

Working with OQPC on drafting private member's legislation

The Office of the Queensland Parliamentary Counsel is a statutory office set up under the *Legislative Standards Act 1992* to draft and publish Queensland legislation. OQPC's chief executive is the Parliamentary Counsel.

Tony Keyes is the Parliamentary Counsel for Queensland.

Tony is available to discuss proposed legislation with you and may be contacted as follows—

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email to tony.keyes@oqpc.qld.gov.au

OQPC's functions include drafting legislation for individual members of the Legislative Assembly, in addition to drafting legislation for the Government. This is referred to as drafting for *private members*.

Under the *Legislative Standards Act 1992*, any member of Parliament may ask OQPC to draft a Bill or an amendment of a Bill. OQPC must draft the legislation unless the Parliamentary Counsel considers it would not be possible to do so without significantly and adversely affecting the delivery of the Government's legislative program.

Types of private member's legislation

A member of Parliament may ask OQPC to draft—

- a Bill; or
- amendments of a Bill.

A **Bill** may be for a new stand-alone Act, such as the *Parliament of Queensland Act 2001*, or an amendment Act.

An amendment Act may amend one or more pieces of existing legislation.

Amendments of a Bill are prepared for a Bill that has been introduced into the Legislative Assembly. This is the way a member proposes changes to a Bill introduced by a Minister or another member when the Bill is debated. These amendments are referred to as *amendments to be moved during consideration in detail*, or ACiDs.

Consideration in detail is the stage of the debate of a Bill during which a member may propose, or *move*, amendments to the Bill.

Confidentiality

All drafting work is protected by legal professional privilege. Unless a private member gives express consent, the Parliamentary Counsel and all OQPC employees are **legally not allowed** to—

- disclose to the Government or anyone else that the member has asked OQPC to draft a Bill or an amendment of a Bill; or
- discuss the private member's Bill or amendments with the Government or anyone else, or any matter relating to the Bill, the amendments or their preparation.

See the *Legislative Standards Act 1992*, section 9A.

Instructing OQPC to draft legislation

Asking OQPC to draft a Bill or amendments of a Bill is referred to as *instructing* OQPC to draft the legislation. A member instructs OQPC to draft legislation by providing written drafting instructions.

OQPC uses a dedicated email address to receive new drafting instructions. This email inbox is checked a number of times each business day.

Email new drafting instructions to—
parliamentary.counsel@oqpc.qld.gov.au

OQPC will contact a private member (or a nominated representative) shortly after receiving initial drafting instructions—within 2 business days unless the instructions are described as urgent.

The Parliamentary Counsel or a Deputy Parliamentary Counsel may phone to discuss the proposed legislation. Otherwise, an email will be sent with a message of introduction and the drafter's contact details.

Allow reasonable time to draft legislation

Allowing a reasonable amount of time to draft a Bill or amendments is essential.

Well-drafted laws require careful consideration, which takes time. Also, drafting private member's legislation is only part of OQPC's workload. OQPC must, as its first priority, deliver the Government's legislative program and OQPC's legislative drafters are generally working on a number of drafting projects at one time.

The more time a private member allows for a drafting project, the more consideration the drafter can give to the project.

Preparing drafting instructions

Drafting instructions do not have to be prepared in a set format. They only need be in writing and include enough detail to enable a legislative drafter to understand what is required for the Bill or amendments.

The following is a guide about the matters that should be included in drafting instructions.

Matters to include in drafting instructions

- Include the name and contact details of the *instructor*; that is, the person who will work directly with the drafter on the legislation. This may be the private member or a member of the private member's staff.
- Describe the objective of the legislative proposal. What outcome is the Bill or the amendments to achieve?
- Identify the legislation to be amended, including the particular provisions to be amended (if known). For amendments of a Bill, or ACiDs, identify the Bill to be amended.
- State the main or basic concepts. Who or what is the legislation to deal with. Explain any key terms the drafter needs to understand.
- Include as much detail as possible. Think about—
 - what has to be done
 - why it has to be done
 - when it has to be done by
 - the persons or things the legislation is to apply to and cover
 - all aspects of the scheme to be legislated, from the big picture to the minor details.

What to expect when working with OQPC to draft legislation

Reviewing drafts and further instructions

A legislative drafter will prepare a first draft of a Bill or amendments and email this draft to the instructor.

It is essential for an instructor to review each draft to make sure it has the desired effect. Also, the drafter may have asked questions or for more information in drafting notes.

The instructor's response to a draft of legislation is referred to as further drafting instructions. These further instructions must be written and emailed to the drafter.

Further instructions may set out changes the instructor wants made to the draft legislation or respond to the drafter's questions.

The drafter will consider the further instructions and send the instructor another draft of the legislation. This process continues until the instructor signs off on the final version of the legislation (see below).

OQPC's quality assurance processes

To ensure legislation is of the highest quality, all legislation prepared by OQPC—

- is reviewed by a second, more experienced drafter (called the D2); and
- undergoes an editorial check.

These checks may result in changes to the draft. Any suggested changes will be included in another draft of the legislation that is sent to the instructor to review.

