- whether previous subordinate legislation is being revoked;
- the background to the regulation; and
- the purposes and consequences of the regulation.

The explanatory statement should:

- name the regulation correctly and include provision for the Subordinate Legislation (SL) number to be entered when requesting notification on the ACT Legislation Register;
- note which authorising provision of the Act the regulation is made under; and
- page number each multi-page explanatory statement and attachment to an explanatory statement.

PREPARING THE SUPPORT MATERIAL FOR TABLING

Supporting Documents to a Bill

The relevant policy area is responsible for developing and preparing the supporting documents for presentation in the Legislative Assembly. The material accompanying a bill consists of the explanatory statement, presentation speech and a human rights compatibility statement. The explanatory statement and presentation speech, together with the bill, must first be approved by the minister and submitted for Cabinet approval.

When a bill is presented to the Legislative Assembly, copies of the bill, explanatory statement and human rights compatibility statement are published on the Legislation Register.

Explanatory Statement

All bills and subordinate legislation (including regulations and disallowable instruments) require an explanatory statement. The statement format for both disallowable instruments and bills are similar. The minister presents the explanatory statement to the Legislative Assembly at the same time as tabling the bill and presentation speech.

The explanatory statement and presentation speech presented in the Legislative Assembly aids interpretation of the legislation. They also assist the public to understand the effect of the legislation. A court may also use the explanatory statement to help in the interpretation once it becomes law (see Legislation Act, sections 141 and 142).

A single page without a separate cover sheet is acceptable where the detailed explanation is less than one page, the amendments are too brief to warrant an outline and the amendments have no financial impact.

Supplementary Explanatory Statement

A supplementary explanatory statement for Government amendments follows the same format as an explanatory statement. The tabling of a supplementary explanatory statement occurs during debate of legislation and not during presentation of a bill.

If a supplementary explanatory statement is not required because the amendments are minor or technical, the sponsoring agency should notify the Manager, Government Business and Coordination team CMTEDD.

Presentation Speech

When presenting a bill in the Legislative Assembly and moving that the bill be agreed to in-principle, the minister responsible delivers a speech, which describes the purposes of the bill and the policy underlying it. The instructing agency is responsible for drafting the speech. A written presentation speech is required for every bill.

If a package of related bills is presented, the purpose of the whole legislative package is normally outlined in the presentation speech for the major bill, which is presented first. The speeches for the complementary bills can be short and should outline how each fits into the legislative package. A presentation speech should have a cover page identifying the name of the bill, the responsible minister and that it is a presentation speech, not a ministerial statement.

Human Rights Compatibility Statement

All bills for presentation in the Assembly require a human rights compatibility statement, issued by Legislation, Projects and Policy Branch, JACS on behalf of the Attorney-General.

Additional Documentation

Agencies must notify the Cabinet Office where a minister wishes to distribute additional documentation at the time of presenting the legislation, such as a letter or report, for information or examination by the Legislative Assembly in context of the debate on a bill.

THE LEGISLATION PROGRAM

ACT Government Legislation Program

The legislation program lists the bills the Government intends to present to the Legislative Assembly during the Spring or Autumn session. The Government usually presents a list of priority items to the Assembly at the beginning of each session.

The object of the program is to ensure:

- a strategic approach to delivering the Government's legislative commitments and other legislative priorities;
- timely and efficient preparation of Government bills; and
- orderly Cabinet consideration and presentation of bills, taking into account policy priorities, administrative urgency, public commitments, resource constraints and other policy considerations.

Proposals on the Legislation Program

Before each sitting period, the Chief Minister writes to ministers inviting them to submit their legislative proposals for the coming session. Agencies are responsible for preparing the proposals and seeking ministerial approval for them.

Completed Legislation Proposal are classified 'Sensitive: Cabinet' and must be handled in accordance with the *Cabinet Handbook*.

The responsible Agency is to forward the proposals to the Head of Service, copied to the Manger of Government Business Coordination, Cabinet Office in accordance with the deadline set by the Chief Minister. Copies of all proposals are provided to PCO for information.

Proposals must identify the proposed category status (that is, the priority or urgency of the proposal for the Government) and forecast the intended dates for obtaining first pass Cabinet agreement for the proposal and presenting the bill to the Legislative Assembly. The present category status that has been agreed by the Government is outlined in the following table.

Category Status for Government Bills

Category	Timeline for first pass Cabinet approval
<p>High</p> <p>Budget legislation and substantial proposals directly linked to the Government's priorities</p> <ul style="list-style-type: none"> • Presentation and passage essential in the sitting period for political, legal or financial reasons 	<p>Generally by mid- December (Autumn Sittings)</p> <p>or</p> <p>end of June (Spring Sittings)</p> <p>(Except for budget bills)</p>
<p>Medium</p> <p>Presentation essential and passage desirable in the sitting period for political, financial or administrative reasons</p>	<p>Generally by end of February (Autumn Sittings)</p> <p>or</p> <p>end of August (Spring Sittings)</p>
<p>Low</p> <p>Low political imperative;</p> <ul style="list-style-type: none"> • Business planning commenced but policy not settled or contingencies not satisfied 	<p>Generally by the end of the sitting period</p>

Based on the legislative proposals submitted by ministers, a legislation program, legislation planning schedule and calendar is developed. When Cabinet approves the Government's legislation program, it also endorses the planning schedule and accompanying calendar with forecast dates for first pass approval and presentation of bills.

The inclusion of a proposal on the legislation program does not imply Cabinet's approval of the proposal itself. Cabinet's agreement of each legislation item is a separate matter requiring separate submissions on each legislation proposal to Cabinet.

Legislation Steering Committee

The Legislation Steering Committee (LSC) scrutinises the draft legislation program and examines legislative proposals to assess their consistency with Government policy and priorities. It takes into account achievability and all other factors relevant to development of the Government's legislation program and may change the category status of proposals accordingly.

After the legislation program has been approved by Cabinet, the LSC meets regularly to monitor and review the progress of all legislation projects being undertaken by agencies and PCO. The LSC comprises appropriate level representatives from all agencies and each minister's office, PCO and Cabinet Office. Attendees must inform policy officers within their agency of matters discussed that may be relevant to area/s within their agency.

The legislation calendar is updated before each meeting to reflect progress of items as reported by agencies and PCO. After each meeting of the LSC, the legislation calendar is updated to reflect decisions of the committee, and circulated to the committee with the minutes of the meeting.

Legislation Program

The Legislation Program includes all bills agreed by the Chief Minister. This program assists with monitoring the progress of legislation for presentation during the sitting period. The program is only available to LSC members. Policy officers can check the information on the calendar relating to their policy matter through their agency representative.

The legislation program includes the following information:

- the priority of each bill;
- the approval status of each bill (whether it has received first pass Cabinet approval or approval in-principle by the Chief Minister);
- when the bill is due for presentation in the Legislative Assembly; and
- progress reports on the preparation of the legislation.

It is particularly important for agencies to monitor the progress of high priority bills and ensure that forecast timelines are met. The legislation program is classified Sensitive: Cabinet and must be given appropriate security in accordance with the *Cabinet Handbook*.

Reporting Progress of Legislation Proposals and Failure to Meet Timelines

To assist with monitoring the progress of the legislation proposals, agencies are to keep their minister updated on the status and expected timeframes for each legislation proposal that falls within the minister's portfolio. This includes reference to any material failure, or anticipated failure, to meet nominated forecast dates in the legislation proposal. Any slippage or anticipated slippage should be reported to the minister, Government Business and Coordination and PCO in a timely manner.

Directors-General should advise the minister as soon as possible of an inability to meet target dates for Cabinet's first pass agreement to develop a bill. Ministers are to inform the Chief Minister, in writing (with a copy to Cabinet Office and to PCO), as soon as possible, of failure or anticipated failure, and the reasons for such, to reach the forecast date for presentation in the Assembly of a bill. A copy of this advice will also be forwarded to the Manager of Government Business and Coordination.

