



# WORKING WITH PCO TO DRAFT LEGISLATION

A guide for private  
Members

ACT Parliamentary Counsel's  
Office

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# PRELIMINARY

## Who this guide is for

This guide is for individual Executive and non-Executive Members of the Legislative Assembly (private Members) who are instructing the Parliamentary Counsel's Office (PCO) to draft legislation.

## About PCO

PCO is an agency of the Justice and Community Safety Directorate, with two key functions: drafting legislation; and publishing legislation on the ACT Legislation Register.

### *Drafting services*

PCO provides legislative drafting services to private Members under a longstanding arrangement.

Our drafters are lawyers with the combination of legal expertise, analytical skills and drafting skills to translate your legislative proposal into effective legislation.

Our drafting services include:

- drafting bills for the ACT Government and private Members
- drafting Assembly amendments of bills for the ACT Government and private Members
- drafting regulations for the ACT Government
- drafting rules for the ACT Courts.

PCO does not generally draft statutory instruments (eg disallowable instruments, notifiable instruments, appointments or delegations).

### *Publishing services*

Our legislation officers deliver publishing services in the following three areas:

- editing and proof reading of legislation drafted by PCO
- republishing consolidated versions of legislation that has been amended
- notifying legislation (including notifiable instruments and disallowable instruments) on the ACT Legislation Register.

## ACT Legislation Register

PCO also maintains the [ACT Legislation Register](#)<sup>1</sup>, the source of all authorised and up-to-date ACT legislation.

## Contacting PCO

PCO has two Deputy Parliamentary Counsel, each of whom is responsible for the oversight of the work of particular private Members, and are the first point of contact for those Members. To discuss a legislative proposal or provide drafting instructions on a matter, please feel free to contact the Deputy Parliamentary Counsel identified in the table below or the Parliamentary Counsel.

Contact details	Oversight
Bianca Kimber Parliamentary Counsel  <a href="mailto:bianca.kimber@act.gov.au">bianca.kimber@act.gov.au</a>  6205 3705	General oversight of legislative drafting and publishing services
Savvas Pertsinidis Deputy Parliamentary Counsel (a/g)  <a href="mailto:savvas.pertsinidis@act.gov.au">savvas.pertsinidis@act.gov.au</a>  6205 3779	Legislative drafting for Liberal MLAs
Christina Maselos Deputy Parliamentary Counsel  <a href="mailto:christina.maselosr@act.gov.au">christina.maselosr@act.gov.au</a>  6205 3775	Legislative drafting for Greens MLAs and Labor MLAs (other than in their capacity as Executive Members)

## Other PCO guides

- [ACT Legislation—Legislation Basics](#)<sup>2</sup>: This guide sets out the basics about ACT legislation, for example, where the ACT derives its law-making power from, what laws apply in the ACT and what the different kinds of ACT legislation are.
- [ACT Legislation—Reading Legislation](#)<sup>3</sup>: This guide explains how to navigate, read and understand ACT legislation. It describes the typical structure of ACT legislation, explains common provisions and identifies interpretation principles and aids.

<sup>1</sup> <https://www.legislation.act.gov.au/>

<sup>2</sup> [https://www.pco.act.gov.au/\\_\\_data/assets/pdf\\_file/0018/2216061/Legislation-Basics.pdf](https://www.pco.act.gov.au/__data/assets/pdf_file/0018/2216061/Legislation-Basics.pdf)

<sup>3</sup> [https://www.pco.act.gov.au/\\_\\_data/assets/pdf\\_file/0020/2216072/Reading-legislation.pdf](https://www.pco.act.gov.au/__data/assets/pdf_file/0020/2216072/Reading-legislation.pdf)

# WHAT YOU CAN EXPECT FROM US

## Drafting

In drafting your proposal, you can expect that we will:

- constructively analyse your instructions and identify where we need clarification or more information
- help you to solve problems and find the best possible legislative solution
- work to achieve the most appropriate expression of your objective
- draft legislation that is clear and drafted applying principles of plain English
- ensure the legislation is legally effective and fits within the ACT statute book as a whole and that amendments will fit within the overall scheme of the bill.

## Advice

### *About preliminary matters*

PCO can give you preliminary advice on legislative proposals. In particular, if you have any doubt about the legality of a proposal or the need for legislation, you are encouraged to seek advice from PCO. We are happy to attend meetings to discuss a proposal in its preliminary stages.

### *About the operation of proposals*

Generally, PCO is responsible for how the legislation is expressed, and you are responsible for the policy.

In giving advice on the best possible way to achieve your policy objective, we may need to:

- discuss fundamental parts of your instructions
- advise on established standard drafting approaches, or administrative and legal considerations that need to be taken into account
- consider whether your objective could be achieved in a better way
- assist you to develop or refine your policy as we analyse and tease out the details during the drafting process.

