



Cabinet Paper Drafting Guide

November 2009

FOREWORD

The *Cabinet Paper Drafting Guide* provides detailed guidance on the content, quality and formatting requirements for Cabinet papers.

In supporting the Cabinet's decision making, officials have a fundamental obligation to ensure the distillation of issues and arguments presented in Cabinet papers is comprehensive, robust and rigorous. It is crucial that we consult our colleagues in the Australian Capital Territory Public Service, and on occasion more broadly, to ensure the Cabinet is in a position to take decisions in the knowledge that the information in front of it is correct, ideas have been tested thoroughly, options weighed-up thoughtfully, and consequences explored extensively.

It is also crucial that Cabinet business is conducted in an orderly and timely fashion. Not only is it important that issues are brought forward for consideration at the right time and while the Cabinet has genuine options available to it, it is also crucial that the timeline for lodgement of Cabinet papers is followed strictly. By definition, matters going to the Cabinet for decision have a significant impact on Canberra and its citizens. It is therefore only reasonable that ministers have time to consider Cabinet papers, and receive briefings from their offices and agencies before they are asked to make decisions.

I encourage officials supporting the work of Cabinet to follow both the letter and the spirit of the guidance set out in the *Cabinet Handbook* and this companion *Cabinet Paper Drafting Guide*. I also encourage them to seek the advice and assistance of the Director, Cabinet and Intergovernmental Relations, the Cabinet Secretariat and their agency's Cabinet Liaison Officer in the discharge of this important function.

Andrew Cappie-Wood
Secretary to Cabinet
December 2008

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TABLE OF CONTENTS

| | |
|---|--------------|
| 1. GENERAL PRINCIPLES | 4 |
| 2. CONSULTATION | 5 |
| Amongst Officials | 5 |
| Exposure Drafts | 5 |
| Final Agency Comments | 6 |
| With the Community and External Bodies | 7 |
| 3. TEMPLATES AND TIMELINES | 9 |
| Circulation Timelines | 10 |
| 4. CABINET SUBMISSIONS | 11 |
| General Editorial Guidelines | 11 |
| Supporting Argument..... | 11 |
| Financial Implications | 12 |
| Treasurer’s Advance and Act of Grace Authorisations | 13 |
| Social Impact | 13 |
| 5. LEGISLATION PROPOSALS | 17 |
| Government Legislation..... | 17 |
| First Pass - Policy Approval and Agreement to Drafting | 17 |
| <i>Human Rights Act 2004</i> | 17 |
| Second Pass - Bill for Presentation | 18 |
| Additional Policy Approval | 18 |
| Exceptions to the Normal Bills Process..... | 18 |
| Exposure Draft Bills | 19 |
| Private Members’ Bills | 20 |
| 6. INFORMATION PAPERS, ASSEMBLY BUSINESS PAPERS, UPDATES AND | |
| CORRECTIONS | 21 |
| General Editorial Guidelines | 21 |
| Information Papers | 21 |
| Assembly Business Papers | 22 |
| Ministerial Statements | 22 |
| Second Pass - Bill for Presentation | 22 |
| Updates and Corrections | 23 |
| 7. APPOINTMENTS | 24 |
| General Editorial Guidelines..... | 24 |
| Appointments For Consideration | 24 |
| 8. PRESENTATIONS | 25 |
| 9. STANDARD RECOMMENDATIONS | 26 |
| 10. FORMATTING CHECKLIST | 30 |
| 11. KEY CONTACTS IN CHIEF MINISTER’S DEPARTMENT | 31 |

1. GENERAL PRINCIPLES

1.1 The Cabinet meets regularly to discharge the critical coordination, strategic policy setting and decision making functions that are central to the operations of the Australian Capital Territory (ACT) Government.

1.2 Each year, the Cabinet will typically make hundreds of decisions on matters covering the ACT's dealings with the Commonwealth and other jurisdictions, the Budget, appointments to boards and committees, the government's legislation program in the Legislative Assembly, major capital works and critical service delivery to the people of the ACT.

1.3 The role of officials in supporting the Cabinet is crucial to the smooth functioning of the system, and ultimately to the quality of Cabinet's decision making. For the system to work at its best, Cabinet papers must:

- a) set out comprehensive and rigorous arguments for and against proposed courses of action;
- b) be concise and use lucid language; and
- c) be timely, not only in relation to when they are brought forward, but also in allowing ministers time to digest them and receive briefing from their offices and agencies (including departments) before they are asked to make decisions.

2. CONSULTATION

AMONGST OFFICIALS

2.1 Thorough and genuine consultation lies at the heart of developing rigorous, accurate and comprehensive Cabinet papers. It also aids the settling of an agreed factual basis for Cabinet's deliberations. Consultation also ensures that differences are resolved in advance of Cabinet consideration, or are clearly identified and set out in a way that assists sound decision making.

2.2 Agencies (including departments) with an interest in a proposal being prepared for Cabinet must be given ample opportunity to contribute to its development. Agencies should allow adequate time for consultation during the development of a draft Cabinet paper. This minimises the potential for major disagreements or surprises at the formal lodgement stages.

2.3 Agencies must consult Policy Division in the Chief Minister's Department (CMD) and the Department of Treasury (Treasury) on all Submissions, Information Papers and Assembly Business Papers seeking second pass approval for legislation. As central agencies, CMD and Treasury have a particular role in facilitating the development of comprehensive and coherent whole-of-government policy advice.

2.4 CMD's Policy Division supports the Chief Minister and Cabinet through the provision of coordinated policy advice. The functions of the Division include consulting with agencies on the policy content and across-government implications of proposed Submissions, providing advice to the Chief Minister on each Submission considered by Cabinet, monitoring and providing advice on the implementation of Government policies and initiatives, and providing advice on the Government's forward policy agenda.