Ministers may be asked to explain to Cabinet the reason for any substantial delay in giving effect to proposals approved by Cabinet.

Late Additions to the Program

If a bill is to be added to the program, the responsible minister should seek agreement from the Chief Minister in writing, to approve the addition.

The request should explain the reason for the addition and be accompanied by a legislation proposal. Copies of the request should also be provided to the Manager of Government Business and Coordination, Cabinet Office and to PCO.

Withdrawing a Bill

A minister may withdraw a bill from the legislation program after introduction if the Chief Minister, or in some cases Cabinet agrees.

If agreement is provided for the withdrawal of a bill, the minister may move a motion to discharge a Government bill that is before the Legislative Assembly. If the Assembly resolves to discharge the bill, the bill is removed from the notice paper and no further consideration by the Assembly occurs. The Manager, Government Business and Coordination, Cabinet Office can provide advice on the Assembly procedures for discharging a bill.

Agencies are advised to consult with the Cabinet Office as to whether it is necessary to seek Cabinet agreement for the proposed withdrawal of a bill from the legislation program. PCO should be informed of a decision to withdraw a bill.

Public Announcement of Proposed Legislation

Unless the Chief Minister agrees otherwise:

- public announcements about proposed legislation should not be made before the proposed legislation has received first pass approval by Cabinet;
- announcements should not forecast a date for presenting the bill to the Legislative Assembly.

If the Chief Minister approves the announcement of the proposed legislation, sponsoring agencies must then seek the responsible minister's approval to the specific details of the announcement, including the anticipated presentation or commencement dates of the proposed legislation.

Technical Amendments Program

The Government maintains a technical amendments program to deal with minor, non-controversial and technical legislative amendments. The object of the technical amendments program is to make ACT legislation simpler and more coherent, and to keep it up to date.

Under this program, PCO regularly prepares Statute Law Amendment Bills, containing minor, structural and technical amendments. Technical amendments may also be included in bills amended for other reasons, and the technical amendments program explicitly recognises this practice. Cabinet gives standing approval for the technical amendments program.

Statute Law Amendment Bills are usually prepared for both the spring and autumn sitting periods. PCO sets and notifies directorates of the closing date for each Statute Law Amendment Bill.

Amendments requested after the closing date for a particular Statute Law Amendment Bill are normally carried forward to the next Statute Law Amendment Bill.

Statute Law Amendment Bill Schedules

Statute Law Amendment Bills usually have four schedules, but may contain more if needed. The Schedules are listed below:

Schedule 1 – Minor amendments	Schedule 1 contains minor amendments proposed by Government agencies. Policy changes will only be included if the Chief Minister has given drafting approval for the amendments and they are not controversial, not important enough to justify a separate amending bill and otherwise meet the guidelines for inclusion in the technical amendments program.
Schedule 2 – Structural amendments	Schedule 2 contains amendments proposed by PCO and which are particularly concerned with making the Statute Book more coherent and concise. These generally relate to Acts of general application (such as the Legislation Act) and are directed at avoiding unnecessary duplication of provisions. Only non-controversial amendments will be included.
Schedule 3 – Technical amendments	Schedule 3 contains statute law revision amendments proposed by PCO and which may correct minor typographical or clerical errors, improve grammar or syntax, omit redundant provisions, remove gender-specific references or otherwise update or improve the form of the legislation. Amendments will only be included if they are not controversial and do not change the effect of the law in significant respects. This schedule may include editorial amendments that could be made under the Legislation Act but that are appropriate to refer to the Legislative Assembly.
Schedule 4 - Repeals	Schedule 4 contains repeals of obsolete or unnecessary legislation proposed by Government agencies or PCO. Any proposed Schedule 4 amendments must be approved by the Chief Minister before drafting.

Matters Inappropriate for the Technical Amendments Program

PCO will assess the suitability of each amendment proposed to be included in the technical amendments program. Amendments that have significant policy implications or are controversial cannot be included in the technical amendments program.

Examples of other amendments that will not be included in a Statute Law Amendment Bill include amendments:

- creating new policies that may be perceived as favouring or disadvantaging particular person/s;
- increasing or reducing penalties for offences;
- retrospectively imposing liabilities;
- of Acts dealing with a controversial subject matter;
- prejudicing the rights of any person;
- removing jurisdiction from a court or tribunal;
- imposing or changing liability to tax;
- appropriating public money;
- that directly affect a Government agency other than the sponsoring Government agency if the amendments have not been agreed between agencies;
- that are lengthy or voluminous (unless they are of a minor, repetitive nature); or
- proposed for an earlier Statute Law Amendment Bill or portfolio amendment bill that was found to be inappropriate or previously rejected by the Legislative Assembly.

PROCESS THROUGH ACT LEGISLATIVE ASSEMBLY

Procedures before Presentation of a Bill

Bills are usually presented in the Legislative Assembly as soon as possible, usually in the next available sitting week after Cabinet has given second pass/final approval.

Legislation agreed by Cabinet for presentation in the Assembly will normally be discussed at Labor Party Caucus or the Liberal Party Room, depending on the party holding Government, before presentation.

It is not usual practice to make a draft bill available to non-Government members before its presentation in the Legislative Assembly. Rather, the period between the presentation of the bill and the resumption of debate gives non-Government members time to examine the bill.

In circumstances where a bill is urgent the minister may wish to give details of its content to non-Government members before its presentation as a means of assisting passage of the bill through the Legislative Assembly. The minister would normally seek Cabinet agreement for such release when second pass approval is sought. Consultation with non-Government members after presentation is a matter for the responsible minister to decide. Such consultation can facilitate consideration of the bill. Where appropriate the ministers may offer briefings conducted by Government officials. It is usual practice for the minister, or a member of the minister's staff, to be present during such briefings.

Legislative Assembly Copies of the Bill and Supporting Documents

As soon as possible after Cabinet has agreed to the presentation of a bill, PCO will provide presentation copies of the bill for embargo at the Assembly.

The following table shows the number of copies of explanatory material that the responsible agency must deliver for embargo the day prior to the bills presentation in the Assembly. Your agency ALO/CLO can provide the most up to date information.

Document	No. Copies Required	Provide copies to...
Bill	PCO provides copies of final bills for tabling in the Assembly and arranges for notification on the Legislation Register.	
Amendments to a bill (Government or private member's bill)	<u>Assembly</u> 35 copies	Manager Government Business and Coordination
Explanatory Statement	<u>Assembly</u> 50 copies If the Explanatory Statement covers two bills, 100 copies are required. If it covers three bills, 150 copies are required. <u>Parliamentary Counsel</u> Electronic files are to be forwarded to PCO at the time of the embargo of the documents.	Manager Government Business and Coordination PCO
Supplementary Explanatory Statement	<u>Assembly</u> 35 copies <u>Parliamentary Counsel</u> Electronic files are to be forwarded to PCO at the time of the embargo of the documents (if necessary).	Manager Government Business and Coordination PCO
Presentation Speech	<u>Minister</u> One reading copy for the Minister (check with the appropriate Minister's office for any special format requirements); <u>Assembly</u> 50 copies	Minister's Office Manager Government Business and Coordination
Other document for tabling	5 copies of each document	Manager Government Business and Coordination

Presentation of Bill

Bills may be presented into the Legislative Assembly in one of the following ways:

- the calling on a notice of presentation;
- the Legislative Assembly giving leave to present a bill;
- a suspension of standing orders; or
- in accordance with the provisions of Assembly Standing Order 200, which allows ministers to present money bills without notice.

Bills are usually presented by calling on a notice of presentation. The minister will normally have given this notice of presentation to the Clerk in the chamber on the previous sitting day, so as to appear in the notice paper on the day of presentation. The bill presentation notice is will be provided to each minister's office by the Manager Government Business and Coordination, Cabinet Office.

