

Project Management Fact Sheet:

Managing Projects with Legislative Implications

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Department of Premier and Cabinet



This Fact Sheet has been developed to provide information about how to manage projects that involve drafting new or amending existing legislation within the Tasmanian Government. It outlines key issues for managing the process for:

- identifying the need for legislation to be drafted
- providing instructions for the new legislation to the Office of Parliamentary Counsel
- taking the legislation through the Tasmanian Parliament

It should be noted that this process can be very complex, and will vary according to the nature of the legislation. Advice should be sought from relevant sources within your agency and from the Cabinet Office before proceeding.

The development of legislation is an excellent example of a project that needs to be managed. It involves planning ahead, managing resources, consultation with stakeholders, a combination of precise and imprecise timelines, risk management, reporting, Ministerial involvement, Cabinet approvals and evaluation. If legislation needs to be developed, project management processes should be used to manage the process.

What is legislation?

Legislation is the law made by the Federal, State or Territory Parliament. Laws are detailed in statutes, which is a frequently used term for an Act of Parliament. Parliaments approve statutes through a process of debate and voting. There are very formal and exact processes in Parliament to manage the process of debating, approving and implementing legislation.

The development and implementation of legislation is one of the key purposes of any government. It is one way the government of the day puts its policies into action or responds to the needs of the community.

Regulations such as by-laws, orders, rules and proclamations may also need to be formulated in order to implement and administer the requirements of an Act.

While any Member of Parliament is entitled to prepare and present a Bill for debate in Parliament, this fact sheet will focus on Bills originating from within Government.

How do you know if and when legislation is required?

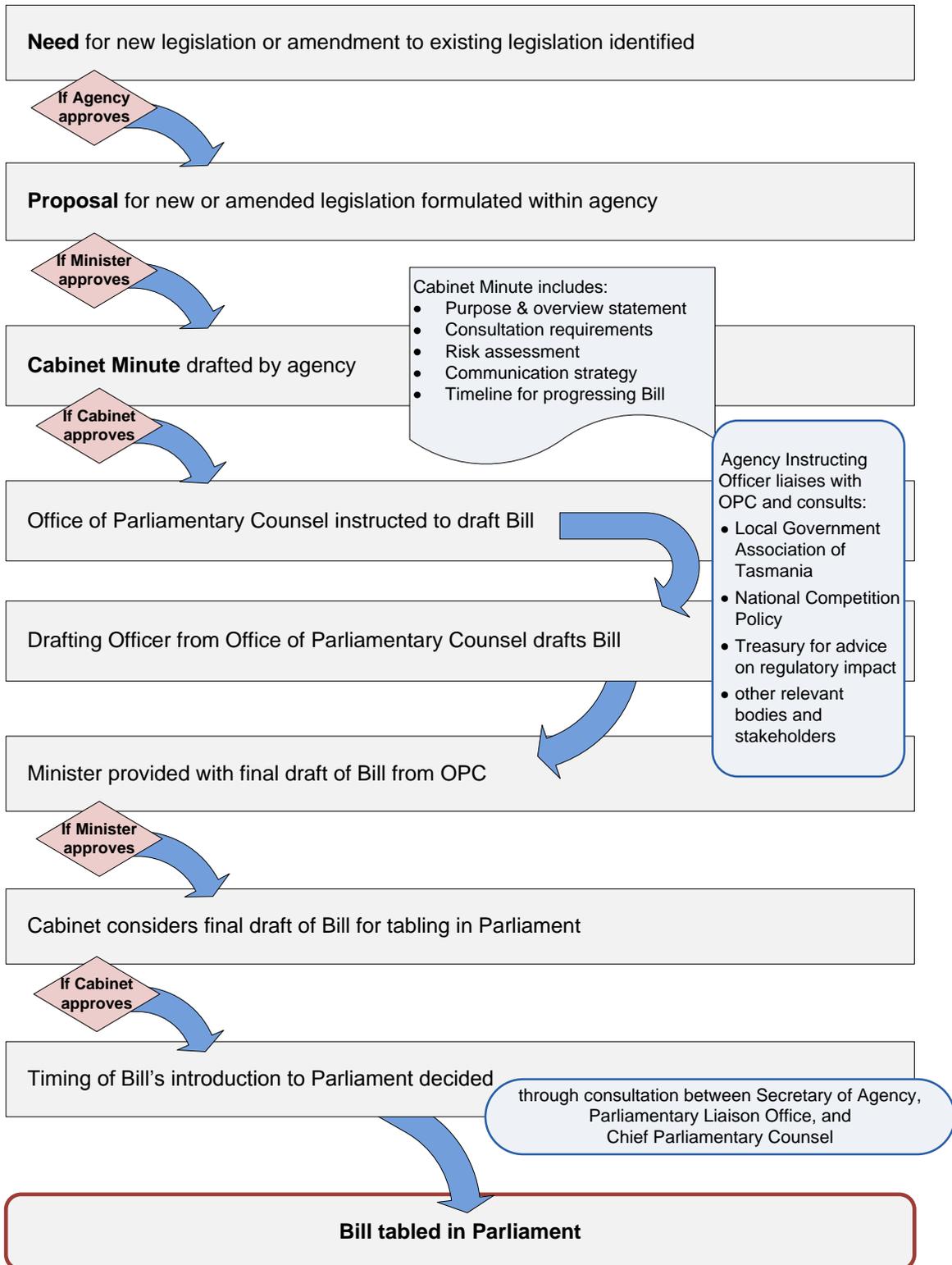
The need for new legislation including amendments to existing Acts can arise in a number of ways, for example:

- Government policy as articulated by a Minister or the Premier
- Election commitment
- National or bi-lateral agreement or obligation
- Stakeholder pressure
- Inconsistencies/anomalies in existing legislation
- Formal review date/sunset clause
- Problem identified with operation of the Act
- During the development of a major/complex project

It can also be identified during the scoping or planning of a project, or during the course of a project.

The following flow chart illustrates the general process for developing Tasmanian Government legislation before it is tabled in Parliament.

Tasmanian Government Process for Developing Legislation



How is legislation developed?

The Cabinet approval process

A document that contains a draft proposal for a new law or for an alteration to an existing law is called a 'Bill'¹. Before a Government Bill comes to Parliament, the appropriate Minister must convince Cabinet to proceed with the legislative proposal through presentation of a *Cabinet Minute*. After Cabinet agreement is reached, the matter is passed to the Office of Parliamentary Counsel to draft a Bill for Parliament to consider. Cabinet must then approve for the Bill to be *tabled* (presented) in Parliament.

The Cabinet Minute must provide the background and policy context for the new legislation. It should provide enough information for Cabinet members to understand the purpose of the legislation, the reasons for the legislation being developed, any consultation processes that need to be undertaken, and any risks associated with its successful completion.

It is important to outline the timelines for progressing the Bill in the Cabinet Minute. The Leader of Government Business in the House of Assembly organises the timing of each Bill's introduction into Parliament. There may be specific organisational issues that need to be thought through. Alternatively, there may be political considerations that need to be taken into account when timing the introduction of particular legislation.

One of the requirements of preparing a Cabinet Minute is the inclusion of a Communications Strategy. The Strategy should outline all the external communications that will need to occur as part of the development and introduction of the new legislation. The Strategy must be approved by the Manager, Communications Unit.

Office of Parliamentary Counsel

The Office of Parliamentary Counsel (OPC) is responsible for drafting legislation for the Government and for non-government members of Parliament. Once Cabinet approval has been given to draft legislation, instructions are given to a Drafting Officer in the OPC. The person working on the project to develop legislation will provide the drafting instructions to OPC and is called the *Instructing Officer* in this process. The Drafting Officer will prepare a draft Bill, which is used for consultation within the agency, with the responsible Minister and with external stakeholders. Depending on the complexity of the Bill or the feedback from consultation, a number of drafts may need to be prepared before a final version is agreed and approved by the responsible Minister.