2.5 Consultation with the Office for Women must occur on all proposed Appointment Papers prior to lodgement. Drafts of Appointment Papers are not required to be circulated to all agencies.

2.6 Draft Assembly Business Papers (addressing bills for presentation to the Assembly) are not generally circulated before lodgement.

2.7 Corrections and updates to lodged papers may require circulation as drafts or for final agency comment. Advice should be sought from the Cabinet Secretariat.

EXPOSURE DRAFTS

2.8 Except where approval is given by the Director, Cabinet and Intergovernmental Relations in accordance with paragraph 2.29 below, every Submission or Information Paper for Cabinet or a Committee must be circulated at least once as an exposure draft to all agencies, for a minimum of 5 working days. This requirement does not replace the obligation outlined above on officials to engage their colleagues in other agencies early in the drafting process, but does ensure all agencies have the opportunity to provide comment on near-to-final draft papers, or to indicate they do not wish to do so.

2.9 Along with facilitating consultation and the provision of comprehensive arguments to the Cabinet, the exposure draft circulation allows agencies to make drafting comments on areas of the paper where the supporting argument is deficient, editorial suggestions, or to highlight other issues that should be brought to the Cabinet's attention.

2.10 Such exposure draft comments also provide agencies with the opportunity to indicate if they wish to provide final agency comments.

2.11 Chief executives may circulate exposure drafts of Submissions or Information Papers on behalf of ministers.

2.12 Exposure draft comments should be provided in electronic form using the secure document exchange maintained by the Cabinet Secretariat, via cabinet liaison officers (CLOs).

2.13 Any emails regarding cabinet matters must contain the words 'Cabinet in Confidence' in the subject title line. Message settings sensitivity (under 'options') should be set to Confidential. Draft cabinet papers must not be attached. Any other attachments should be password protected.

2.14 Drafting agencies should provide a response to agencies providing comments on how they will be incorporated, or why they will not be, and work collaboratively to resolve any outstanding concerns. A written response in table form may assist commenting agencies at the final agency comment stage. In no circumstances are drafting or editorial comments to be attached to the final Cabinet paper.

2.15 The Cabinet Secretariat will provide detailed guidance on the framing of recommendations, and on compliance with the requirements of the *Cabinet Handbook* and *Cabinet Paper Drafting Guide* on all exposure drafts.

2.16 The agreement of the Director, Cabinet and Intergovernmental Relations must be sought to any proposal for a more limited circulation of papers.

FINAL AGENCY COMMENTS

2.17 Final agency comments are made by CMD, Treasury and other agencies that indicate an interest in doing so at the exposure draft stage. These comments are a brief, clear and concise statement of the agency's position on the recommendations. Positions advanced in final agency comments foreshadow lines that agencies will take in briefing their minister for Cabinet. In this regard, they facilitate robust discussion by avoiding surprises in the Cabinet Room, and allowing ministers to receive briefing from their offices and agencies in response to issues raised.

2.18 Final agency comments must be included **unamended and in full** in the table immediately after the recommendations. They should be approved at an appropriately senior level before they are provided to the drafting agency.

2.19 Final agency comments should only address matters of substance including significant risks, policy conflicts, or administrative consequences for the agency

resulting from the course of action recommended.

2.20 Final agency comments should be provided in electronic form using the secure document exchange system maintained by the Cabinet Secretariat, via agency CLOs.

2.21 The difference between the first lodged and the final Cabinet paper is the addition of the final agency comments.

2.22 Agencies do not provide final agency comments on Cabinet papers they have drafted, but would do so on a paper brought forward by their minister in another capacity supported by another agency.

2.23 Drafting agencies do not provide responses to final agency comments in the cabinet paper. Where final agency comments are of significant concern, consideration may be given to withdrawing and redrafting the Cabinet paper. Advice on this procedure should be sought in relevant circumstances from the Director Cabinet and Intergovernmental Relations.

2.24 Transmission of the compiled set of final agency comments must be in electronic form, from the drafting agency CLO to the Cabinet Secretariat using the secure document exchange.

2.25 The Cabinet Secretariat will not accept lodgement of a Cabinet paper unless all final agency comments have been included.

WITH THE COMMUNITY AND EXTERNAL BODIES

2.26 Properly conducted community engagement demonstrates the transparency and accountability of government processes and help to build a cooperative and responsive relationship between the Government and the community. Cabinet should be informed of stakeholder views and likely community reaction to policy proposals.

2.27 In consulting bodies or individuals outside the ACT Government, however, particular regard must be paid to maintaining Cabinet confidentiality. While issues and options should be canvassed and feedback sought, Cabinet papers must not be shared. Such consultations with the community should not occur without Cabinet or ministerial endorsement of the scope and timing.

2.28 A Community Engagement Strategy can be developed outlining the timing, scope and objectives of the engagement. Feedback to participants on the outcomes of the consultation is required. More information on community engagement approaches is available from the ACT Government Community Engagement website and manual www.communityengagement.act.gov.au

APPROVAL TO SKIP THE EXPOSURE DRAFT STAGE

2.29 In the following circumstances, the approval of the Director Cabinet and Intergovernmental Relations can be sought by the drafting agency to skip the Exposure Draft stage:

- a) where the paper has been developed by an interdepartmental committee or working group;
- b) where the content has been provided by affected agencies;
- c) where the paper responds to a rapidly emerging issue **and** there has been close, but informal, consultation among affected agencies.

2.30 Drafters contemplating this approach should make early contact with the Director Cabinet and Intergovernmental Relations to discuss the proposed timeline and approach. Drafters must also ensure CMD and Treasury, as well as all affected agencies, are provided with proper opportunity to comment on the development of the Cabinet paper, and that senior officials in affected agencies are comfortable with the proposals in the Cabinet paper.