When the Clerk calls on the notice, the minister with responsibility for the bill presents it together with an explanatory statement and human rights compatibility statement. He or she hands the Clerk two signed copies of the presentation copy of the bill. A copy of the bill is then circulated to each MLA.

The minister then moves "that the bill be agreed to in-principle". He or she immediately delivers the presentation speech. The speech outlines the general principles and objectives of the bill. A copy of the presentation speech is then given to each MLA.

Money Bills

Bills which impose a tax or a charge and/or appropriate revenue are commonly called "money bills". Section 57 of the Self-Government Act requires that the receipt, expenditure and control of the Territory's public money be regulated by enactment. Only a minister may present, in the Legislative Assembly, a proposal for the appropriation of public money (see Self-Government Act, section 65).

Scrutiny of Bills

All bills presented in the Assembly are referred to the Scrutiny Committee, and the Committee reports on its findings to the Assembly. Generally a report on a bill will be available before debate of the bill. Any adverse comment about a bill should be considered and responded to, where appropriate, in preparing for debate of the bill.

The Legislative Assembly's Standing Committee on Justice and Community Safety performs the duties of Scrutiny of Bills and Subordinate Legislation Committee.

The Committee is responsible for examining bills, and in some cases proposed government amendments to government bills to ensure that clauses of the bill do not:

- unduly trespass on personal rights and liberties;
- make rights, liberties and/or obligations unduly dependent on insufficiently defined administrative powers;
- make rights, liberties and/or obligations unduly dependent on non-reviewable decisions;
- inappropriately delegate legislative powers; or
- insufficiently subject the exercise of legislative power to parliamentary scrutiny.

Depending on the nature of the comment it may be necessary to provide briefing to the minister in response to the comments for the preparation of Government amendments to the bill.

A Government response should be prepared to the Scrutiny Committee if there are any controversial or negative comments on a bill. This response must be provided within 30 calendar days of the tabling of the Committee report or before its debate if scheduled for consideration.

The agency responsible for the bill is responsible for providing the Government response. The minister forwards the Government's response to the chair of the Committee before debate on the bill.

Under the HRA, the Committee also has a statutory obligation to report to the Assembly on the consistency of bills with fundamental human rights principles. The HRA strengthens the Committee's role under the existing terms of reference. Policy officers should expect a high level of scrutiny on civil and political rights issues.

The scrutiny function of the Committee is to test legislation by reference to standards protected under the HRA and the Committee's Terms of Reference, seeking to ensure that proposed bills meet these standards.

The responsibility for ensuring compliance with the HRA rests with each minister, and the agency responsible for the bill must respond to the Committee's reports. Agencies responses should be checked with Legislation, Policy and Programs Branch, JACS to ensure consistency in Government statements.

It is not the function of the Committee to comment on the policy of the legislation. Nevertheless, the Government will be open to criticism if a bill unnecessarily imposes limits on rights or is not consistent with human rights without there being strong policy reasons for justifying a departure from basic standards.

PCO routinely takes account of the Committee's principles when drafting legislation, and will raise matters of concern with instructing officers.

Guidance on how these principles have been applied can be found in the Committee's reports to the Legislative Assembly, available via the "Committees" link on the Legislative Assembly website (www.parliament.act.gov.au). The Legislation, Projects and Policy Branch, JACS is also available to advise agencies on comments made by the Committee.

Timing of Debate on Bills

The Government is committed to providing time for the appropriate scrutiny of bills and consideration of ministerial responses to the Scrutiny of Bills and standing committee reports on a bill before putting it for debate.

The Manager of Government Business determines the listing of Government bills for presentation and when debate will occur. The Government will usually allow two sitting weeks to lapse after the presentation of new legislation before its debate on bills to allow time for MLAs to consider the bill. It is imperative that agencies maintain close contact with their minister's office and GBC particularly with respect to the proposed timing of debate.

Agencies must inform the Manager Government Business and Coordination, Cabinet Office and their minister's office of any urgency or impediment to debate. Unless declared urgent, bills will not be debated by the Legislative Assembly in the same sitting period as their introduction.

Non-Government members are informed of the Government bills to be listed for debate at the Government Business Meeting, which is held the week before each sitting week.

The notice paper lists Executive Business in the order in which the Government wishes it to be debated in the Legislative Assembly.

For private members' bills, the Standing Committee on Administration and Procedure determines the order of debate, which is also listed on the notice paper.

The notice paper is printed each sitting day under the authority of the Clerk and distributed in the Legislative Assembly before the beginning of the sitting day. The notice paper and the daily program are also available at www.parliament.act.gov.au.

Officers wishing to check the timing of debate of legislation should contact the Manager Government Business and Coordination, Cabinet Office.

Parliamentary Debate

All bills are debated in two stages. The first is the in-principle debate stage and if the bill is agreed to, is followed by the detailed stage debate.

In-Principle Stage Debate

In most circumstances, following the presentation of a bill, and the moving of a motion for in-principle agreement that the Assembly should consider the bill further, debate is adjourned to a future date. This allows the non-Government members, community interest groups and interested members of the public an opportunity to examine the bill in some detail before debate. In exceptional circumstances, or where there has been consultation on the bill at the draft stage, there are procedures to enable the debate to proceed immediately following presentation of the bill.

The agreement in-principle debate relates to the general principles of the bill. Refer to Assembly Standing Order 69 for time limits of debate.

It is usual for the responsible Government official who took carriage of the bill to be present in the chamber during debate to advise the minister, unless the minister's office instructs otherwise.

Amendments to be Relevant

An amendment may be moved to the question "That this bill be agreed to in principle". The amendment must be relevant to the bill, must not anticipate an amendment which may be moved at the detail stage, and must make clear whether or not the bill will proceed to further stages of passage (see Assembly Standing Order 173 for further advice).

The agreement in-principle and amendment are debated together. The minister usually replies to criticisms, comments and suggestions at the end of the debate. It is usual for the responsible Government official who took carriage of the bill to be present in the chamber during debate to advise the minister, unless the minister's office advises otherwise.

Briefing the Minister for Debate

The minister who is preparing for debate in the Legislative Assembly is entitled to accurate and comprehensive briefing from the agency officer(s) responsible for carriage of the bill. The following is suggested as a minimum:

- a copy of the bill as presented to the Assembly;
- a copy of the presentation speech;
- a copy of the explanatory statement;
- a copy of the human rights compatibility statement; and

- talking points or comments on any major issues or questions that might arise during debate in the Legislative Assembly, including Scrutiny Committee comments (if any).

A senior agency officer or officers should be present in the chamber in the Legislative Assembly, to advise the minister during the debate of the bill unless the minister's office has advised otherwise.

The Directorate Liaison Officer in the relevant minister's office is responsible for keeping agency contact officers up-to-date on timing of debates.

Cognate Debates

Cognate debates have been devised to assist the passage of groups of related bills and save the time of the Legislative Assembly. Related bills must be presented to the Legislative Assembly separately, and the motion "that this bill be agreed to in-principle" therefore moved separately. A separate presentation speech is required for each bill, though it can be very brief for all but the major bill, which should be presented first.

However, the minister may suggest, at the resumption stage of the agreement in-principle debate on the first bill of a group, that the Speaker ask the Assembly that debate on all of the bills be undertaken cognately, or together. If agreed, a substantive debate will follow, technically on the first bill, but in reality on the package of bills. When debate of the first bill is concluded, the subsequent bills will be called on sequentially and dealt with, usually without further debate taking place.

Detail Stage Debate

Once a bill has been agreed to in-principle, and assuming it is not referred to a committee, the Legislative Assembly may proceed to the detail stage of the debate. At this time, the Legislative Assembly considers the bill clause-by-clause in numerical order, and either agrees to each or considers permissible amendments.

Appropriation bills are exceptional in that the schedule is considered before the clause. For each clause the Speaker puts the question, "that the clause be agreed to".