In doing these things, we are not questioning the policies behind the instructions or raising unnecessary obstacles. Rather, we are applying the process necessary to achieve a sound law that satisfies your objective and is legally and technically correct.

## ***About legislative drafting issues***

PCO provides advice on legislative proposals such as:

- raising legal matters that arise incidentally to the process of drafting an amendment of a bill or a private Member's bill
- questioning policy proposals with a view to ensuring they will be workable within the ACT's legislative framework
- commenting on matters of legislative policy.

It is important to appreciate that a law is not drafted in isolation. We must always work to achieve the most appropriate expression of your objective, and to ensure that the bill as a law operates effectively with other ACT laws. Some of the Acts of general application in the ACT are the *Human Rights Act 2004*, the *Financial Management Act 1996*, the *Legislation Act 2001* and the *Criminal Code 2002*.

We do not generally give legal advice and do not undertake legal research, and may sometimes recommend that you seek your own legal advice on issues related to a legislative proposal.

## **Confidentiality**

Our relationship with you is analogous to that of a lawyer and client. Our communications with you are protected by legal professional privilege, and PCO maintains strict confidentiality between the drafter and Member.

Often, more than one Member wants to move an amendment of a bill, and may want to move the same amendment that is proposed by another Member. We will not disclose to other Members that we are working on your proposed amendment, and other Members will not be aware of your amendment until you disclose the amendment.

# WHAT CAN BE LEGISLATED

## Self-Government Act and Standing Orders

The source of the ACT's power to make laws is the *ACT (Self-Government Act) 1988* (Cwlth) (the Self-Government Act). There are also some restrictions on bills and amendments under the [Standing Orders and continuing resolutions of the Assembly](#)<sup>4</sup> (the Standing Orders).

## Law-making powers under Self-Government Act

Section 22 of the Self-Government Act gives the Legislative Assembly a broad power to make laws 'for the peace, order and good government of the Territory'. There are limits on that power, including restrictions on the ability to make laws for the acquisition of property, coining money or classifying material for censorship (see Self-Government Act, s 23).

## Laws cannot be inconsistent with Commonwealth

Another important qualification on the ACT's law-making power is the inability to make laws that are inconsistent with other non-ACT laws that apply in the ACT—primarily Commonwealth laws (see Self-Government Act, s 28).

## Money proposals

The Self-Government Act, section 65 restricts a Member other than a Minister from proposing a bill for the appropriation of the public money of the Territory, and the Member may move an amendment of a bill only if it does not increase the amount of public money appropriated. These restrictions are reflected in Standing Orders 200 and 201 respectively.

## Amendments to be within subject matter of bill

Standing Order 181 requires an amendment of a bill to be within the long title of the bill **and** relevant to the subject matter of the bill, and to otherwise conform with the Standing Orders. If the proposed amendment is to an amending bill, the Member must be careful to ensure that the proposed amendment is within the subject matter of the bill, and not only within the subject matter of the Act being amended.

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<sup>4</sup> <https://www.parliament.act.gov.au/parliamentary-business/in-the-chamber/standing-orders>

# INSTRUCTING PCO

## Drafting instructions

As drafting legislation is a detailed exercise, written drafting instructions are important for us to be able to do our work. Initial drafting instructions should be provided in writing to the relevant Deputy Parliamentary Counsel or the Parliamentary Counsel for consideration and allocation to a drafter.

## What to include

In order to develop your legislative proposal into effective legislation, it is important that we have a clear understanding of the issue you are looking to address and the policy objective you are seeking to achieve.

It is useful to remember the drafter is unlikely to have much if any background about your legislative proposal. The instructions should be set out in a narrative style and include the following:

- **Contact officers** Details of the contact officer and ideally an alternative contact to discuss the drafting project with.
- **Timeframes** Any important timeframes, including:
  - when you would like the legislation to commence
  - for a bill, when you expect the bill will be presented in the Legislative Assembly.
- **Policy objective** What objectives you want to achieve: Are you proposing to establishing a new scheme or amend an existing one? What issue are you are seeking to address and how has it arisen?
- **Policy detail** The details of the policy, for example, who or what will be affected by the proposed law, and what is required to happen?  
  
Don't be too prescriptive about how the object is to be achieved—give the drafter as much flexibility as possible to decide how to draft the law to achieve the objective. It is the drafter's responsibility to work out the legal means and language to best give effect to your objectives.
- **Unresolved issues** Are there any unresolved issues in relation to the policy that may impact on the detail set out in your instructions or that you anticipate you will instruct us on?
- **Other issues** Are there any other issues that we should be aware of? Knowing about this will assist us to achieve the best outcome.
- **Supporting material** This may include advice, legislative models, reports or relevant information coming out of consultations.