2.31 Drafters should nevertheless recognise the inherent risk, notwithstanding prior consultations, that a paper that goes straight to first lodgement may be the subject of highly critical or complex final agency comments that might necessitate it being held over for further development in accordance with the procedures outlined at paragraph 2.23.

3. TEMPLATES AND TIMELINES

3.1 Cabinet Papers fall into four categories and are prepared on one of three templates.

| Paper | Reasons Include | Timeframe | Forum | Template |
|---|--|---|--|--------------------------|
| <p>Cabinet Submission</p> <p>from ministers</p> | <p>agree a course of action</p> <p>setting policy</p> <p>first pass approval for legislation</p> <p>negotiating positions for and agreements to Intergovernmental Agreements (IGAs)</p> <p>Government position on a Private Members Bill</p> | <ul style="list-style-type: none"> exposure draft must be circulated at least once to all agencies for not less than five working days final Submission first lodged (for final agency comments) with the Cabinet Secretariat not less than ten working days before Cabinet consideration is forecast final lodged with the Cabinet Secretariat not less than five working days before Cabinet consideration is forecast | <p>Cabinet</p> <p>Budget</p> <p>SEMC</p> <p>MAC</p> <p>CIC</p> | <p>Submission</p> |
| <p>Appointments</p> <p>from ministers</p> | <p>endorse appointments to statutory offices, boards or committees</p> | <ul style="list-style-type: none"> final lodged with the Cabinet Secretariat not less than five working days before Cabinet consideration is forecast | <p>Cabinet</p> | <p>Appointment</p> |
| <p>Assembly Business</p> <p>from ministers</p> | <p>approve Ministerial Statements</p> <p>second pass approval for legislation</p> | <ul style="list-style-type: none"> second pass legislation: first lodged (for final agency comments) with the Cabinet Secretariat not less than ten working days before Cabinet consideration is forecast Statements not requiring final agency comments lodged not less than five working days before Cabinet consideration is forecast | <p>Cabinet</p> | <p>Information Paper</p> |
| <p>Information Paper</p> <p>from ministers or chief executives</p> | <p>provide information</p> <p>correct lodged papers</p> <p>update lodged papers</p> | <ul style="list-style-type: none"> exposure draft circulated at least once to agencies for not less than five working days final Information Paper first lodged (for final agency comments) with the Cabinet Secretariat not less than ten working days before Cabinet consideration is forecast final lodged with the Cabinet Secretariat not less than five working days before Cabinet consideration is forecast out of session Information Papers circulated by agreement of Chief Minister | <p>Cabinet</p> <p>Budget</p> <p>SEMC</p> <p>MAC</p> <p>CIC</p> <p>Out of Session</p> | <p>Information Paper</p> |

CIRCULATION TIMELINES

3.2 Submissions and Information Papers for Cabinet or a Committee should be circulated according to the following nominal timeline.

| WEEK | Monday | Tuesday | Wednesday | Thursday | Friday |
|------|---|---------------------|---|----------|--|
| 1 | exposure draft circulated to all agencies for at least 5 working days | | | | agency comments received on exposure draft |
| 2 | | | | | final approved by minister |
| 3 | Submission or information papers first lodged at least 10 working days before Cabinet | | final agency comments provided 3 days after first lodged papers | | |
| 4 | Final papers lodged at least 5 working days before Cabinet | papers to ministers | | | |
| 5 | CABINET meets | | | | |

3.3 The minimum mandatory timelines are:

- a) exposure drafts must be circulated to all agencies at least once for a minimum of 5 working days;
- b) final submissions, information papers and certain assembly papers (for second pass legislation and ministerial statements that involve more than one agency) must be first lodged (after signing by the minister) a minimum of 10 working days prior to cabinet consideration;
- c) agencies must have a minimum of 3 full working days to provide final agency comments on first lodged final papers; and
- d) final papers (including agency final comments) are required by the Cabinet Secretariat no later than noon 5 working days prior to Cabinet consideration.

3.4 Requests to alter this timeline in exceptional circumstances should be made in writing to the Director, Cabinet and Intergovernmental Relations (CIGR). Ministers seeking to lodge final papers less than 10 working days prior to Cabinet consideration must write to the Chief Minister, copied to the Director, CIGR.

3.5 If significant final agency comments are received and policy content amendment is required, drafting agencies should consult the Cabinet Secretariat on a possible delay to Cabinet consideration.

4. CABINET SUBMISSIONS

GENERAL EDITORIAL GUIDELINES

4.1 The Cabinet Secretariat will reject Cabinet papers that do not comply with the requirements of the Cabinet Handbook and Cabinet Paper Drafting Guide.

4.2 All components of the Cabinet Submission template must be completed.

4.3 The *Cabinet Paper Drafting Guide* formatting checklist must be followed.

4.4 The cover page is intended to provide ministers with a comprehensive overview of the matters for decision. Drafters should distil the key issues for ministers and make clear why and what, the Cabinet is being asked to decide. Recommendations must be self contained and set out in detail what the Cabinet is being asked to agree to.

SUPPORTING ARGUMENT

4.5 The supporting argument section must be self-contained and cover all the issues on which decisions are sought. Where there is agency disagreement on core issues, the competing views should be canvassed in the body of the submission. All elements of the recommendations must be supported by discussion in this section.

4.6 Headings and sub headings should be used to aid ministers' reading of the Submission.

4.7 The supporting argument should:

- a) set out why Cabinet is being asked to make this decision;
- b) advance an agreed basis of fact on which discussion may proceed;
- c) concisely distil essential issues;
- d) display a logical development of information and evidence based argument;
- e) identify the costs and benefits of the proposal;
- f) address realistic policy options and their implications;
- g) identify contentious issues or points of disagreement; and
- h) address likely community or stakeholder reaction.

