# BILLS AND REGULATIONS STANDARD OPERATING PROCEDURE

## Standard Operating Procedure Purpose

This SOP outlines the procedures to be followed when preparing a bill for presentation to the Legislative Assembly or a regulation for consideration by the ACT Executive.

A bill is a proposed law which is generally presented to the Assembly by a Minister. Bills may also be presented by non-executive members (private members bills) or by crossbench executive members.

A bill is introduced and debated in the Legislative Assembly, and if passed by the Assembly, it becomes a law of the Territory.

A regulation is a provision, or set of provisions, made under a regulation-making power in an Act. A regulation is made when two or more Ministers (acting as the Executive) sign it, one of whom is the Minister responsible for administering the Act that the regulation is made under.

An amendment is a legislative instrument which amends an existing Act or regulation. If the amendment is to an Act, then an amendment bill is required. Regulations may be amended either by a bill or an amendment regulation.

This SOP provides guidance staff on preparing bills and regulations which are clear, legally effective, meet their policy objective and fit within the statute book.

This SOP also provides sample drafting instructions based on a fictitious legislation bid (Attachment A). These sample instructions reflect the PCO drafting instructions checklist in the [Developing Legislation and Working with PCO](http://www.pco.act.gov.au/library/Developing%20Legislation%20and%20Working%20with%20PCO.pdf) handbook.

## Scope

| Business Area | Responsibility |
| --- | --- |
| Policy Areas | * Undertake policy analysis and develop and seek agreement on Government policy position. * Develop draft briefs, Cabinet material, drafting instructions, explanatory statements, regulatory impact statements (if required), Assembly material (such as speeches), draft response to Standing Committee on Scrutiny of Bills * Liaise with PCO on development of bill/regulation; answer policy questions about whether bill/regulation achieves purpose |
| Government Services | * On advice from Policy Area, prepare timeline for development and presentation of legislation (bills and amendment bills) * As Cabinet Liaison Officer (CLO) - Coordinate with Cabinet office and relevant processes * As Assembly Liaison Officer (ALO) – Coordinate with Assembly and Government Business, CMTEDD to schedule items in the Legislative Assembly. |
| Communications | * Prepare communications material |
| Legal Services and Integrity | * Provide advice on preparation of regulation/bill, drafting instructions, explanatory statements and regulatory impact statements (if required) * Review Cabinet/Ministerial briefs * Review and clear regulation/bill and explanatory statement and RIS (if required) * Liaise with PCO in conjunction with policy area |
| Parliamentary Counsel’s Office (PCO) | * Draft bill/regulation * Publish on the Legislation Register when the Act passes or the regulation is made. |

This SOP applies to all staff within the EPSDD portfolio who are responsible for preparing bills, regulations and amendments.

EPSDD involvement with private members and crossbench executive bills are rare, and a different procedure from that detailed in this SOP applies. Generally, the bill is drafted directly between the relevant member of the Assembly and PCO. Policy areas are generally not involved until a request is made by the Government. Refer to the [Assembly Process handbook](mailto:http://www.cmd.act.gov.au/__data/assets/pdf_file/0003/1261353/Assembly-Process-Handbook.pdf) for more information regarding private member and crossbench bills.

## Procedure – Description of activities

#### **PRELIMINARY STEPS**

The following steps apply to the preparation of both bills and regulations.

##### **Develop policy**

The policy area must have a clear idea of what it intends to achieve with the proposed legislation. Consult Legal Services and Integrity, and any other interested or affected divisions, Directorates and other stakeholders including community members in developing the policy.

Consider the problem you are trying to solve, and if a bill or regulation or amendment is the most appropriate response to solve the problem. Legal Services and Integrity can assist with this.

##### **Consider timing**

Allow time for all necessary steps in making a regulation or bill. The normal process for preparing a bill for consideration by the Assembly typically takes at least six months, and a regulation can take upwards of 3 months.