## What to avoid

In drafting legislation, we need to be satisfied that the drafting solutions address the issues and achieve the objectives. As such, it is generally not helpful for your instructions to focus on legislative solutions, and we ask you to avoid the following:

- **Suggested drafting**

This tends to obscure the policy intention and can slow down the drafting process as we will need to understand the thinking behind the drafting.

However, if you have received proposed drafting in the course of receiving legal advice, this can be useful for us to see when accompanied by your explanation of the policy intention.
- **Proposing amendments to be made**

Instructions that set out the amendments you consider need to be made without further explanation can also obscure the policy intention.

For example, an instruction to amend a provision by omitting particular words and substituting other words. However, identifying the provisions you expect will need amendment as an addition to your instructions is often helpful for us.
- **Asking to copy provisions from other jurisdictions**

It is not helpful if your instructions to point to provisions from another jurisdiction without an explanation of the overall policy objective or how your policy may vary from that underlying the other jurisdiction's legislation.

Each jurisdiction has its own drafting and publishing practices and individual legislative and legal frameworks, and it is generally not possible to simply adopt legislation of other jurisdictions.

# DRAFTING PROCESS

## Collaborative process

Drafting legislation is a collaborative process. It is unusual for the first draft of legislation to be fully developed. For anything but the simplest pieces of legislation, you should expect that multiple drafts will need to be prepared. The ‘devil is in the detail’ as the saying goes, and it is common to identify issues that had not been anticipated in developing the proposal.

## Drafting team

Each legislative drafting project has a drafting team allocated to it—usually a primary drafter and a settling drafter. Each draft of the legislation will be drafted by the primary drafter and then reviewed by the settling drafter before it is sent to you. This is important for ensuring quality and assisting the efficient development of the legislation. The settling drafter is also an alternative contact for you if the primary drafter is unavailable.

## Communicating with each other

Generally, communication will be by email, video conference (Microsoft Teams or Webex) and telephone, and we require instructions in writing. Meetings are also often an integral part of the drafting process, giving us an invaluable insight into your needs.

A meeting shortly after receiving your initial instructions is often very useful to discuss the policy objective, identify potential issues and discuss timeframes and expectations. Meetings may then be held throughout the drafting process as needed.

It is important that you keep us informed of any relevant changes or events that affect the development of your legislative proposal. We also encourage you to contact us throughout the drafting process if you would like to discuss any aspect of the drafting job.

## Quality assurance check

Once a draft has been prepared to your satisfaction, the bill or amendment is referred to a PCO editor for reading to ensure it complies with PCO drafting standards. The editor may recommend editorial changes that will not affect the substance of the bill or amendment.

# FINALISING DRAFTS

## Bills

After any editorial changes are made, the bill is finalised and a presentation copy is sent by email to the Member and Chamber Support in the Office of the Legislative Assembly. Chamber Support arranges copies of the bill and distributes the bill to Members when the bill is presented.

## Assembly amendments

After any editorial changes are made, the amendment is finalised and final version is sent by email to the Member and Chamber Support.

Standing Order 182A requires all amendments be considered and reported on by the Scrutiny Committee before they can be moved. In practice, this requires Members to deliver finalised amendments to the Scrutiny Committee 14 days before debate.

Standing Order 182 requires amendments to be circulated to Members, and, to support this, Standing Order 178A requires Members to deliver a signed copy of the amendments to the Clerk of the Legislative Assembly by 12 noon the day before the bill being amended is to be debated. Chamber Support then circulates amendments to Members before the bill's debate.

## Presentation of bills to Assembly

A Member who wants to present a bill must give a notice of intention to present the bill to Chamber support by 12 noon on the Monday of the sitting week in which the bill is proposed to be presented, or to the Clerk in the Chamber during a sitting (see Standing Order 168 (a)). The notice must state the long title of the bill and be signed by the Member. The Member must be careful to ensure that the title of the Bill listed on the notice paper is exactly the same as the long title of the bill.

## Explanatory statements

When a bill is presented to the Assembly, it must be accompanied by an explanatory statement (see Standing Order 168 (c)). The Assembly and Scrutiny Committee also expect an explanatory statement for Assembly amendments of bills.

The explanatory statement is prepared by the Member and gives an explanation of the bill and its purpose. PCO does not draft the explanatory statement but is available to assist you and may comment on the draft statement to ensure accuracy.

The explanatory statement is included on the legislation register with the bill following the bill's presentation. An electronic copy of the explanatory statement should be sent by email to PCO before the bill is presented to enable the explanatory statement to be included.



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