4.8 Every Submission must provide details of any human rights implications, including whether the proposal is consistent with the *Human Rights Act 2004* (the Human Rights Act).

4.9 Information essential to Cabinet's deliberations that is not able to be accommodated in the body of the Submission can be provided in attachments.

FINANCIAL IMPLICATIONS

4.10 Submissions must clearly state on the cover page the Budget impact of the recommendations for the current Financial Year and each of the four subsequent financial years.

4.11 The figures shown in the table on the cover page indicate the net Budget impact of agreement to the recommendations. The gross financial impact must be presented in a table under the Financial Implications heading. This table should, where relevant, include entries for recurrent expenditure, offsetting savings, revenue to the government and capital.

4.12 The Financial Implications section within the Submission should address (as appropriate):

- a) the source of the funding for the initiative, including where the initiative is to be funded from the Budget, why offsetting savings have not been identified;
- b) why a proposal cannot be held off until for consideration in the Budget context;
- c) whether there is an impact on cross border service delivery including possible cost-shifting; and
- d) the financial impacts of not proceeding.

4.13 Treasury's agreement must be obtained to the costings of proposals before a Submission can be first lodged with the Cabinet Secretariat. This agreement assures Cabinet that the stated Budget impact of a proposal has been verified. It does not include agreement to the policy itself.

4.14 Agencies must allow sufficient time for Treasury to assess the financial implication of proposals, and should commence discussions as early as possible in the drafting process. It is preferable to include at least a preliminary Treasury assessment in the exposure draft. Agencies and Treasury should be mindful of the required lodgement timeline for Cabinet consideration in settling costings.

4.15 Proposals that involve a commitment of additional funding should not be brought forward outside the Budget context unless there is an urgent and compelling case for earlier consideration. In such circumstances, the responsible minister must seek the prior agreement of the Chief Minister, in writing, to the matter being brought forward.

4.16 Proposals not supported in a previous Budget round should not be brought forward for reconsideration outside the Budget process. If a minister believes that there is an urgent and compelling case for consideration for such proposals, the Submission must clearly identify that it was not supported in a previous Budget, and spell out the case for reconsideration. The minister must seek the prior agreement of the Chief Minister, in writing, to the matter being reconsidered.

4.17 Proposals that do not identify a source of funding, but state that the funding will be sought through a future Budget proposal will not be accepted.

TREASURER'S ADVANCE AND ACT OF GRACE AUTHORISATIONS

4.18 Cabinet Submissions should not recommend funds be made available from the Treasurer's Advance or authorised as Act of Grace payments. Such decisions are a matter for the Treasurer.

SOCIAL IMPACT

4.19 The social impact of the recommendations must be spelt out on the cover page, and addressed as part of the supporting argument. The impact of the recommendations on the community as a whole should be spelt out. This would include differential or adverse impacts on particular elements of the community. Relevant groups might include women, people with a disability, people from a culturally or linguistically diverse background, Aboriginal and Torres Strait Islander people, and children and young people.

4.20 The following paragraphs provide a guide to potential social impacts that may be relevant, but it is unlikely that all of these potential impacts will be materially significant in relation to a single proposal.

4.21 In assessing any policy it is necessary to consider how the proposal will impact on the delivery and accessibility of government services. In particular, agencies should consider whether the policy would:

- a) affect the level or quality of public amenities or the community's ability to access public services;
- b) alter the distribution of the costs of providing, and/or benefits from using, government services; and/or
- c) improve health, safety or housing outcomes.

4.22 A wide range of research highlights the importance of employment and income for social wellbeing. A key component of assessing the social impact of a policy option is to consider whether the policy is likely to improve the capacity of ACT residents to find employment and generate income. In doing this agencies should consider whether the proposed policy would:

- a) affect employment levels or the ability of people to gain employment;
- b) impact on income levels and distribution;
- c) affect asset values; and/or
- d) impact on opportunities to establish businesses.

4.23 The distribution of government services also has implications for social welfare. In developing policies, agencies should consider the extent to which they will:

- a) impact on particular racial, gender, or age groups;
- b) impact on disadvantaged groups within the community; and/or
- c) encourage social engagement across the community.

4.24 The social impact of policy extends to the direct delivery of services. The amount of uncertainty and risk faced by individuals also impacts on their wellbeing. Care should be taken to consider any benefits that accompany an increase in risk, such as greater choice or the potential for higher rewards. Agencies should examine the extent to which policy proposals:

- a) affect the level of risk faced by the government and the community;
- b) change the complexity of managing daily activities; and/or
- c) provide mechanisms to manage risk and complexity.

4.25 Drafters should consult the Department of Disability, Housing and Community Services; Chief Minister's Department and Department of Treasury (via the respective CLO) on the social impact of proposals early in the drafting process.

ENVIRONMENTAL IMPACT

4.26 Within ACT legislation the definition of the environment is very broad. Impacts that might need to be considered are therefore also broad in nature. The *Environment Protection Act 1997* provides the definition of the **environment** as:

- a) the components of the earth, including soil, the atmosphere and water;
- b) any organic or inorganic matter and any living organism;
- c) human made or modified structures and areas;
- d) ecosystems and their constituent parts, including people and communities;
- e) the qualities and characteristics of places and areas that contribute to their biological diversity and ecological integrity, scientific value, and amenity;
- f) the interactions and interdependencies within and between the things mentioned in paragraphs (a) to (e);
- g) the social, aesthetic, cultural and economic conditions that affect, or are affected by, the things mentioned in paragraphs (a) to (e).

4.27 Consistent with the Government's strong commitment to ecologically sustainable development, the environmental impact of the recommendations must be spelt out on the cover page and addressed as part of the supporting argument. **Ecologically sustainable development** is also defined in the *Environment Protection Act 1997* and means the effective integration of economic and environmental considerations in decision-making processes and to be achievable through implementation of the following principles:

- a) the precautionary principle, namely, that if there is a threat of serious or irreversible environmental damage, a lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
- b) the inter-generational principle, namely, that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
- c) conservation of biological diversity and ecological integrity; and
- d) improved valuation and pricing of environmental resources.

