

Best Practices for Developing Drafting Team Expertise—Australia: Publications and Presentations

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I.	INTRODUCTION.....	3
II.	ABOUT THE OFFICE OF PARLIAMENTARY COUNSEL	3
III.	DOCUMENTS AND OTHER MATERIAL ON OPC’S WEBSITE	4
	A. OPC DOCUMENTS	4
	B. ABOUT OPC: LEGISLATION PROCESS COURSES.....	5
	C. LEGISLATION.....	5
	D. LINKS	6
	E. FAQs (FREQUENTLY ASKED QUESTIONS)	6
	F. CALC	7
IV.	DOCUMENTS AND OTHER MATERIAL AVAILABLE WITHIN OPC ...	7
	A. FOLIO OTHER DOCUMENTS	8
	B. FOLIO ACTS AND BILLS.....	8
	C. STANDARD PROVISIONS	9

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V.	TRAINING FOR DRAFTERS	10
A.	INTERNALLY-PROVIDED TRAINING	11
B.	EXTERNALLY-PROVIDED TRAINING	12
C.	REQUIREMENTS FOR TRAINING SESSIONS	13
D.	EVALUATION OF TRAINING SESSIONS	14
E.	COURT DECISIONS AND OPINIONS OF THE AUSTRALIAN GOVERNMENT SOLICITOR	14

I. INTRODUCTION

This paper gives a short summary of the documents and other resources and programs that OPC has developed to assist drafters and instructors and other people who work with OPC or with Commonwealth legislation.

The paper also describes OPC's training program for drafters.

II. ABOUT THE OFFICE OF PARLIAMENTARY COUNSEL

This Part gives some background about the Office of Parliamentary Counsel.

The Office of Parliamentary Counsel (*OPC*) is a statutory office created under the *Parliamentary Counsel Act 1970* of the Commonwealth of Australia. The Office is within the Attorney-General's portfolio and is located in Canberra, Australia.

The Office consists of three statutory office-holders (First Parliamentary Counsel, currently Mr Peter Quiggin, two Second Parliamentary Counsel) and about 45 staff, of whom about 30 are drafters.

OPC's functions are to draft Bills and parliamentary amendments of Bills for the Commonwealth Government. The Office rarely drafts Bill or amendments for non-government parties or government backbenchers and it does not prepare the explanatory memorandum or second reading speech that accompanies a Bill.

OPC does not draft subordinate legislation. This is done by a Division of the Attorney-General's Department called the Office of Legislative Drafting and Publishing (*OLDP*) or by officers of administering agencies.

The drafters in OPC work in teams. These generally consist of a senior drafter and one or more assistant drafters. As well as ensuring that each Bill is considered by two drafters, OPC finds that this arrangement provides the best method for training new drafters.

III. DOCUMENTS AND OTHER MATERIAL ON OPC’S WEBSITE

This Part describes the documents and other resources on OPC’s website and available internally.

OPC’s website address is www.opc.gov.au.

The website provides information about OPC and includes links to other useful sites. Some of the main areas of interest to instructors and those outside OPC are as follows:

- OPC Documents;
- About OPC: Legislation Process Courses;
- Legislation;
- Links, including:
 - Parliament & Bills;
 - Research Services;
- FAQs (Frequently Asked Questions).

A. OPC DOCUMENTS

This section contains a wide range of documents produced by and about OPC, including:

- Working with the Office of Parliamentary Counsel: A Guide for Clients;
- Giving Written Drafting Instructions. This document provides guidance about giving written instructions to OPC for drafting Bills and parliamentary amendments of Bills. It contains a checklist of matters to cover in drafting instructions and a discussion of particular points in the checklist;
- Drafting Directions Series. Drafting Directions are instructions that are issued by First Parliamentary Counsel. They cover a wide range of topics related to drafting. All drafters are required to comply with the directions. This ensures that a consistent approach is taken to amendments.

The Drafting Directions are organised on a subject-matter basis and cover the following areas:

- Presentation and form of legislation;
- Usage (including plain English);
- Content (including constitutional issues);
- Procedural matters;
- Client Advisers. This is a list of senior drafters from whom client agencies can obtain quick off-the-cuff advice about drafting matters before drafting instructions are given.

These documents can all be downloaded in PDF or RTF format.

B. ABOUT OPC: LEGISLATION PROCESS COURSES

OPC conducts a number of Legislation Process Courses each year. The one-day course is designed for staff of Commonwealth Government agencies who would like to gain a basic understanding, or refresh their knowledge, of the process involved in developing primary legislation for the Commonwealth. Each course is presented by a senior drafter and an assistant drafter. The course covers much the same topics as the *Legislation and Legislative Process in British Columbia* course referred to earlier in this session (except that it does not deal with subordinate legislation). A comprehensive course manual is provided to participants.

C. LEGISLATION

This page contains a number of links, the most important being to the following:

- Commonwealth Acts;
- Commonwealth Bills;
- Explanatory memorandums (current Bills);
- Explanatory memorandums (other Bills);
- Commonwealth Legislative Instruments (containing the text of regulations and other subordinate legislation);

- Legislation of the Australian States and Territories and New Zealand and of other countries (including Canada).