The Drafting Officer's role is to prepare legislation that is clear and, as far as possible, free from ambiguity. The Instructing Officer must provide logical and accurate advice and information to the Drafting Officer - this can occur over many meetings, depending on the complexity of the Bill. Policy issues associated with the Bill must be clarified and resolved prior to providing instructions to the Drafting Officer. If uncertainties about policy implications arise during the drafting stage, they need to be resolved by negotiation with the Drafting Officer or within the agency before the Bill can be finalised.

¹ www.parliament.tas.gov.au/tpl/Backg/LawsMade.htm

Consultation

Consultation on a Bill is one of the most important considerations when preparing new legislation. When managing a project that includes a legislative component, consultation is clearly going to arise as a key task that will use resources and time. It can also be a risk to the successful finalisation of the legislation because consultations can result in significant changes to draft legislation or prompt changes in policy direction or the resolution of policy issues that are key to the legislation.

A good example of how consultation can affect draft legislation is the preparation of the *Child Care Act 2001*. This legislation replaced an older Act that was considered to be out of date and not relevant to the current childcare environment. The childcare industry had evolved over time and the policy framework had changed since the previous Act was implemented. The Department of Education needed to consult with the childcare industry, which includes a range of carer types (eg after school, centre based, family day care) as well as parents, schools, the Commonwealth Government and Local Government. The Department developed a consultation plan that included meetings across the State over several months.

The consultation phase for the Child Care Bill lasted several months and it resulted in many redrafts of the Bill. This is usual for complex or lengthy legislation. Consultation for less complex legislation may only take a matter of weeks. There is no standard timeline for consultation. It will always depend on the nature of the Bill.

Consultation and National Competition Policy (NCP)

Under the National Competition Policy (NCP) requirements, proposed legislation should not restrict competition or significantly impact on business unless it can be demonstrated that the:

- benefit of the restriction outweighs the costs
- objective of the legislation can only be achieved by restricting competition or imposing a significant impost on business

The Economic Policy Branch of the Department of Treasury and Finance (Treasury) must be consulted about all new legislation. The Branch will determine whether the new legislation restricts competition or impacts on business. As part of the approval process through Cabinet, the responsible agency must include the advice from Treasury about the regulatory impact of the legislation in the documentation to Cabinet.

If Treasury determines that the legislation will significantly restrict competition or impact on business, it may advise the responsible agency that a Regulatory Impact Statement (RIS) needs to be prepared. The RIS is a key part of the consultation phase and it can form the basis of the consultation. This was the case with the Child Care Bill as the provision of childcare is a business that needs to be regulated and the Child Care Act is essentially about regulating the childcare industry. The Economic Policy Branch can provide more information and advice about an RIS, how it should be prepared and how to deal with responses to it.

Consultation and Local Government

An important consideration when developing legislation is the effect of the Bill on Local Government. The State Government has an agreement with the Local Government Association of Tasmania (LGAT) that the Association will be consulted on new legislation, including amendment Bills. The LGAT's Legislation Committee reviews legislation that will have an effect on Local Government. With this in mind, the consultation timeline should be long enough to enable appropriate consideration and review by Local Government.

Consultation with other Key Stakeholders

It is important that other key stakeholders are able to consider legislation that is relevant to them. Key representative groups should be identified and made aware of the draft legislation. This should be part of a stakeholder analysis process.

Tabling in Parliament

Once the content of final Bill has been agreed, the Office of Parliamentary Counsel will issue a final version to the responsible Minister to approve.

It is important that the agency responsible for introducing the Bill liaises with the Parliamentary Liaison Officer (PLO) to arrange for the Bill to be tabled. This is usually done through the agency's Office of the Secretary. The PLO works for the Leader of Government Business and together with the Chief Parliamentary Counsel, the three of them will decide when the Bill can be tabled.