Alternatively, the Legislative Assembly may consider clauses in groups, rather than individually. The long title is the last part of the bill to be considered. The process continues until all clauses, any schedules and the title of the bill have been agreed. The Assembly may also agree to bypass the detail stage and move immediately to the question that the bill is agreed to as a whole.

Amendments During Detail Stage

After a bill is presented, it may be necessary for amendments to be presented during the detail stage. The need for amendments may arise, for example, to deal with urgent, essential changes

or because of negotiations with other members to ensure the passage of the bill or in follow up of Scrutiny of Bills Committee comments.

Generally, only essential amendments should be proposed. The option of dealing with a matter by a later bill or regulation developed in accordance with the legislation program should not be dismissed lightly. Also, if a large number of essential amendments are contemplated, the option of withdrawing the bill and representing it in consolidated form should be considered. This can often save time and allow better consideration of the issues.

All government proposed amendments to government bills are to be referred to the Scrutiny of Bills Committee before being debated unless the amendment is urgent, minor or technical in nature, or in response to previous comment made by the Committee (Assembly Order 182A). Where applicable, proposed government amendments should be forwarded in writing from the relevant minister to the Committee Chair at least 14 days before the detail stage debate of the bill.

There is no requirement under the HRA to obtain a compatibility statement in relation to amendments that are proposed during the passage of a bill. However, as a matter of policy every attempt should be made to ensure that amendments are consistent with the HRA.

Amendments to be Circulated

If there is an amendment to be moved at the detail stage, a signed copy of the amendment is to be provided to the Clerk's office by 12 noon on the day prior to the sitting at which the amendment is proposed to be moved. The Clerk will arrange for circulation to Members as soon as practicable (Assembly Standing Order 178A).

Reference to a Legislative Assembly Committee

Anytime after a bill has been presented, a member may move that the bill be referred to a select or standing committee of the Legislative Assembly (Assembly Standing Order 174). If carried, the relevant committee will examine the bill in detail and report to the Legislative Assembly before the resumption of debate on the matter.

If the Legislative Assembly considers it necessary, a bill will be referred to the relevant committee for detailed consideration before the resumption of debate on the bill but not after completion of the detail stage.

Legislative Assembly committees have no time limit for the consideration of bills unless prescribed by the Assembly. However, if consideration is not completed prior to an election, Cabinet agreement will need to be sought for re-introduction of a new bill in the Assembly.

The Government will prepare its response to the committee report before bringing the bill on for debate. A Government response to the committee report will need to be considered by Cabinet before its tabling in the Assembly. A Government response is to be provided within four months of the tabling of the Committee Report.

A Government response to a committee is to be tabled within four months of the presentation of the report, or provided to the Speaker for out of session circulation to Members within four months of the presentation of the report and tabled by the Minister on the next day of sitting (Assembly Standing Order 254A).

In the event that the Minister does not provide an explanation or statement to the satisfaction of the Chair, the Chair may without notice move a motion with regard to the Minister's failure to provide a government response or an explanation or a statement.

Private Members'/Executive Members' Bills

Although the majority of bills are sponsored by ministers, non-Executive/Executive Members also present bills.

The non-Executive member/ Executive member presenting a private bill is responsible for all policy development associated with that bill. Agency officers cannot assist a private member in such a task without the approval of the minister.

Drafting arrangements

The following administrative arrangements apply to the drafting of private members' bills:

- a member will make a written request to PCO for drafting assistance and provide drafting instructions for the proposed bill or amendment setting out the matter to be provided for in the proposed bill or amendment;
- PCO will prepare the draft (in accordance with priorities) clarifying any issues, as necessary, directly with the member; and
- when drafting is completed, PCO will send electronic copies to the MLA and Clerk of the Legislative Assembly. The Clerk will arrange for a stock of the bill or amendment to be printed and supplied to the Member and the Assembly.

When a Private Member' / Executive Members' bill is presented to the Legislative Assembly, the responsible MLA should send an electronic copy of any explanatory statement for the bill to the Assembly Clerk Assistant and to PCO for publication on the Legislation Register.

PCO keeps the work of Private Member' / Executive Members'. The Government and other Assembly members cannot access it until presentation in the Assembly.

Once presented, the Legislative Assembly considers the private member's bill during Private Members' Business according to the same procedures as for Government bills.

Preparation for Debate

The Government must be in a position to debate all Private Member'/Executive Members' bills as soon as possible after presentation. Government readiness to respond to Private Member'/Executive Members' bills is dependent on agreement on a Government position and preparation of appropriate documentation for use by the relevant minister during debate.

A Government position on each Private Member'/Executive Members' bill must be prepared for Cabinet consideration as a matter of priority. This should canvas the operational impact of the proposed legislation and details such as commencement provisions.

A Cabinet submission must be prepared within three months of the private members' bill being presented.

In-principle agreement to any proposed Government amendments may be sought as part of the response to a Private Member'/Executive Members' bill. Agencies are responsible for instructing PCO in formulating such amendments in accordance with the requirements for Government amendments. The Manager, Government Business and Coordination, Cabinet Office must be informed of all proposed Government amendments to Private Member'/Executive Members' bills to allow for advice to be provided to the Assembly Secretariat in its procedural preparation for debate on a private members' bill.

Ministers must be provided up-to-date speaking notes for debate of Private Member'/Executive Members' bills.

Commencement

The processes for commencement of Private Member'/Executive Members' are the same as for all other enactments made by the Legislative Assembly.

Reconsideration of a Bill before Final Agreement Stage

At the end of the detail stage, but before the Legislative Assembly has agreed to the bill, a member may propose that a bill be reconsidered in whole or in part. If passed, the motion prevents the bill from proceeding further. Rather, debate on the bill must return to the detail stage for further examination and debate in accordance with the terms of the motion. Reconsideration is infrequent and is usually used only where an error has been found or there is a very late change in Government policy.

Final Agreement Vote

When the Legislative Assembly has considered the bill in full, the Speaker puts the question, "*that this bill (or this bill as amended) be agreed to*". There is no debate on this question. The vote completes the bill's passage through the Legislative Assembly. When the Legislative Assembly has agreed to the bill, it has been passed and no further questions may be put.

Notification of Acts

After passage of a bill, the Clerk of the Legislative Assembly arranges the checking of the bill to ensure that amendments made during passage are properly reflected in the text. A bill becomes an Act when it has been notified on the ACT Legislation Register. Unless otherwise provided in the Act, the Act commences on the day after its notification day (Legislation Act, section 73).

During this process, the Clerk, acting with the Speaker's authority, may correct clerical, grammatical or typographical errors, in any part of a bill (Assembly Standing Order 191). The Speaker will advise the Assembly of such amendments.

Certificate of Bill Having Passed

After a Bill has been passed by the Assembly and thoroughly checked, the Clerk shall certify a copy as a true copy of the Bill passed by the Assembly, and the Speaker shall then ask the Parliamentary Counsel to notify the making of the proposed law (Assembly Standing Order 193).

Under section 28 of the Legislation Act, the Speaker must ask PCO to notify a proposed law passed by the Legislative Assembly. PCO must notify the law.

An original signed hard copy, and an electronic copy of both the Speaker's request for notification and the proposed law certified by the Clerk, is sent to PCO. The original signed hard copy of the Speaker's request and the proposed law is the primary method of notification.

Under section 28 of the Legislation Act, PCO notifies the making of the proposed law on the Legislation Register by entering on the register:

- a statement that the law has been passed by the Legislative Assembly; and
- the text of the law.

Notification on the Legislation Register replaces the former system of notification in the Gazette. Gazette notification would only be used if notification on the register were not practicable at the time (for example, because of a technical, IT problem).

Assembly Process for Subordinate Law

Disallowance or Amendment by Legislative Assembly

After a subordinate law (disallowable instrument or regulation) is notified under the Legislation Act, it must be presented to the Legislative Assembly within six sitting days. If not, it is taken to have been repealed (see Legislation Act, section 64).