4.28 To support sound decision-making these considerations must be fully integrated into the proposal. This includes consideration of environmental impacts at an early stage to avoid or mitigate environmental impacts at later stages of implementation and to realise opportunities to promote positive environmental outcomes.

4.29 In addressing potential environmental impacts of proposals agencies should consider:

- a) how best to optimise positive environmental effects and minimise or mitigate negative environmental effects;
- b) potential cumulative environmental effects;
- c) the balance between social, economic and environmental impacts; and
- d) align proposals to whole-of-government policy agendas and strategic settings.

4.30 The level of the analysis required should be commensurate with the level of anticipated effect. Impacts should be considered throughout the proposal development process. A thorough analysis of potential impacts early in the process will provide for a more informed decision, and early identification of issues.

4.31 Where an assessment confirms areas of significant environmental concerns, possible intervention strategies and options should be detailed to feasibly address these concerns. The costs and benefits associated with these strategies should be identified, valued or ranked and then accounted for in the assessment of financial impacts.

4.32 Consideration of the environmental impacts should be outlined in the Cabinet submission where the proposal:

- a) has outcomes that impact on greenhouse gas emissions and/or ability of the Territory to adapt to climate change;
- b) has outcomes that might affect natural resources, either positively or negatively. Natural resources include air, land or water, biodiversity and native vegetation;
- c) has outcomes likely to affect, either positively or negatively, the achievement of an environmental quality goal. Environmental quality goals include noise, waste to landfill, improved air, land or water quality, protection of endangered species etc as identified in the Government's strategies and plans; and/or
- d) involves a new process, technology or delivery arrangement with important environmental implications.

4.33 Drafters should contact the Ministerial and Corporate Branch of the Department of the Environment, Climate Change, Energy and Water, for referral to appropriate areas within the Department, early in the development of proposals that might have a potential impact on the environment.

5. LEGISLATION PROPOSALS

GOVERNMENT LEGISLATION

5.1 Proposals for government legislation are considered in two stages:

- a) in a Submission seeking agreement to a policy position and the drafting of legislation (the first pass); and
- b) in an Assembly Business Paper seeking agreement to the presentation of a Bill (the second pass).

5.2 Where a bill will affect legislation administered by another agency, the lead agency should ensure that appropriate consultation occurs before and during the drafting of the bill. The Parliamentary Counsel's Office (PCO) should also be consulted as early as possible.

5.3 More detailed guidance on the process for preparing legislation for consideration by Cabinet is set out in the *Legislation Handbook*.

FIRST PASS - POLICY APPROVAL AND AGREEMENT TO DRAFTING

5.4 Cabinet's policy approval for the preparation of new or amending legislation must be sought in a Submission, and the Submission should seek Cabinet agreement to all the policy issues to be addressed in the proposed legislation.

5.5 Proposals should be well developed before first pass approval is sought. Submissions must include a statement that PCO has been consulted and agreed that the proposal is sufficiently developed for drafting to begin. Agencies should allow sufficient time for consultation with PCO.

5.6 Submissions seeking first pass approval may also require a Regulatory Impact Statement (RIS). Any RIS should be prepared in consultation with Treasury and an Executive Summary attached to the Submission.

Human Rights Act 2004

5.7 The Human Rights Act affects the operation of all legislation in the ACT by:

- a) imposing on officials a statutory obligation to take account of human rights principles when interpreting all ACT primary and subordinate legislation; and
- b) institutionalising consideration of fundamental civil and political rights during the development of law and policy.

5.8 Under the Human Rights Act, the Attorney General has a statutory obligation to provide a compatibility statement in writing to the Assembly for each government bill, stating that the bill is consistent with the Human Rights Act, or how it is not consistent with rights protected under that Act.

5.9 All Submissions seeking first pass approval, and Assembly Business papers proposing presentation, must address compatibility with the Human Rights Act. Advice should be sought from the Legislation and Policy Branch in the Department

of Justice and Community Safety (JACS) prior to the first pass stage to ensure early identification of potential compatibility issues.

SECOND PASS - BILL FOR PRESENTATION

5.10 Once a bill has been drafted, its presentation in the Assembly is considered by Cabinet in an Assembly Business Paper. In most cases, the recommendation will simply be that the bill be presented.

5.11 There may, however, be occasions where further policy approval is required, and explicit recommendations are made. A PCO memorandum is required to state whether the bill gives effect to the previous approval. Where there are significant matters not covered by the earlier approval, the memorandum will normally point this out. A PCO memorandum is not required if the further policy approval would negate or otherwise displace the earlier approval.

5.12 The following documents must be attached to an Assembly Business Paper proposing the presentation of a bill:

- (a) the Explanatory Statement;
- (b) a memorandum from PCO setting out whether the bill gives effect to the policy approval; and
- (c) a memorandum from JACS setting out whether the Bill is compatible with the Human Rights Act.

5.13 A copy of the bill should be provided to the Cabinet Secretariat for distribution to ministers on request.

5.14 While Assembly Business Papers seeking second pass approval of legislation do not require exposure draft circulation, they are first lodged 10 working days prior to Cabinet consideration to allow for final agency comments.

ADDITIONAL POLICY APPROVAL

5.15 Submissions seeking first pass approval should recommend Cabinet agree minor matters of policy or approach be settled by the responsible minister with the Chief Minister.

5.16 A Submission at the second pass stage may however, be warranted in certain circumstances. These could include where there has been a change in particular circumstances that may have been influential in Cabinet's initial agreement to the policy, or where the minister feels that a particular handling strategy is required in the Assembly.