When a Bill is ready to be tabled in Parliament, a package of documents must be prepared for distribution to Members of Parliament and other individuals who receive documentation relating to Bills being tabled. The package must include:

- An Advisor Sheet (listing details of the departmental officer who will be providing advice for the Minister when the Bill is considered in Parliament)
- Fact Sheet (one page summary of the provisions of the Bill, which is used by members of the media as well as Members of Parliament)
- Second Reading Speech
- Clause Notes
- All the above on a disk for use in Hansard and in the Parliamentary Library

The package of documents must be delivered to the Parliamentary Liaison Officer in the days prior to the Bill being tabled in Parliament.

Political considerations can affect when the Bill is tabled. The Leader may request that an agency give priority to finalising a Bill to ensure that it is ready for a certain sitting date. Similarly, the agency can advise the Leader, either through the Office of the Secretary or the responsible Minister, whether a Bill has particular urgency.

Bills can be tabled in either House of Parliament but the vast majority are tabled in the House of Assembly (the Lower House) because the Government of the day is made up of the majority of members in that House. When a Bill is tabled in Parliament, it is considered to have been read for the first time, even though it is not actually read or considered at all. This is known as the First Reading. The Bill must sit in the House for at least two days, which includes the day it was tabled.

The Minister moves that the Bill be read a second time and he/she presents the Second Reading Speech. After the speech, the House considers the Bill, clause by clause, and all members present in the House can debate the provisions contained in the clauses. This is the Committee Stage. The members can agree to amend clauses but ultimately, the majority numbers will approve or reject them. At the end of the Committee Stage, the Bill is read for a third time and put to the House for approval.

Once the Bill is approved (passed) in the House, it is sent to the Legislative Council for consideration. The same principles apply with First, Second and Third Reading stages.

The Council can propose amendments to a Bill but those changes may not be approved and passed by the House. Once the Council has considered the Bill and is ready to return it to the House, it is

considered to have been read a third time (Third Reading).

Once returned to the House, the Bill is read for the third time (Third Reading). This is essentially the final approval process in the Houses of Parliament. The Bill is now ready to be sent to the Governor for Royal Assent. Royal Assent is the legal approval that must be given to give effect to the Act.

Timing of commencement of the Act

An Act includes a section that specifies when the provisions of the Act will take effect. There are a number of options available and consideration must be given to this during the drafting stage.

Provisions of the Act can commence on the date Royal Assent is given, on a specific date nominated in the Act (the date needs to be specified in writing), on a date to be specified later, by an Order of the Governor-in-Council, or a combination of those options. In some cases, the Act can specify that some provisions be taken to have commenced prior to Royal Assent.

See:

<http://www.parliament.tas.gov.au/tpl/Backg/LawsMade.htm> for a useful summary on how laws are made by the Tasmanian Parliament.

Associated Rules and Regulations

The Act may need to give authority to a variety of regulations such as by-laws, rules, orders and proclamations which will activate, expand on, support or give more detailed effect to its provisions. The power to make such legislation must be prescribed in the principal Act. The terms *Statutory Rule* and *Subordinate Legislation* apply, depending on the particular idiosyncrasies of the legislation.

Some examples of such legislation include:

- *Child Care (Fees) Regulations 2003*

- *Crown Lands (Shack Site) Regulations 2002*
- *Administrative Arrangements Order 2007*
- *Proclamation under the Public Health Act 1997*

Using the Child Care Act and the Child Care (Fees) Regulations as examples, we see that section 17(1) of the Act provides for a “prescribed licence fee” to be paid. The Regulations specify how much that fee is. It would be too unwieldy to include fees in the primary Act so they are specified in Regulations that can be amended (usually by the Executive Council, a Minister, or a Statutory Authority) without having to amend the Act (which must pass through Parliament and is a more complex process). In this case, the fees are expressed as “fee units” rather than dollars. Fee units are determined under the *Fee Units Act 1997* and under the provisions of that Act, they are regularly reviewed and changed as necessary. This results in fees increasing or decreasing without the relevant Act or Regulations having to be amended.