The explanatory statement and RIS (if required) for each subordinate law are also presented to the Assembly to facilitate its consideration of the matter.

MLAs have up to six sitting days, after the subordinate law is tabled in the Assembly to move a motion to disallow the legislation. The motion to disallow is effected by the member listing a notice of motion on the notice paper.

Planning legislation relating to Territory Plan variation has a period of disallowance of only up to five sitting days (see *Planning and Development Act 2007*).

It is important that the Government seeks debate of the motion to disallow, even where the matter has not been listed for debate prior to the expiration of the six sitting days.

If a motion to disallow a subordinate law or disallowable instrument is given and then passed by the Assembly, the law is considered repealed. PCO must take steps to notify this on the Legislation Register.

The motion is taken as passed if at the end of six sitting days, the notice is given:

- that the motion has not been withdrawn and has not been called on for debate; or
- that the motion has been called on for debate and moved, but has not been withdrawn by the Member or disposed of through a vote of the Assembly.

Speaker's Requests for Notification of Disallowance or Amendment

If a subordinate law or disallowable instrument is disallowed, or taken to have been disallowed, the Speaker must ask PCO to notify the disallowance.

The Speaker's request for notification, incorporating the text of the resolution passed, or taken to have been passed, by the Assembly, is sent to PCO both electronically and as a signed hard copy.

Notification of Disallowance or Amendment

Under the Legislation Act (sections 65A and 69), PCO notifies the making of the proposed amendment or disallowance on the Legislation Register by entering on the register:

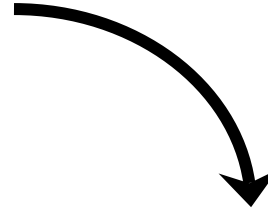
- a statement that the subordinate law or disallowable instrument has been disallowed;
- the text of the resolution passed, or taken to have been passed, by the Legislative Assembly;
- the day when the resolution was passed or taken to have been passed; and
- the day when the subordinate law or disallowable instrument is taken to be repealed because of the resolution.

APPENDIX A: FLOW CHARTS

A1 The Legislative Process

1. First Pass approval

- Seek the responsible minister's agreement to the policy behind the proposed legislation.
- Prepare legislation proposal, which is submitted by the minister to the Chief Minister for inclusion on the legislation program. Seek PCO agreement that the proposal is sufficiently developed for drafting to begin.
- Seek policy approval and agreement for legislation drafting by:
 - developing a Cabinet Submission (first pass and which is to include a RIS if applicable); or
 - seeking the agreement of the Chief Minister to the drafting of the legislation without initial reference to Cabinet.



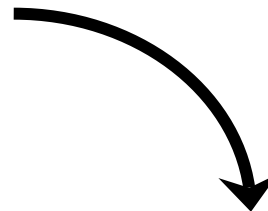
2. Drafting of legislation

- Issue drafting instructions to PCO following Cabinet's first pass approval or the agreement of the Chief Minister.
- Directorate instructing officer consults with PCO during the drafting and development of the legislation.



3. Agreement to Presentation

- Seek Cabinet's agreement (second pass) to introduce the Bill and explanatory material in the Legislative Assembly by:
 - preparing an Assembly Business Paper (if there is no departure from Cabinet's original legislation drafting agreement); or
 - preparing a full Cabinet Submission (if there is departure from Cabinet's original policy authority).



4. Presentation and Notification

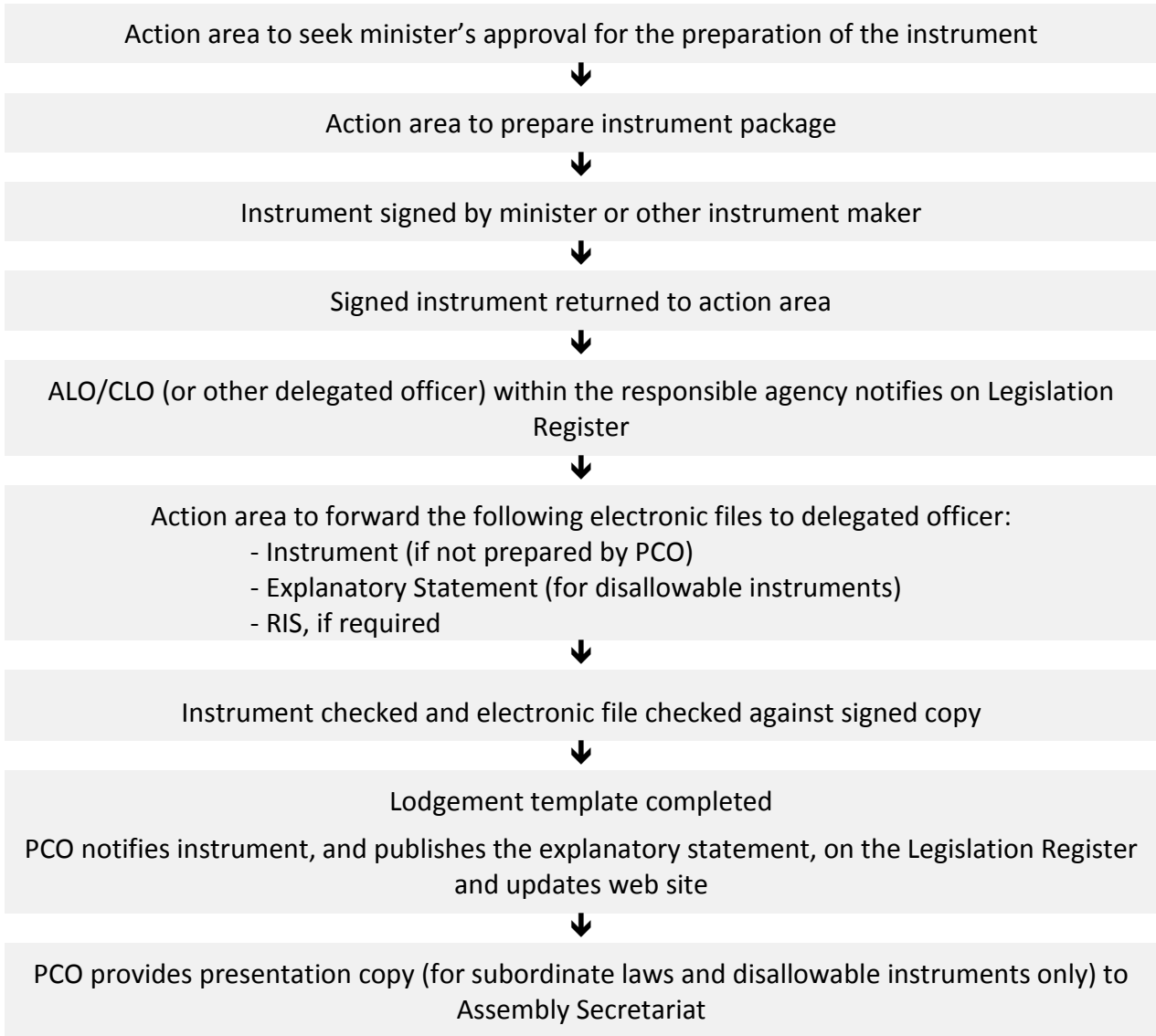
- Following Cabinet's second pass approval, provide 50 copies of the explanatory statement and presentation speech for embargo the day before the bill is scheduled for presentation (NOTE: PCO will arrange for provision of the bill itself).
- Provide support to the minister in preparation for and during debate.
- If Government amendments are proposed to the bill, provide 35 copies of the amending clauses and any supplementary explanatory statement for embargo as soon as possible.
- Where appropriate, a revised explanatory statement may be prepared, alongside the government amendments - 50 copies for embargo the day before debate of the Bill.
- Notification of the Act on the Legislation Register will usually take place within 5 –10 working days of it being passed by the Assembly. Cabinet Office should be advised of any requirement for urgent notification.