#### **PREPARING A REGULATION**

##### **Policy approval**

* Prepare a brief to the responsible Minister seeking agreement to a policy position to draft the regulation. Template briefs can be found [here](https://objective.act.gov.au/id:fA6154383).
* In the brief, clearly and succinctly set out the background to the regulation, its purpose, any issues/sensitivities, and consultation undertaken.
  1. **PCO drafting**
* Once policy approval has been granted, the policy area prepares drafting instructions in consultation with Legal Services and Integrity. Refer to the [PCO website](http://www.pco.act.gov.au/pages/draftpubstand/dpg.htm) for drafting guidance. Particularly refer to the PCO Guide [Developing Legislation and Working with PCO](mailto:http://www.pco.act.gov.au/library/Developing%20Legislation%20and%20Working%20with%20PCO.pdf) which provides a checklist (pages 16-17) for drafting instructions.
* Legal Services and Integrity send drafting instructions to PCO.
* Legal Services and Integrity and the policy area liaise with PCO on drafting and finalising the regulation.
  1. **Executive signature**

The policy area prepares a brief to Minister responsible for signature of the regulation. The briefing package includes the draft regulation in addition to the following:

##### **Ministerial brief**

The purpose of the brief is to seek agreement from the Minister to sign the regulation. The Minister needs to seek a second signature from another Minister. Template briefs can be found [here](https://objective.act.gov.au/id:fA6154383).

##### **Explanatory Statement (ES)**

* The ES outlines the policy objectives and intended operation of the regulation and its provisions.
* The [Standing Committee on Justice and Community Safety’s Guide to Writing an Explanatory Statement](https://www.parliament.act.gov.au/__data/assets/pdf_file/0006/434346/Guide-to-writing-an-explanatory-statement.pdf) provides guidance on what the ES should include. Check particularly that the ES addresses the Scrutiny of Bills Committee principles on human rights. If there is any inconsistency, set out the reasons for the inconsistency.

##### **Regulatory Impact Statement (RIS)- if required**

* In general, a RIS is required if the regulation will impose an appreciable cost on the community. However, there are many exceptions under s36 of the *Legislation Act 2001*.
* If one of the s36 exceptions apply, the Explanatory Statement must address why a RIS has not been prepared. The brief should also explain why a RIS has not been prepared.
* Refer to the [Best Practice Guide for Preparing Regulatory Impact Statements](http://www.treasury.act.gov.au/documents/regulatory_impact_statement_guide.pdf) for guidance on preparing a RIS.

##### **Send to Legal Services and Integrity for review**

* Once the regulation, brief, ES and RIS (if required) are complete and cleared by the head of the policy area, send the Objective folder to [Legal Services and Integrity](mailto:EPSDLegalServices@act.gov.au) for review.

##### **Send to Government Services**

* Once the brief has been cleared by Legal Services and Integrity, and cleared by the relevant Executive Branch/Group Manager, send the Objective folder to [Government Services](mailto:EPSDGovernmentServices@act.gov.au) for relevant DDG/COO/DG clearance and provision to the Minister’s office for signature.

##### **Notification, disallowance and Scrutiny**

* Government Services will coordinate notification of the regulation with PCO.
* If received, Government Services will send a Scrutiny Committee report to the policy area. The policy area prepares a response promptly addressing the concerns raised. Send the response to Legal Services and Integrity for review.
* A regulation must be presented to the Assembly not more than 6 sitting days after it has been notified. Once presented, a regulation can be disallowed or amended.
* If not disallowed and the regulation comes into force, the policy area needs to consider implementation as required.

#### **PREPARING A BILL**

* 1. **Legislation Bids**
* Every 6 months Legal Services and Integrity will coordinate bids for the upcoming legislation program.
* Once the legislation program is agreed by Cabinet, Government Services prepares a timeline for development and presentation of the new legislation.
* There should be preliminary informal consultation with interested agencies and PCO on the new bill.

###### **Cabinet approval**

The [ACT Cabinet handbook](https://www.cmtedd.act.gov.au/__data/assets/pdf_file/0006/1189383/Cabinet_Handbook.pdf) provides guidance on the process of Cabinet approval of legislation. The flowchart on page 18 is particularly useful.