EXCEPTIONS TO THE NORMAL BILLS PROCESS

5.17 There are three exceptions to the process outlined above:

- a) drafting of legislation may be authorised by the Chief Minister;

- b) minor uncontroversial policy changes and technical amendments are brought to Cabinet in a consolidated Submission proposing a Statute Law Amendment Bill (SLAB); or
- c) minor and technical amendments to legislation administered by the Justice and Community Safety Portfolio are brought to Cabinet in a consolidated Submission proposing a JACS Legislation Amendment Bill.

Chief Minister's Approval

5.18 In exceptional cases (usually involving matters of some urgency), the Chief Minister may approve the drafting of legislation following a written request (with inclusions as set out in the Legislation Handbook) by a minister. In this case, a Submission is required at the second pass stage.

Technical Amendments Program

5.19 The technical amendments program allows for legislative changes of a minor or technical nature to be dealt with on a regular basis, either through inclusion in a SLAB or, where appropriate, in schedules of technical amendments in other bills.

5.20 Amendments which meet the criteria for inclusion in the technical amendments program do not require first pass approval from Cabinet. Advice in this regard should be sought from either the PCO or the Cabinet Secretariat.

5.21 Amendments proposed under Schedule 1 and/or 4 of a SLAB require the Chief Minister's approval. Schedule 1 deals with minor policy changes proposed by government agencies. Schedule 4 deals with repeals of obsolete or unnecessary legislation proposed by government agencies or PCO. Schedules 2 and 3 are technical amendments proposed by the PCO and have standing Cabinet in-principle approval.

5.22 SLABs are approved by Cabinet in a one pass process in a Submission from the Attorney-General.

Justice and Community Safety Legislation Amendment Bill

5.23 Justice and Community Safety Legislation Amendment Bills relate to minor and uncontroversial amendments to laws administered by JACS.

5.24 Such bills are approved by Cabinet in a one pass process in a Submission from the Attorney-General.

EXPOSURE DRAFT BILLS

5.25 In normal circumstances, a bill is first made public when it is presented in the Assembly. In some cases, however, it may be desirable for the community or interest groups to be given an opportunity to comment on a formal exposure draft of the bill.

5.26 In such cases, the responsible minister should seek Cabinet's agreement to release an exposure draft of the bill, as part of the first pass approval.

PRIVATE MEMBERS' BILLS

5.27 Cabinet agreement is required for government positions on Private Members' Bills. A Submission should be prepared as soon as possible and, in any event, within three months of a Private Member's Bill being presented in the Assembly.

6. INFORMATION PAPERS, ASSEMBLY BUSINESS PAPERS, UPDATES AND CORRECTIONS

GENERAL EDITORIAL GUIDELINES

- 6.1 The Cabinet Secretariat will reject Cabinet papers that do not comply with the requirements of the *Cabinet Handbook* and *Cabinet Paper Drafting Guide*.
- 6.2 All components of the template must be completed.
- 6.3 The side bar on the cover page (which reads INFORMATION PAPER in the template) must be changed to read ASSEMBLY BUSINESS, UPDATE or CORRECTION as necessary.
- 6.4 The *Cabinet Paper Drafting Guide* formatting checklist must be followed.
- 6.5 The cover page is intended to provide ministers with an overview of the matters for decision. Drafters should distil the key issues for ministers and make clear the purpose and scope of the document.

INFORMATION PAPERS

- 6.6 Information Papers are used to provide information to the Cabinet in response to a direct request, where a minister wishes to formally inform colleagues of portfolio matters, or to alert Cabinet to emerging issues that do not yet require a decision.
- 6.7 In addition to ministers, agency chief executives can bring forward Information Papers. This approach will be most often used for regular reporting the Cabinet has requested, or for reports on the activities of officials including, for example, in working groups.
- 6.8 Information Papers must only recommend Cabinet note information, and must not be used to seek the Cabinet's agreement to a course of action, or endorsement of actions taken. It is appropriate, however, for an Information Paper to propose Cabinet note action taken by a minister within the scope of their portfolio responsibilities.
- 6.9 Information Papers are circulated to all agencies at least once as an exposure draft for at least 5 working days to all agencies. They are provided to CMD, Treasury and any other agency that expresses interest in providing final agency comments at the first lodgement stage.

Out of Session consideration of Information Papers

- 6.10 The Chief Minister may agree to the circulation of Information Papers for consideration by Cabinet out of session. This would most often occur in circumstances where the material canvassed is uncontroversial and responds to a request by the Cabinet. Information papers for out of session consideration must be circulated as exposure drafts and first lodged with the Cabinet Secretariat in accordance with the usual timeframes and processes. CLOs should advise the Cabinet Secretariat if ministers propose certain Information Papers be considered out of session.

6.11 Out of session Information papers are provided to ministers by the Cabinet Secretariat.

6.12 Instead of the final Information Paper being listed for consideration and included in ministers' Cabinet folders, only the draft Cabinet Decision is included in the folders approximately two weeks after the Information Paper is circulated.

ASSEMBLY BUSINESS PAPERS

6.13 The Information Paper template is also used for consideration of Ministerial Statements and second pass approval of legislation. In this case, the side bar on the cover page is changed to read Assembly Business.

6.14 While Assembly Business Papers are not required to be circulated as exposure drafts, final agency comments are still required on second pass legislation proposals to ensure other interested agencies have adequate opportunity to provide comments on the bill prior to the final lodgement of the paper with the Cabinet Secretariat.

6.15 Ministerial Statements that do not involve more than one agency, do not require final agency comments and may be lodged five working days before Cabinet consideration is forecast.

6.16 Assembly Business Papers must not be used to seek agreement to new policy (including through the content of proposed Ministerial Statements).