NOTE: At least 6 weeks should be allowed for Cabinet processes at the first and second pass (if another full submission is to be made). See the *Cabinet Handbook* for detail on all aspects of the Cabinet process.

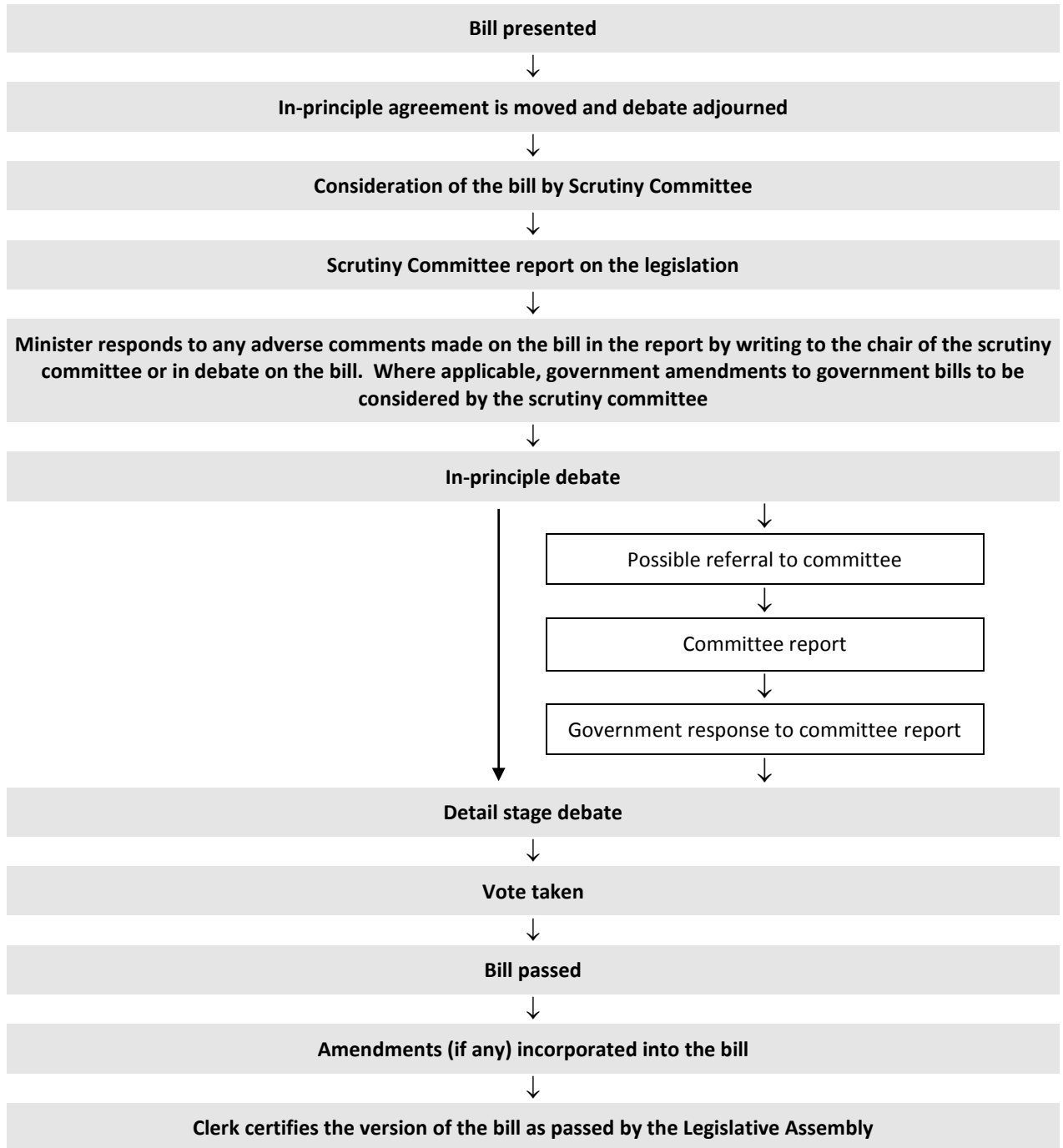
A2 Making Regulations



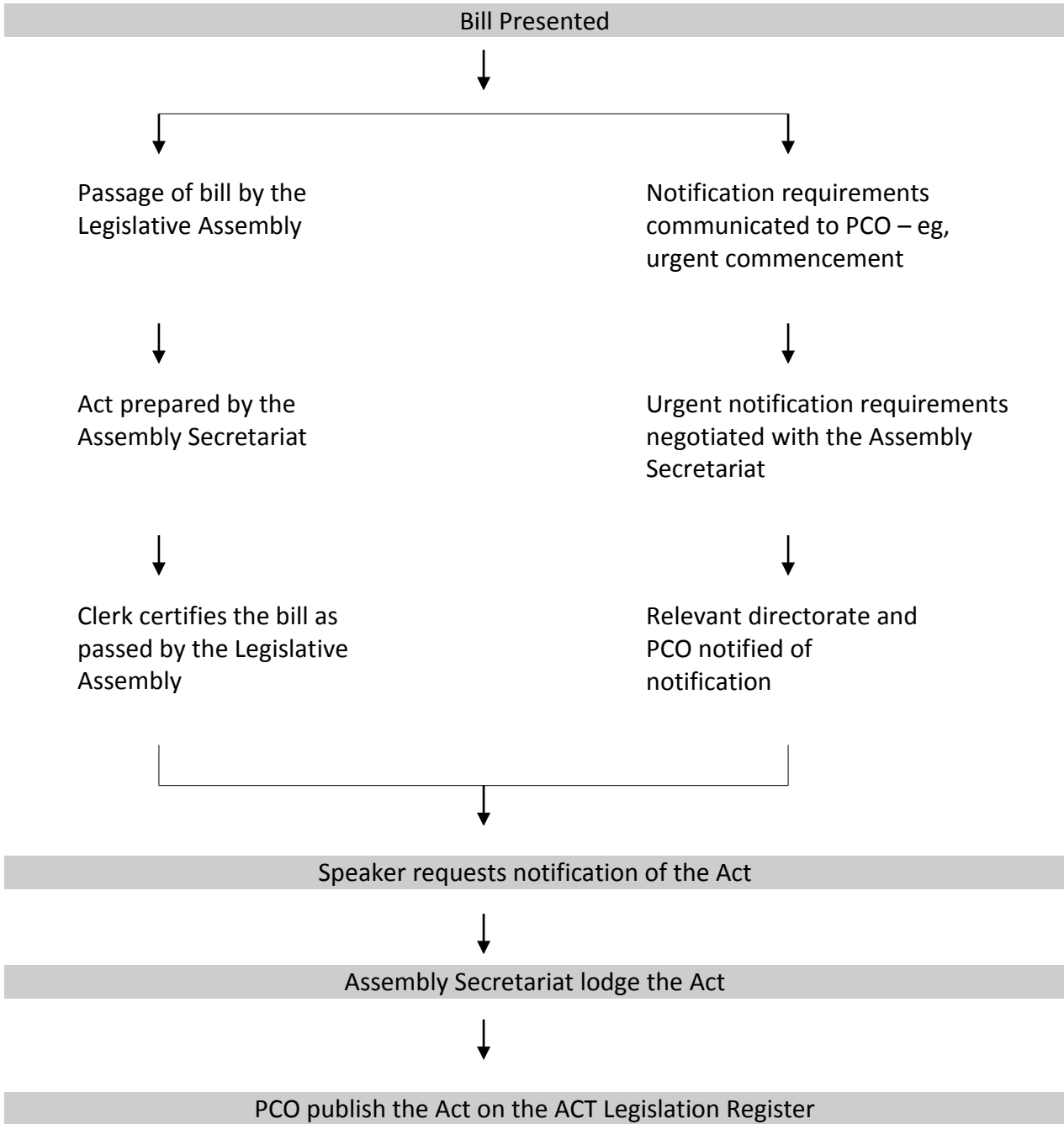
A3 Preparing Disallowable Instruments, Determinations, Statutory Appointments & Statutory Forms



A4 Bill to Act Process I



A5 Bill to Act Process II



APPENDIX B: TEMPLATES AND FORMS

B1 **Legislation Proposal Proforma**

Example only – requirements may alter

[Bill Title]

Minister’s Agency/Directorate:

Minister’s title:

Agency Contact:

Phone No:

1. Rationale for Legislation

- a) Description and intent for the development of the Bill:

(Give an overview of what the new law is aiming to achieve and what are the benefits to government and the community? Is this an election /parliamentary agreement commitment? Is this a requirement of an intergovernmental agreement?)