Key steps are the following:

1. **Policy approval**

* The policy area in consultation with Legal Services and Integrity prepares a Cabinet submission to seek policy approval for the bill. The submission should be accompanied by a Triple Bottom line summary. Refer to the [Cabinet Handbook](http://www.cmd.act.gov.au/__data/assets/pdf_file/0005/113585/cabinet-handbook.pdf) and [Triple Bottom Line Assessment](https://www.cmtedd.act.gov.au/__data/assets/pdf_file/0020/331373/TBL_Assessment_Framework.pdf) framework for further guidance.
* After Cabinet has approved the policy and that a bill be prepared, the policy area prepares drafting instructions (although this can be done earlier in anticipation). Refer to the [Developing Legislation and Working with PCO](mailto:http://www.pco.act.gov.au/library/Developing%20Legislation%20and%20Working%20with%20PCO.pdf) guide for assistance in developing drafting instructions. Legal Services and Integrity can assist the policy area to develop and finalise the drafting instructions and once finalised will send drafting instructions to PCO.
* Legal Services and Integrity and the policy area will liaise with PCO on drafting and finalising the bill.

1. **Agreement to introduce**

* When the bill has been drafted and finalised, the policy area prepares a ministerial brief attaching an Assembly Business Paper to seek Cabinet’s agreement to introduce the bill to the Legislative Assembly. Government Services will assist with this step.
* The policy area prepares an explanatory statement (see 2.3(b) above) and draft introduction speeches to accompany the Assembly Business Paper.
* The ministerial brief, Assembly Business Paper, ES and speeches are cleared by Legal Services and Integrity prior to seeking executive approval.
* Government Services sends the ministerial brief and Assembly Business Paper for relevant DDG/COO/DG clearance, ministerial approval, and submission to Cabinet for agreement to introduce.
* Once the Assembly Business Paper is agreed, the responsible Minister will introduce the bill as per the government Assembly business schedule.
* The bill is then referred to relevant Legislative Assembly Standing Committees, including the Standing Committee on Scrutiny of Bills. Any comments received from standing committees need to be addressed, or amendments may need to be proposed before the bill can be debated.

1. **Combined pass**

* For urgent or critical bills, the Chief Minister can agree to a combined pass which is a single stage process where the final bill comes to Cabinet for agreement to both the policy position and to introduce the bill to the Legislative Assembly. Please contact Government Services at the earliest opportunity if this is a possibility. They will advise on possibility of utilising this process.

##### **Legislative Assembly Introduction and Debate of the Bill**

Liaise with Government Services for requirements for the Assembly processes relating to introduction and debate of the bill. This will include preparing a presentation speech as well as two debate speeches. Ministers may also will to have a clause-by-clause analysis of each section of a bill, and media talking points and Q&As.

The [Assembly Process handbook](mailto:http://www.cmd.act.gov.au/__data/assets/pdf_file/0003/1261353/Assembly-Process-Handbook.pdf) provides further information on Assembly processes.

##### **Further steps**

* The Speaker of the Assembly will write to PCO to coordinate notification of the bill. Notification can take up to two weeks.
* Consider implementation steps in your policy area.

## Records Management

Records need to be managed in accordance with the *Territory Records Act 2002* and Directorate policies and procedures.

Policy areas need to keep an Objective folder in the relevant area with all background (such as consultation), in addition to Ministerial/Cabinet folders prepared by Government Services. All documents for a bill and Cabinet processes must be filed in a Cabinet file, with access granted to staff who need to undertake work in the folder. Staff in the policy area need to clearly mark Cabinet documents as ‘Sensitive: Cabinet.’

Legal Services and Integrity Objective records of legal clearances.