Signing off on final draft of legislation

The instructor will be asked by the drafter to send an email approving the final draft of the legislation. OQPC will then supply the final draft to the Table Office at Parliament House.

The member must also authorise the Clerk of the Parliament or the Table Office to publish the Bill or amendment. It will then be printed ready for the member to introduce or table.

Introducing a Bill into Parliament

When introducing a Bill into the Legislative Assembly, a member must—

- circulate explanatory notes for the Bill to the other members; and
- circulate a Statement of Compatibility with human rights for the Bill to the other members; and
- deliver a speech explaining the Bill, which is called an *explanatory speech*.

Once a member authorises publication of the Bill, the Clerk of the Parliament is able to assist the member with the parliamentary procedure for introducing a Bill.

Explanatory notes

The *Legislative Standards Act 1992* requires explanatory notes to be circulated for a Bill (sections 22 and 23). Explanatory notes must contain particular information about the Bill and be written in clear and precise language.

The information that is required includes—

- the policy objectives of the Bill and the way the Bill achieves them;
- any reasonable alternative ways of achieving the policy objectives;
- the Bill's consistency with the *fundamental legislative principles* (or *FLPs*) and reasons for any inconsistency;
- a statement about consultation that was carried out in relation to the Bill;
- a simple explanation of each clause of the Bill, its purpose and operation.

With the member's authority, the Table Office will print the explanatory notes ready for introduction. For more information about preparing explanatory notes, contact the Table Office.

Statements of Compatibility

As of 1 January 2020, all Bills that are introduced must, under the *Human Rights Act 2019*, be accompanied by a Statement of Compatibility with human rights. A Statement of Compatibility must set out whether, in the

opinion of the Member introducing the Bill, the Bill is compatible with the human rights set out in the Act, and the nature and extent of any incompatibility.

Override declarations

In exceptional circumstances, the *Human Rights Act 2019* provides that an override declaration can be used by Parliament to expressly declare that an Act or provision of an Act has effect despite being incompatible with human rights or despite anything else in the Human Rights Act.

The Act makes it clear that override declarations should only be used in exceptional circumstances, such as war or an exceptional crisis situation constituting a threat to public safety, health or order.

OQPC and the Table Office do not prepare or review Statements of Compatibility or override declarations for Government or Private Member's bills.

A number of human rights resources including a template for the drafting of a statement of compatibility are available on the Queensland Government's website [here](#).

Explanatory speech

The requirement for a member to deliver an explanatory speech about a Bill is imposed by the *Standing Orders of the Legislative Assembly* (standing order 129).

See the *Queensland Parliamentary Procedures Handbook* for more information.

A few other matters to keep in mind

Bills and amendments that appropriate money from the consolidated fund

Only Government Bills and Government amendments to Bills can appropriate money from the consolidated fund.

This is because section 68 of the *Constitution of Queensland 2001* only allows the Legislative Assembly to originate or pass a Bill, vote or resolution that makes an appropriation if it has first been recommended by a message of the Governor. As an amendment to a Bill would require a vote or resolution of the Legislative Assembly, this restriction also applies to amendments that make an appropriation.

Only a Minister, as a member of the Executive Government, can obtain a Governor's message for a Bill or amendment that makes an appropriation.

A drafter will advise a private member if a Bill or amendment being drafted appropriates money from the consolidated fund and discuss options for progressing the drafting.

Amendments outside the long title of a Bill

Amendments that a member proposes to a Bill during consideration in detail must be 'within the long title of the Bill'. This means the amendments must be made to the legislation listed in the Bill's long title and consistent with the objectives of the provisions of the Bill. This rule is set out in standing order 151 of the *Standing Orders of the Legislative Assembly*.

Standing order 151 contains an exception. A member may propose an amendment to a Bill that is outside its long title with the permission (or *leave*) of the Legislative Assembly.

A drafter will advise a private member if the drafter considers amendments of a Bill are outside the Bill's long title.

The drafter may refer the member to the Clerk of the Parliament for advice.

Same question rule

There are procedural rules of the Parliament that prevent the Parliament from revisiting matters that have already been decided during a parliamentary session.

Standing order 87 prevents a question or amendment being proposed if it is the same as one that has previously been decided in the same session of Parliament. This is whether the Legislative Assembly decided the question or amendment in the *affirmative* or *negative*.

The same question rule applies when a member seeks to introduce a Bill into the Legislative Assembly if—

- the Bill contains substantially the same provisions as another Bill; and
- during the same session, the Legislative Assembly has voted to give the other Bill a second reading or to refuse it a second reading.

See the Speaker's statement of 15 February 2017 about the application of the same question rule to Bills (Hansard 2017, page 103).

Standing Order 150 also prevents an amendment, new clause or schedule to a Bill from being moved during consideration in detail if it is—

- substantially the same as one already rejected by the House; or
- inconsistent with one already agreed to by the House.

A drafter will advise a private member if the drafter considers legislation being drafted raises the same question rule.

The drafter will refer the member to the Clerk of the Parliament for advice.