It is important that when scoping the development of legislation, consideration is given to whether any regulations will be required. Drafting primary legislation may be quite a straightforward exercise, but the preparation of associated regulations can be complex and time consuming, particularly for OPC. This is because it often requires a lot more detail.

The Office of Parliamentary counsel has issued guidelines for the preparation of such statutory rules. It is available at <http://www.dpac.tas.gov.au/divisions/opc>

The Treasury has issued a handbook about the preparation of subordinate legislation. It can be downloaded from Treasury’s website by searching in the Publications link and looking up “Subordinate Legislation Act 1992 – Administrative Handbook”.

Legislation Program Committee

The Legislation Program Committee (LPC) is made up of the Leader of Government Business, the Chief Parliamentary Counsel, the Parliamentary Liaison Officer and representatives from all agencies and the Cabinet Office. It meets prior to Parliamentary sittings to plan the timing of when legislation will be tabled in the House of Assembly.

Tips

- Refer to your agency's legislation preparation handbook in the early stages of the process. It provides comprehensive information and advice about how legislation is drafted and approved.
- Seek advice from staff with experience in developing legislation, both within your agency and across Government. This will improve your understanding of the risks likely to be encountered in developing the required legislation.
- Use the networks in your agency to manage the timing for Ministerial approvals and introduction of legislation into Parliament. It is particularly important to develop an effective working relationship with the Office of the Secretary and your agency's representative on the Legislation Program Committee.
- Be aware of the availability of your Minister to approve the final draft of the Bill and the Cabinet submission for the Bill's introduction into Parliament.
- Talk to the Cabinet Office about the timing for submitting the Bill to Cabinet for approval.
- Work with the Parliamentary Liaison Officer about the timing of the introduction of the Bill into Parliament.
- The title of both primary and secondary legislation is written in italics and does not have any commas, eg the *Vehicle and Traffic Act 1999* and the *Public Accounts Regulations 1999*. When an Act is first mentioned, it should be given its full title including the year. After that, it can be referred to as "the Act" or the name of the Act without the year. If you do not include the year, the name of the Act should not be written in italics. The title of a Bill is written in regular font and does not have any commas, eg, Marine Safety (Misuse of Alcohol) Bill 2006.

Where to get additional help

The Cabinet Office
Manager
4/15 Murray Street
Ph: 1300 135 513

Economic Policy Branch Department
of Treasury and Finance Treasury
Buildings
21 Murray Street
Ph: 1300 135 513

Parliamentary Liaison Officer
Office of the Leader of Government Business
Ph: 1300 135 513

www.parliament.tas.gov.au - This is the website for the Parliament of Tasmania. It has a number of useful resources relating to the legislation approval process, including a list of Bills that have been tabled in the House of Assembly and the Legislative Council and their progress from the date of introduction to the date the Bill is passed by both Houses.

www.thelaw.tas.gov.au - this is the website for all Tasmanian legislation, including subordinate legislation. It is also known as the EnAct website. It provides a consolidated list of all current legislation, including all amendments that have been passed over time. It is continually updated by OPC as Bills are passed by Parliament.

Further information and resources are available from
www.egovernment.tas.gov.au

Glossary

Bill	Legislation that is being drafted, or has been passed by Parliament, but has not yet received Royal Assent
Act	Legislation that has been passed by Parliament and has received Royal Assent
Instructing Officer	The departmental officer who provides instructions to the Office of Parliamentary Counsel about the contents and provisions of a Bill
Office of Parliamentary Counsel	The Office of Parliamentary Counsel is responsible for drafting legislation. The Office provides this service primarily for the Government of the day, but when resources allow, it may also draft legislation for non-government members of the House of Assembly or the Legislative Council.
Royal Assent	The legal approval given by the Governor to an Act. Notice of Royal Assent is published in the Government Gazette.
Subordinate Legislation	The term given collectively to statutory rules used to implement and administer the requirements of an Act. It includes regulations, rules, by-laws, orders and proclamations.

Acknowledgements

This Fact Sheet contains elements of the *Tasmanian Government Project Management Guidelines* developed by the Department of Premier and Cabinet.

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