## Evaluation

| Outcome MeasuresWhat will be measured to determine achievement – has the procedure purpose occurred? | MethodHow will this be done? | ResponsibilityWho is responsible for evaluation? |
| --- | --- | --- |
| Timely progression of legislation | Early engagement with Legal Services and Integrity, Government Services, Communications and PCO. | Policy areas, Legal Services and Integrity, Government Services, Communications, PCO. |
| High quality regulations, bills and amendments | Consistent liaison with PCO and Legal Services and Integrity | Policy areas, Legal Services and Integrity |

## Related Documents

* [Objective Ministerial templates](https://objective.act.gov.au/id:fA6154383" \l "layout=compact-view)
* [Approval of Instruments template](mailto:https://actgovernment.sharepoint.com/:w:/r/sites/Intranet-EPSDD/_layouts/15/Doc.aspx?sourcedoc=%7BE55590CE-E52A-4522-A2B4-F7C58CD5A261%7D&file=Approval%20of%20instruments%20form.docx&action=default&mobileredirect=true&DefaultItemOpen=1)
* [Assembly Process Handbook](mailto:http://www.cmd.act.gov.au/__data/assets/pdf_file/0003/1261353/Assembly-Process-Handbook.pdf)
* ACT [Legislation Handbook](http://www.cmd.act.gov.au/__data/assets/pdf_file/0017/113624/actgov-legislation-handbook.pdf)
* ACT [Cabinet Handbook](http://www.cmd.act.gov.au/__data/assets/pdf_file/0005/113585/cabinet-handbook.pdf)
* [*Legislation Act 2001*](http://www.legislation.act.gov.au/a/2001-14/default.asp)
* *Chief Minister’s* [Administrative Arrangements](http://www.legislation.act.gov.au/ni/2011-712/default.asp)
* [*Self Government Act*](http://www.comlaw.gov.au/Details/C2011C00940)
* ACT [Legislation Register](http://www.legislation.act.gov.au/default.asp)
* [PCO website](http://www.pco.act.gov.au/pages/draftpubstand.htm).
* [Guide to Writing an Explanatory Statement](http://www.parliament.act.gov.au/__data/assets/pdf_file/0006/434346/Guide-to-writing-an-explanatory-statement.pdf) of the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)

* [Best Practice Guide for Preparing Regulatory Impact Statements](http://www.treasury.act.gov.au/documents/regulatory_impact_statement_guide.pdf)
* [Subordinate Legislation— Technical and Stylistic Standards TIPS / TRAPS – 2011](http://www.parliament.act.gov.au/__data/assets/pdf_file/0007/434347/Subordinate-Legislation-Technical-and-Stylistic-Standards.pdf) Paper of Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)
* [Triple Bottom Line Assessment for the ACT Government](https://www.cmtedd.act.gov.au/__data/assets/pdf_file/0020/331373/TBL_Assessment_Framework.pdf)

* *[Territory Records Act 2002](https://legislation.act.gov.au/View/a/2002-18/current/PDF/2002-18.PDF)*
* *[Information Privacy Act 2014](https://legislation.act.gov.au/View/a/2014-24/current/PDF/2014-24.PDF)*

Version history

The following table details the published date and amendment details for this document

| Version | Date | Amendment details |
| --- | --- | --- |
| 1.0 | 24/07/2019 | First publication of this policy |

**Attachment A- sample drafting instructions**

**Water Management (Rain Water) Amendment Bill 2019**

Date: 03 July 2019

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Policy Authority

Cabinet submission number 45/894, considered on 24/5/2019

HYPOTHETICAL

Title: Water Management (Rain Water) Amendment Bill- policy approval

Minister: Minister for Water, Jon Snow MLA

Cabinet agreed:

* That amendments be drafted to the *Water Management Act 2012* to:
  + Regulate the Territory’s collection and management of rain water; and
  + Create the new statutory position of Rain Water Commissioner.

Cabinet noted:

* That the Minister will bring forward an Assembly business paper in late 2019 addressing the presentation of the bill.

Timetable

It is expected that this bill will be presented in the Legislative Assembly in November 2019 and commence in December 2019.

A final draft is required by October 2019.

Policy objective

To amend the *Water Management Act 2012* to ensure that rain water is effectively managed in the ACT. To date there has been no legislation addressing the management of rain water.