- b) What currently exists in order to administer this area and why is legislation required in future?

(i.e administrative arrangements, current national reform requiring model legislation, etc. Has it been identified as a result of a review or recommendations from committee, auditor general or other report, or through a formal review process or community engagement?)

- c) What alternative policy options were considered? Why is development of legislation required?

(i.e operational policy, program development, administrative action etc)

- d) Relationship to Government Priorities:

- *liveability and opportunity;*
- *growing the economy;*
- *deregulation and red tape reduction; and*
- *healthy and smart.*

(Please outline the relationship to government priorities. How does the legislation support the government’s priorities?)

- e) Human Rights implications:

- f) Financial Implications:

2. Priority

(Please select the priority of the proposed legislation)

High priority (critical for passage)	
Reason:	
Forecast date for introduction:	
Critical date for passage:	
Implications of failure to pass:	
Medium Priority (preferable for passage)	
Reason:	
Forecast date for introduction:	
Critical date for passage:	
Implications of failure to pass:	
Low Priority (not essential for passage)	
Reason:	
Forecast date for introduction:	
Critical date for passage:	
Implications of failure to pass:	

3. Checklist:

Please ensure all the items below are completed prior to submitting your legislation bid.

Agreement from Executive to progress legislation proposal:	
Responsible Minister	Yes/No
Chief Minister	Yes/No
Early Consultation - Legislation proposal discussed with relevant stakeholders	
Key Directorates	Yes/No
Treasury	Yes/No
PCO	Yes/No
Advice sought from Cabinet Office regarding cabinet requirements and timeframes	
Timeline template completed	Yes/No

Early consultation with Cabinet Office	Yes/No
Bid proforma completed	Yes/No
Bid package prepared for appropriate clearance and forwarding to Chief Minister	Yes/No

Any changes to proposed introduction dates should be advised to the Manager Government Business and Coordination, Cabinet Office.

B2 Legislation Proposal Guidelines

1. TITLE

- If the proposal is for a new measure: "(title) BILL"
- If the proposal is to amend an existing Act: "(name of Act being amended) Amendment BILL"

If more than one amendment proposed to same Act, use same description but include unique identifying number at end of title for each subsequent amendment eg Electoral Amendment Bill 2017 (No 2). If there is a package of Bills then cite the principal Bill in this section and indicate the names of the associated consequential Bills in section 3.

2. EFFECT

A brief outline of the effect of the amendment or the new legislation that clearly identifies the proposal and its intent, including an explanation of why the proposal has been brought forward at this time (for example election commitment, agreement, administrative difficulties or unforeseen burden on revenue). Agencies need also to consider and indicate any potential or anticipated human rights implications, including compatibility with the *Human Rights Act 2004*.

3. RELATED MEASURES / CONTINGENCIES

Advise whether the proposal is packaged with another, or will involve consequential amendments to other legislation. Explain whether and why there is anything which must occur before the legislation can be presented or passed. For example, signing of agreement for uniform national legislation, complementary NSW or Commonwealth legislation. Give an indication of timing for the presentation of the Bill and timing for passage.

4. CATEGORY SOUGHT PLUS JUSTIFICATION

Identify the reason for the category and any implications of the failure to pass the bill in the sittings. Proposed timelines must reflect timeframes for the particular category sought, including when the bill will be presented in the Assembly. The Legislation Steering Committee will refine the priorities within a whole of Government context for Cabinet consideration.

Very High/ High Priority comprises only budget legislation and any substantial proposals where introduction and passage is essential in the sitting period for political, legal or financial reasons and are directly linked to the Government's priorities.

Medium Priority comprises proposals, which are essential for introduction and for which passage is desirable in the sitting period for political, financial or administrative reasons.

Low Priority comprises proposals for which business planning has commenced but underlying policy has yet to be settled; or where other contingencies are yet to be met.

Inclusion in Technical Amendments Program will be dependent on fulfilling the criteria set out in the Guidelines for the Technical Amendments Program as outlined in the Legislation Handbook.

B3 **Sample Explanatory Statement Cover Sheet**

[Year Presented]

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

[NAME OF BILL]

EXPLANATORY STATEMENT

**Presented by
[Minister's Name]
[Minister's Portfolio]
month year**

B4 Explanatory Statement Guidelines

Outline

- Brief description of the purpose of the bill/regulation/disallowable instrument;
- Brief description of the purpose of the bill and the effect of the substantive provisions of the bill/regulation/disallowable instrument;
- Brief description of any associated bill/regulation/disallowable instrument if it is part of a package;
- If the bill/regulation/disallowable instrument is part of a national scheme a comment to that effect;
- Brief description of the direct and indirect financial effect of the bill/regulation/disallowable instrument;
- Brief description of savings, costs, revenue losses or gains from the bill/regulation/disallowable instrument; and
- If precise figures are unavailable, an estimate should be included. If an estimate is unavailable, an explanation should be included.

Detailed explanation

- Use simple language, plain English; everyday language should be used to explain technical provisions;
- Describe the intention and purpose of the operative clauses of the bill/regulation/disallowable instrument, i.e. the problem the provision is designed to resolve;
- Use examples if appropriate; and
- Explain commencement, transitional and consequential provisions

B5 Sample Presentation Speech Cover Sheet

[Year Presented]

**THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY**

[NAME OF BILL]

PRESENTATION SPEECH

**Presented by
[Minister's name]
[Minister's portfolio]**

Month /Year

B6 **Presentation Speech Guidelines**

[Name of Bill]

- Outline the policy context of the bill;
- Describe the objectives of the bill;
- Include details about administration of the legislation;
- If appropriate briefly summarise the main provisions but do not explain individual clauses of the bill;
- Be concise (for simple bills - one page, for complex bills - up to four pages); and
- Do not include statements seeking leave from the Legislative Assembly for the minister to present papers or otherwise refer to Assembly procedures.

APPENDIX C: GLOSSARY

Act	A law made by the Legislative Assembly.
ACT	Australian Capital Territory
ACT Executive	Executive Members of the Legislative Assembly, being MLAs that have been appointed as Ministers of the Government.
AAs	Administrative Arrangements
ALO	Assembly Liaison Officer
Appropriate person	<p>A person, other than the instrument maker, who may make a request for notification as follows:</p> <ul style="list-style-type: none"> • for instruments made or approved by the Executive - a minister; • for rules of a court or tribunal - the registrar. <p>For any other legislative instrument - the Director-General of the administrative unit responsible for the provision under which the instrument is made.</p>
Approved Form	<p>Legislation often provides for a form, approved by a particular person, to be used for a particular purpose, such as an application for a licence.</p> <p>To improve public access to these statutory forms, legislation generally provides for approved forms to be notified on the Legislation Register, but not subject to disallowance by the Assembly.</p>
Cabinet (ACT Executive)	The ACT Executive, known as Cabinet, is established under section 36 of the Self-Government Act. It comprises the Chief Minister and other Ministers appointed by the Chief Minister.
Caucus / Party Room	Caucus (Labor) or Party Room (Liberal) consists of all MLAs of the Governing party in the Legislative Assembly.
CLO	Cabinet Liaison Officer
Commencement Notice	A commencement notice fixes the date (or time) when provisions of an Act, subordinate law, disallowable instrument or notifiable instrument commence. Commencement notices are legislative instruments and must be notified under the <i>Legislation Act 2001</i> but are not presented to the Legislative Assembly and are not disallowable.
Disallowable Instrument	<p>Disallowable instruments consist of:</p> <ul style="list-style-type: none"> • determinations of fees or charges by a minister under an Act or subordinate law; and • statutory instruments expressly declared to be disallowable by an Act, subordinate law or another disallowable instrument (such as appointments).