Ministerial Statements

6.17 Ministers proposing to make a Ministerial Statement in the Assembly must seek Cabinet's agreement to the timing and content through an Assembly Business paper.

Second Pass - Bill for Presentation

6.18 Cabinet considers the presentation of bills in an Assembly Business Paper. In most cases, the recommendation will simply be that the bill be presented.

6.19 There may, however, be occasions where further policy approval is required, and explicit recommendations need to be made. In this case, Cabinet should consider the policy matters and presentation of the bill, in a Submission.

6.20 The following documents must be attached to an Assembly Business Paper proposing the presentation of a bill:

- a) the Explanatory Statement;
- b) a memorandum from Parliamentary Counsel's Office (PCO) setting out whether additional policy approval is required; and
- c) a memorandum from the Department of Justice and Community Safety (JACS) setting out whether the Bill is compatible with the Human Rights Act.

6.21 A copy of the bill should be provided to the Cabinet Secretariat for

distribution to ministers on request.

UPDATES AND CORRECTIONS

6.22 In the event that a lodged paper requires correction or additional essential supplementary information needs to be provided to the Cabinet, the Cabinet Secretariat should be consulted immediately on the appropriate procedures.

6.23 While Updates can stand alone, Corrections should provide complete replacement pages to the original paper (with new material sidelined). If more than one correction is required, it may be preferable to withdraw the original paper and re-lodge it.

6.24 Update and Correction Papers are not usually circulated before lodgement with the Cabinet Secretariat.

6.25 Where Update and Correction Papers are for information only, chief executives may provide these papers on behalf of ministers.

7. APPOINTMENTS

GENERAL EDITORIAL GUIDELINES

- 7.1 The Cabinet Secretariat will not accept Cabinet papers that do not comply with the requirements of the *Cabinet Handbook* and *Cabinet Paper Drafting Guide*.
- 7.2 All components of the template must be completed.
- 7.3 The *Cabinet Paper Drafting Guide* formatting checklist must be followed.

APPOINTMENTS FOR CONSIDERATION

- 7.4 Proposed appointments to ACT Government statutory offices, boards, or committees are brought to Cabinet by the responsible minister for endorsement. ACT nominations to inter-jurisdictional committees or bodies should also be brought to Cabinet.
- 7.5 The consideration of appointments by the Cabinet is a consultative rather than determinative process. The power to make appointments that are, as a matter of information or government coordination, considered by Cabinet is in many cases determined in legislation, and rests with the ACT Executive constituted formally, or with individual ministers.
- 7.6 Before Appointment Papers are lodged with the Cabinet Secretariat, it should be confirmed with the proposed appointee that they are willing to accept the position and likely terms of appointment.
- 7.7 While proposed appointments are normally brought to Cabinet in an Appointment Paper, they may also be brought to Cabinet in a Submission where they are closely associated with other issues requiring a Cabinet decision.
- 7.8 The Office for Women must be consulted on all proposed appointments in light of the commitment to achieving equal representation of women on all ACT Government Boards and Committees is achieved. The Office for Women may recommend the development of strategies to improve the representation of women on a particular board. Consultation should therefore occur at the earliest possible stage in the appointment process.
- 7.9 The outcomes of the consultation with the Office for Women must be reported to Cabinet on the Appointment paper.
- 7.10 Brief statements of relevant experience from each candidate must be attached to the Appointment Paper template. Statements are not required for ACT Government officials being appointed to boards or committees, or for ex-officio appointments. In such cases, just the name, gender, current position and diversity data (if self identified) should be provided.
- 7.11 The ACT Government *Boards and Committees Handbook* provides detailed guidance on making and managing appointments to ACT Government Boards and Committees.

8. PRESENTATIONS

8.1 The making of audio/visual presentations to the Cabinet is strongly discouraged.

8.2 In certain circumstances (especially for matters involving plans, maps, or large amounts of data that might be presented graphically), a presentation may, however, aid Cabinet's consideration. In such circumstances, the first and preferred option should be to include such material as an attachment to a Cabinet paper. If necessary, such attachments may be presented in A3 format.

8.3 Where a minister wishes to make a presentation, the prior agreement of the Chief Minister must be sought in writing.

8.4 A presentation must not be used as a substitute for a Submission or Information Paper, and even where the Chief Minister's agreement to a presentation is obtained, a full Cabinet paper must be prepared.

8.5 Where a presentation is agreed to, a copy of the proposed slides or other documents must be lodged with the Cabinet Secretariat at the same time as the relevant Cabinet paper.

9. STANDARD RECOMMENDATIONS

9.1 Recommendations in Cabinet papers are, in practice, the first draft of the Cabinet Decision. As such they need to be self sufficient, and comprehensively cover all matters advanced in the paper for which Cabinet agreement is required.

9.2 Recommendations must not canvass the reasons for a particular decision.

9.3 Agencies should seek the advice of the Cabinet Secretariat at an early stage in the drafting of recommendations.

Basic Form

1) I recommend Cabinet agree:

- a) ...;
- b) ...:
 - i) ...;
 - ii) ...; and
 - iii) ...; and
- c)

2) I recommend Cabinet note:

- a) ...; and
- b)

Further Submission

1) I recommend Cabinet agree the Minister for Roads bring forward a further Submission later in 2008 addressing options for

Follow-on Submission

1) Further to Cabinet Decision No. 0X/0XXX of [DATE MONTH YYYY] I recommend Cabinet agree...

First Pass Approval for Legislation

- 1) I recommend Cabinet agree amendments be drafted to the *Town Planning Act 2001* that would:
 - a) require ...;
 - b) establish ...; and
 - c) prevent
- 2) I recommend Cabinet agree the Minister for Development (the Minister) settle with the Chief Minister any minor policy issues identified during the drafting process.
- 3) I recommend Cabinet note the Minister will bring forward an Assembly Business Paper early/late in 20XX addressing the presentation of the amendments referred to at paragraph 1 above.