Policy detail

* Water sources in the ACT are severely depleted and have been for a number of years. A need for greater regulation of water management has been identified by the Territory.
* Rain water is now a common supply of household water. However, management has been largely ad hoc and governed by informal policies such as guidelines on the instalment of household tanks. The Directorate has identified a need for a more uniform approach.
* The Directorate has explored several options to introducing this uniform approach. This legislative proposal is recommended as the most comprehensive solution. The proposed legislative amendments will provide certainty to members of the community, Government and stakeholders.
* The bill proposes to introduce requirements for licences to take and use rain water into the Water Management Act. The bill also introduces offences for failing to comply with the legislation.
* There are human rights implications for the introduction of this bill. The Directorate has been working with the Human Rights Unit to address these.

Legislation affected

* Regulations will be required in relation to matters such as restrictions on the size and capacity of tanks, and licences to take and store rainwater.

HYPOTHETICAL

* Amendments should be made to the *Water Restrictions Act* s93, which currently provides that rain water is exempt from licensing requirements.

Unresolved issues

There are no unresolved issues with this legislation.

Other issues

N/A.

**Supporting material**

Advice

The ACT Government Solicitor has been consulted on the legislative proposal, particularly on the applicability of certain provisions of the Victorian equivalent the *Rain Water Management Act 2018*. The ACTGS has advised that there is nothing problematic in the application of these provisions. The advice is provided at Attachment A.

The Human Rights Unit (the HRU) has been consulted and provided advice on the introduction of strict liability offences.

Legislative models

This legislative proposal reflects key aspects of the *Rain Water Management Act 2018* (Vic). Victoria has seen an increase in rain water tanks in recent years, similar to the ACT, and has recognised a policy need to introduce greater regulation of rain water.

Reports

This legislative proposal is consistent with the ACT Water Plan 2000-2050, which provides a direction for water security for the Territory and addressing new challenges.

Case law

ACAT decision *Rain & Water v Sky* [2018] ACAT 123 is relevant to this decision. In this decision, the plaintiff challenged a decision to restrict access to rain water. The Tribunal decided that in the absence of express provisions, a household has unlimited access to rain water. This decision clearly conflicts with the policy need in this area.

Consultation

Internal and external stakeholders have been consulted and are supportive of the proposed approach. ACT Water has expressed support to carry out implementation of the bill.

All Directorates were consulted as part of the Cabinet circulation. Only minor comments were received and were addressed accordingly.

HYPOTHETICAL

Instructions

Please prepare a bill with the following elements:

1. **Definition of rain water**

The current act does not provide for a definition. A useful guide for a definition is the Dictionary definition in the *Rain Water Management Act 2018* (Vic).

1. **Licensing scheme for rain water access and use**

Please provide that access to and use of rain water is only permitted with an appropriate licence.

1. **Regulations**

The Act should permit the Minister to approve regulations to set out restrictions on access to and consumption of rain water, including licence categories. A useful guide for this licensing scheme is s9 of the *Rain Water Management Act 2018* (Vic). Licence categories suggested through consultation with stakeholders are the following:

* One-person licence
* Household licence (two or more people)
* Commercial licence (up to 100 staff)
* Not for profit enterprise licence (up to 100 staff)
* Large enterprise licence (100+)

The regulations should also provide for restrictions on the capacity of water tanks. These restrictions should be in line with the below categories:

* One person- 450L
* Household-1000L
* Commercial-20,000L

HYPOTHETICAL

* Not-for-profit- 20,000L
* Large enterprise- 40,000L

1. **Offences**

The act should make it an offence to access or use rain water in a manner contrary to the regulations. The offence should be a strict liability offence punishable by a maximum 50 penalty units.

1. **Compliance and Enforcement powers**

The intention is for compliance and enforcement actions to be undertaken by inspectors. Please insert provisions as appropriate so that the functions of inspectors currently provided for by the act apply to the new offences relating to rain water restrictions.

1. **Right of review**

The bill should provide for a right to review for a decision to refuse a licence.