D. LINKS

The Parliament & Bills page has a number of useful links for instructors, including to the following:

- Australian Parliament House website;
- House of Representatives and Senate Hansards;
- Senate Scrutiny of Bills Committee;
- Legislation Handbook;
- Draft Legislation Program for the House of Representatives and the Senate.

The Research Services link provides access to a wide variety of legal material, including the following:

- Case Law Commonwealth (includes decisions of the High Court and other federal courts and tribunals);
- Case Law State/Territory;
- Treaties;
- Legal Research Services (including materials of the commercial law publishers);
- Law Journals.

E. FAQs (FREQUENTLY ASKED QUESTIONS)

This section includes answers to the following questions:

- [What is the role of OPC?](#)
- [How can I get advice on drafting matters before I give drafting instructions to OPC?](#)
- [How do I give written drafting instructions to OPC?](#)
- [How do I find out about jobs at OPC?](#)

- [Does OPC draft regulations or other statutory instruments?](#)
- [How do I find out if there are regulations made under an Act?](#)
- [Can OPC give information about how an Act operates?](#)
- [How do I find out which Minister or Department is responsible for an Act?](#)
- [How do I find out if a Bill is being drafted?](#)
- [How do I find out whether an Act has been amended?](#)
- [How do I find out what stage a Bill is at in Parliament?](#)
- [How do I find a copy of a Bill?](#)
- [How do I find a copy of an Act?](#)
- [How do I find an Explanatory Memorandum for a Bill or Act?](#)
- [How do I find out when an Act commenced?](#)
- [What is the process for a Bill to get Royal Assent?](#)
- [How long does it take an Act to receive the Royal Assent?](#)
- [How can I find out when an Act is going to receive the Royal Assent?](#)
- [How can I find out when the commencement of an Act is going to be proclaimed?](#)

F. CALC

The OPC website also has information about CALC (the Commonwealth Association of Legislative Counsel). CALC's website is hosted by OPC as a general service to legislative drafting. There is a link on this page to the CALC newsletter *The Loophole*.

IV. DOCUMENTS AND OTHER MATERIAL AVAILABLE WITHIN OPC

This Part deals with some of the documents and other resources available within OPC to assist drafters in their work.

Almost all OPC documents are available on OPC's intranet. They are contained in two folio databases called "Office Documents" and "Acts and Bills."

A. FOLIO OTHER DOCUMENTS

Folio Office Documents includes material relating to drafting, Word Notes and IT circulars and documents relating to office management and procedures.

Included in the material relating to drafting are the following:

- Drafting Manual;
- Drafting Directions;
- Drafting Notes;
- Amending Forms Manual;
- Criminal Law Documents;
- Income Tax Drafting Manual;
- Legislative Instruments Documents;
- Administrative Arrangements Order and Ministry List;
- Senate Scrutiny of Bills Committee Digests and Reports;
- House of Representatives Practice and Standing Orders;
- Odgers' Australian Senate Practice and Standing Orders.

All these documents are able to be searched electronically and the search can cover a part only of a document or a number of documents.

B. FOLIO ACTS AND BILLS

Folio Acts and Bills includes the following:

- consolidated versions of all Commonwealth Acts;
- Acts from the current session of Parliament;
- Bills and parliamentary amendments before Parliament;

- Draft Bills and draft parliamentary amendments;
- Bill plans/blueprints;
- Acts and Bills from previous sessions of Parliament (from 1998 to 2007);
- Regulations that amend Acts;
- Repealed Acts and expired (but not repealed) Acts;
- Consolidated amending Acts;
- Database currency table.

Most drafters would have this database open on their second screen. Like the Folio Office Documents, it is possible to search across the whole of this database or within a single Act or other document or even within a single Part of an Act or other document.

C. STANDARD PROVISIONS

A very useful resource that saves time and assists in achieving consistency in Bills is the standard provisions macro. Some of the provisions that can be inserted using this macro are as follows:

- commencement provisions;
- introductory provisions (relating to, for example, binding the Commonwealth, binding States and Territories, Crown not liable to prosecution, extension to external Territories);
- provisions dealing with criminal law matters (for example, standard offence provision, strict liability and absolute liability provisions, evidential and legal burden of proof provisions);
- provisions to create a statutory body or statutory office;
- commonly used definitions (for example, Australia, exclusive economic zone, penalty unit);
- provisions dealing with constitutional matters (for example, acquisition of property on just terms, concurrent operation of State and Territory laws);

- standard regulation-making power;
- financial provisions (relating to, for example, fees, standing appropriations, special accounts);
- provisions relating to legislative instruments.

V. TRAINING FOR DRAFTERS

This Part describes some of the processes OPC has in place for the training and development of drafters.

As part of OPC's performance management program for drafters, each drafter has an Individual Development Plan. The objectives of the Plan are to develop a drafter's:

- drafting skills and knowledge; and
- general legal skills and knowledge; and
- other skills, knowledge and characteristics relevant to drafting work (for example, time and stress management skills).