Exposure draft	<p>Disallowable instruments must be notified under the <i>Legislation Act 2001</i> and be presented to the Legislative Assembly where they can be disallowed or amended.</p> <p>A draft bill or regulation released for consultation before presentation in the Legislative Assembly. It also requires Cabinet agreement.</p>
HRA	<i>Human Rights Act 2004</i>
JACS	Justice and Community Safety Directorate
Legislative instrument	<p>A statutory instrument that is registrable on the Legislation Register:</p> <ul style="list-style-type: none"> • subordinate laws (regulations, rules and by-laws); • disallowable instruments; • notifiable instruments (including approved forms); • commencement notices.
Legislation program	The Government's program of bills being developed for consideration in the Legislative Assembly
Legislation planning calendar	A calendar of bills proposed for consideration in the Legislative Assembly, including development progress and proposed dates for Cabinet agreement and presentation in the Legislative Assembly.
LSC	Legislation Steering Committee
Legislation Steering Committee	A senior adviser to the Manager of Government Business, chairs the Legislation Steering Committee. It comprises Ministers' advisers, Directors-General delegates from each agency, Parliamentary Counsel officers and the Director, Cabinet Office or his/her delegate. The committee scrutinizes the draft legislation program and examines the proposals to assess their consistency with Government policy and priorities, and the achievability of the program.
MLA	Member of the Legislative Assembly
Notifiable instrument	Notifiable instruments consist of statutory instruments that are expressly declared to be notifiable instruments by an Act, subordinate law, a disallowable instrument or another notifiable instrument. Notifiable instruments must be notified under the Legislation Act but are not presented to the Legislative Assembly and are not disallowable.
PCO	Parliamentary Counsel's Office
Parliamentary Counsel's Office	The Parliamentary Counsel's Office is an agency of the Justice and Community Safety Directorate that provides comprehensive

<i>Private member</i>	legislative drafting and information services for the Territory, which includes maintenance of the Legislation Register.
<i>Regulation</i>	A non-Executive member of the Legislative Assembly.
<i>Request facility</i>	A subordinate law that is made under an existing Act.
<i>RIS</i>	Electronic facility for sending notification (Legislation Register) requests to the Parliamentary Counsel's Office.
<i>Sitting period</i>	Regulatory impact statement.
<i>Sitting Week</i>	A group of sitting weeks referred to as the Spring (July-December) or Autumn (January-June) sitting period.
<i>Subordinate law</i>	An allotted sitting of the Legislative Assembly, generally Tuesday to Thursday.
	A regulation, rule or by-law (whether or not legislative in nature) made under:
	(a) an Act;
	(b) another subordinate law; or
	(c) power given by an Act or subordinate law and also power given otherwise by law.

APPENDIX D: POLICY RESPONSIBILITY

Area	Responsibilities
Assembly/Cabinet Liaison Officers	<ul style="list-style-type: none"> • Management of agency Assembly/Cabinet processes. • Procedural advice on whole of Government, Assembly or Cabinet issues. • Coordination and support of agency Assembly, Ministerial and Cabinet matters.
Cabinet (ACT Executive)	<ul style="list-style-type: none"> • Executing and maintaining enactments and subordinate laws. • Approving the Government's legislation program and priorities. • Approving all Government draft bills, presentation speeches and Explanatory Statements for presentation in the Legislative Assembly. • Considering Government amendments to bills before the Legislative Assembly.
Cabinet and Policy Branch, Chief Minister, Treasury and Economic Development Directorate	<ul style="list-style-type: none"> • Coordination and support for the Chief Minister and Cabinet. • Legislation program and priorities. • Intergovernmental relations for the Chief Minister. • Self-Government legislation. • Machinery of Government matters.
Caucus/Party Room	<ul style="list-style-type: none"> • Legislation that has been agreed to by Cabinet for presentation in the Assembly is provided to Caucus (Labor Government) / Party Room (Liberal Government) for its consideration before presentation of the Bill in the Assembly.
Manager of Government Business and Coordination Cabinet Office	<ul style="list-style-type: none"> • The Government Business and Coordination Cabinet Office is the principal contact for agencies on all matters concerning the preparation, approval and passage of legislation.
Legislation Steering Committee	<ul style="list-style-type: none"> • The Legislation Steering Committee monitors the implementation of the legislation program. The Committee's role is to: <ul style="list-style-type: none"> - assess overall Government policy priorities requiring new or amended legislation; - recommend priority status for legislation proposals; - monitor the achievability of the legislation program; - undertake ongoing review of overall Government priorities; and - canvass issues with respect to legislative process and content with ministers, Directors-General or agencies as appropriate.

Area	Responsibilities
Legislation, Projects and Policy Branch, Justice and Community Safety Directorate	<ul style="list-style-type: none"> • Specialised policy groups within the Legislation, Projects and Policy Branch provide advice and assistance in relation to legislative policy issues including: <ul style="list-style-type: none"> - whether legislation is needed; - jurisdiction of courts; - jurisdiction of tribunals; - administrative, criminal and commercial law; - indigenous justice; - legal aid; - adult corrections and sentencing; - law enforcement and police services; - human rights issues and requirements under the <i>Human Rights Act 2004</i>; - establishment of bodies corporate (including statutory offices, authorities, companies, cooperatives, incorporated associations); - modifications to the general civil law; - acquisition of property; - constitutional issues; and - other legal and legislative policy issues.
Parliamentary Counsel's Office	<ul style="list-style-type: none"> • Draft legislation (mainly Acts and subordinate laws) for the Government, individual members of the Legislative Assembly and other clients. • Analyse legislative proposals and provide advice to clients on legal and constitutional implications and on alternative ways of achieving policy objectives, including whether legislation is needed. • Draft amendments of Bills being considered by the Assembly. • Draft rules of court. • Arrange for printing of Bills and subordinate legislation. • Ensure that the <i>Legislation Act 2001</i> remains a high-quality, easily understood source of law dealing with the 'life cycle' of legislation. • Prepare republications and annual volumes of ACT legislation, tables and information about legislation, to be available in printed and electronic form. • Manage the technical amendments program to ensure, as far as practicable, legislation forms a cohesive Statute Book of the highest standard.

Area	Responsibilities
	<ul style="list-style-type: none"> • Edit republished legislation under the <i>Legislation Act 2001</i> to ensure, as far as practicable, legislation reflects current legislative drafting practice. • Notify new legislation and legislative instruments on the Legislation Register. • Maintain the Legislation Register to facilitate public access to up-to-date, authorised legislation.
Policy and Cabinet (CMTEDD)	<ul style="list-style-type: none"> • Whole of Government policy advice.
Policy/Instructing Officers	<ul style="list-style-type: none"> • Ensure that legislation is developed in accordance with this Handbook. • Develop and modify as appropriate timeframes for the preparation of legislation, including its presentation and passage through the Assembly. • Ensure appropriate consultation during the development of legislation.
Treasury (CMTEDD)	<ul style="list-style-type: none"> • Economic, financial, budget and taxation policy. • Financial administration and monitoring. • Government business enterprises. • Procurement policy and implementation. • Regulatory Impact Statements. • Regulatory policy and reform