Second Pass Approval for Legislation

- 1) Further to Cabinet Decision No. YY/XXXX/CAB of DD/MM/YYYY, I recommend Cabinet agree the Minister for Schools present the Schools (Healthy Canteens) Bill 2008.

Combined First and Second Pass Approval for Legislation

- 1) I recommend Cabinet agree the Education Bill 2009 (the Bill) include amendments that would:
 - a) require ...;
 - b) establish ...; and
 - c) prevent
- 2) I recommend Cabinet agree the Minister for Education present the Bill.

Government Position on a Private Member's Bill

- 1) I recommend Cabinet agree the Government oppose the Dog Tax Bill 2008.

Appointments

- 1) I recommend Cabinet agree to endorse the proposed:
 - a) appointment of Mr John Smith as the full time Chairman for a period of three years commencing on the day after notification; and
 - b) reappointment of the following people as part time members for a period of three years commencing on the day after notification;
 - i) Mr Fred Jones; and
 - ii) Ms Josephine Bloggs.

- 2) I recommend Cabinet agree the Minister for Fair Trading refer these reappointments to the Standing Committee on Consumer Affairs.

Government Submission to an Assembly or Other Inquiry

- 1) I recommend Cabinet agree the Australian Capital Territory Government Submission (the Submission) to the House of Representatives Standing Committee on Childcare's (the Committee) inquiry into models for holiday care at Attachment A to the Submission, including that the Government:
 - a) supports ...;
 - b) opposes ...;
 - c) supports in principle

- 2) I recommend Cabinet agree the Minister for Children (the Minister) settle with the Chief Minister any necessary minor amendments to the Submission before it is lodged.

- 3) I recommend Cabinet agree the Minister provide the Submission to the Committee.

Government Response to an Assembly Committee Report

- 1) I recommend Cabinet agree the Government response (the Response) to the report of the Standing Committee on Agriculture *Report XI: Self Sufficiency and the Urban Vegetable Garden* at Attachment A to the Submission, including that the Government:
 - a) agrees to sixteen recommendations addressing:
 - i) ...;
 - ii) ...; and
 - iii) ...;
 - b) agrees in principle to two recommendations addressing:
 - i) ...; and
 - ii) ...;
 - c) does not agree to:
 - i) Recommendation Eleven that ...;
 - ii) Recommendation Thirteen that ...; and
 - iii) Recommendation Nineteen that

- 2) I recommend Cabinet agree the Minister for Agriculture (the Minister) settle with the Chief Minister any necessary minor amendments to the Response before it is tabled.

- 3) I recommend Cabinet agree the Minister table the Response.

10. FORMATTING CHECKLIST

| | |
|-------------------------|--|
| Template | <ul style="list-style-type: none"> correct one selected and italic drafting guidance deleted |
| Perspective | <ul style="list-style-type: none"> from the minister (I recommend ..., in the last Budget we ...) |
| Font | <ul style="list-style-type: none"> Arial 10 point on cover page Arial 12 point for the remainder |
| Headings | <ul style="list-style-type: none"> TEMPLATE HEADINGS <u>Sub Heading Level 1</u> <u>Sub Heading Level 2</u> |
| Length | <ul style="list-style-type: none"> template front page is not to be altered or exceed one page page ii (roman numeral numbering)– recommendations new page (roman numeral numbering) – Final Agency Comments new page with numerical numbering – Supporting Argument/Discussion (not to exceed 6 pages) |
| Cover Page | <ul style="list-style-type: none"> All sections must be completed (use nil or N/A as appropriate) |
| Paragraph Numbering | <ol style="list-style-type: none"> 1) ...: <ol style="list-style-type: none"> a) ...; b) ...: <ol style="list-style-type: none"> i) ...; and ii) ...; and c) <ul style="list-style-type: none"> paragraph numbering restarts in each attachment. |
| Spacing | <ul style="list-style-type: none"> cover page – single. body and attachments – 1 ½ supporting argument/discussion – clear line between paragraphs |
| Acronyms or short forms | <ul style="list-style-type: none"> Australian Capital Territory (ACT) the <i>Human Rights Act 2004</i> (the Act) |
| Legislation | <ul style="list-style-type: none"> <i>Public Sector Management Act 2004</i> <i>Australian Capital Territory (Self-Government) Act 1988 (Cwlth)</i> |
| Presentation | <ul style="list-style-type: none"> single sided all pages numbered |
| Security Classification | <ul style="list-style-type: none"> CABINET-IN-CONFIDENCE from template additional classification as agreed with the Cabinet Secretariat |
| List of Attachments | <ul style="list-style-type: none"> index in the template – page numbers should run on from Supporting Argument/Discussion (unless attachments are pre-printed in which case the number of pages is indicated) |
| Attachments | <ul style="list-style-type: none"> top right hand corner of first page ATTACHMENT A each attachment must be referred to in the Supporting Argument / Discussion and underlined <u>Attachment A</u> |

11. KEY CONTACTS IN CHIEF MINISTER'S DEPARTMENT

| | | |
|--|-------------------------|-----------|
| Secretary to Cabinet | Mr Andrew Cappie-Wood | 6205 0246 |
| Deputy Chief Executive Policy Division | Ms Pam Davoren | 6207 6136 |
| Director, Cabinet and Intergovernmental Relations | Mr Andrew Kefford | 6205 0230 |
| Manager Cabinet Secretariat | Mr Chris Ambler | 6207 5989 |
| Cabinet Secretariat CLO | Mr Jacob Collins | 6207 0148 |
| CMD CLO | Ms Priyanthi Dasanayaka | 6205 0456 |
| Assistant CLO | Ms Tracey Elliott | 6205 0232 |