The main training for assistant drafters occurs as part of the process of drafting Bills and parliamentary amendments. As mentioned earlier, an assistant drafter generally works in a team with a senior drafter. The work done by the assistant drafter in the team depends on the drafter's ability and experience.¹

Training is also provided by way of formal and informal training sessions given within OPC and by outside providers.

Drafters are required to complete at least 15 hours of continuing legal education in a financial year. This can be done by attending internally-provided training sessions and seminars and training sessions

¹ Since the focus of this paper is on publications and presentations, I haven't included any detailed information about how the team arrangement works in terms of training and development for assistant drafters.

given by outside providers (for example, other Government Departments, academics from universities and the Australian Government Solicitor).

Drafters are also encouraged to keep up-to-date with recent court decisions and opinions given by the Australian Government Solicitor on matters related to drafting.

A. INTERNALLY-PROVIDED TRAINING

Last year OPC put into place a three-year program of training sessions. The current program started this year and will go until 2010. Between eight and nine internally-provided training sessions are planned for each year. Four of these are to be presented by senior drafters and four to five are to be presented by external presenters.

The sessions are normally presented outside Parliamentary sittings.

The topics to be covered in the current three-year program by sessions to be presented by senior drafters are as follows:

- finance provisions;
- Commonwealth-State schemes;
- taxation;
- legislative instruments;
- subordinate legislation-making powers;
- application and transitional provisions;
- statutory corporations;
- plain language;
- calculating amounts/formulae/time issues;
- legal personality;
- project management;
- interaction between Commonwealth and State laws;
- benefit schemes;
- licensing schemes.

These topics are to be presented once in the three-year period.

Some of these sessions may be presented by way of panel discussions (for example a session on plain language). Some sessions are particularly targeted at assistant drafters. Senior drafters are always welcome to attend these sessions though, and it is considered useful for the purposes of discussion and sharing of experience if some senior drafters do attend these sessions.

Drafters from the Office of Legislative Drafting and Publishing in the Attorney-General's Department (responsible for drafting Commonwealth subordinate legislation) and the Parliamentary Counsel's Office of the Australian Capital Territory are generally invited to attend these sessions.

Senior drafters are also encouraged to present training sessions on an ad hoc basis in addition to the sessions provided in the three-year program. This might happen during quiet periods (for example, during the caretaker period after an election has been called). Topics that were dealt with on this basis most recently included the following:

- managing large projects;
- productivity;
- mathematical concepts in drafting;
- simplified outlines;
- applying and disapplying Acts of general application;
- analysing instructions;
- problem-solving;
- definitions;
- attention to detail.

B. EXTERNALLY-PROVIDED TRAINING

The three-year program provides for sessions on the following topics to be given each year:

- constitutional law;
- criminal law.

The session on constitutional law is presented by a leading academic, and the session on criminal law is presented by the Criminal Law Division of the Attorney-General's Department with input from the Commonwealth Office of the Director of Public Prosecutions on some occasions.

Sessions on the following topics are to be presented once during the three-year period:

- court and court jurisdiction (presented by the Attorney-General's Department);
- secrecy, privacy and freedom of information (presented by the Attorney-General's Department);
- party room clearance and scheduling debate (presented by the Legislation Section of the Department of the Prime Minister and Cabinet);
- role of the areas responsible for tax legislation in the Department of the Treasury (presented by the Department of the Treasury);
- statutory interpretation in providing advice (presented by the Australian Government Solicitor);
- maritime boundaries (presented by the Office of International Law in the Attorney-General's Department and Geoscience Australia).

C. REQUIREMENTS FOR TRAINING SESSIONS

Training sessions are usually between one and two hours. Providers are encouraged to make their sessions as interactive as possible and to include examples, exercises and group discussion.

Presenters are expected to provide notes for each session. This is particularly useful for drafters who cannot attend the session and also for future reference. Internal providers may provide their notes in the form of dot points; they are not required to prepare a formal paper. External providers are engaged on the basis that they will provide a paper or written notes for their session. If appropriate, these notes are kept on the Drafting Notes Database on OPC's intranet.

D. EVALUATION OF TRAINING SESSIONS

Drafters who attend a training session are asked to complete an evaluation form indicating how useful they found the session. An annual evaluation of the sessions given in a year is also made and adjustments to the program are made if needed.

E. COURT DECISIONS AND OPINIONS OF THE AUSTRALIAN GOVERNMENT SOLICITOR

OPC has processes in place to ensure that drafters can keep up-to-date with relevant court decisions and opinions given by the Australian Government Solicitor that relate to drafting matters.

Drafters are notified of relevant court decisions by e-mail, and copies of relevant opinions given by the Australian Government Solicitor are circulated among the drafters in the Office. The opinions are categorised as follows:

- opinions relating to constitutional law issues;
- opinions that include comments about how provisions were drafted (for example, comments about the difficulty of knowing how the provisions were intended to apply or how they interact with one another);
- other opinions that are of special interest to drafters (for example, because they deal with the interpretation of a provision of the Acts Interpretation Act on which drafters regularly rely in their drafting work).