

## **DRAFTING AMENDMENTS IN COMMITTEE**

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This paper briefly considers the way in which the NSW PCO approaches the drafting of amendments in committee to Bills and some of the issues that we face in drafting amendments. This paper also refers to some statistics which indicate how significant this work is for our Office.

Requests for drafting amendments are made to the PC usually by fax or email, or sometimes a telephone call is all we get to initiate the drafting of an amendment in committee, especially if the matter is urgent. Although the PC keeps the allocation of drafting work flexible, in most cases the drafting will be allocated to the drafter of the Bill. This will be the case even if the drafter also happens to be doing amendments at the same time for another client.

Considering the tight deadlines that we face in drafting amendments in committee, allocating them to the drafter who knows their way around the Bill is seen to be the more efficient approach, particularly if the proposed amendments are complex or lengthy. As a result, the client benefits from the expertise of the drafter who is on top of the particular job.

However, in drafting amendments for different clients to the same Bill, there are a number of matters that the drafter should keep in mind.

Maintaining confidentiality is paramount. It should always be easy for the drafter to refrain from giving out information obtained from a particular client when preparing amendments for the other client. Both government instructing officers and non-government members accept that we provide our drafting services on a confidential basis and they do not, in my experience, request information about proposed amendments in committee from the other side. The drafter may on occasion have to erect their own internal Chinese wall and “play dumb” if asked about someone else’s amendments in committee, but this rarely happens.

The more difficult problem for the drafter is to avoid actually using the information obtained from discussions with a particular client when preparing amendments for the other client. For example, the situation may arise where the government is proposing amendments that deal with the same subject matter, or are seeking the same outcome, as the amendments that are being proposed by a non-government member. The policy behind the government amendments will clearly work and has been given effect to accordingly by the drafter, whereas the policy behind the non-government amendments is flawed. Should the

drafter follow the same approach for the non-government amendments in order to help them out ?

In most cases no, because it would be a breach of confidentiality. In these cases the drafter should simply give the client amendments that give effect to what the client has asked for.

But what if the non-government amendments have nothing to do with the government ones ? The drafter will have to decide, particularly if there is a tight deadline, whether to just give them what they have asked for, or whether to help them out by suggesting alternative options. In these cases, the professional integrity and reputation of the Office is at stake, because it will always be expected that whatever leaves our Office is capable of working.

To some extent, these issues are readily managed if the drafter keeps in mind that our role in drafting amendments in committee is to facilitate the legislative process and to safeguard the integrity of the statute book. Our drafting services are provided on an independent and impartial basis. We deliver on the policy but do not become proponents of it. We do not take sides. It is not our role to deliberately manipulate the wording of what is a public document in way that benefits the interests of one client over another. This means that we can safely draft amendments for more than one client in relation to the same Bill without compromising the duty of confidentiality that we owe to each respective client.

As for our general arrangements for drafting amendments in committee, it has never been the practice in NSW for drafters to attend Parliament to draft amendments. This approach allows for more efficient use of the resources of the Office (such as access to our legislation database and editorial checking services) and ensures a more accurate product.

The Office also provides an after hours service on the evenings when Parliament is sitting to assist with urgent amendments in committee. Fortunately, most of our drafting time after hours is devoted to making minor changes to amendments that have already been sent over to the House. But there will be occasions when the drafter on duty will have to draft something new on the spot, often in relation to a Bill that he or she has not drafted or seen before.

We also have in place a system for the allocation of non-government drafting hours. A total of 650 hours of “core” drafting time (which also covers Bills) is divided up between the non-government members or their parties on a 6-monthly basis. For example the Opposition is allocated a total of 250 hours for

each session. This system has proved to be useful in the past for ensuring that non-government members do not waste their available credits on lengthy proposals that are unlikely to be supported.

The drafting of non-government amendments in committee really took off after 1991 which was when the government of the day agreed to make our drafting services available to non-government members. The increase in non-government drafting activity has also coincided with an increasing willingness on the part of the government to amend its own Bills.

The following figures should give some indication of this general increase. In 1987 only 8% of introduced Bills were passed with amendments. In 2004 it was 26%. In some years, the percentage has jumped to the 40's, with up to 80 Bills in 1998 being passed with amendments in committee. There have some years when the percentage has dropped, perhaps because of an election, but generally the percentage of Bills passed with amendments has been quite significant.

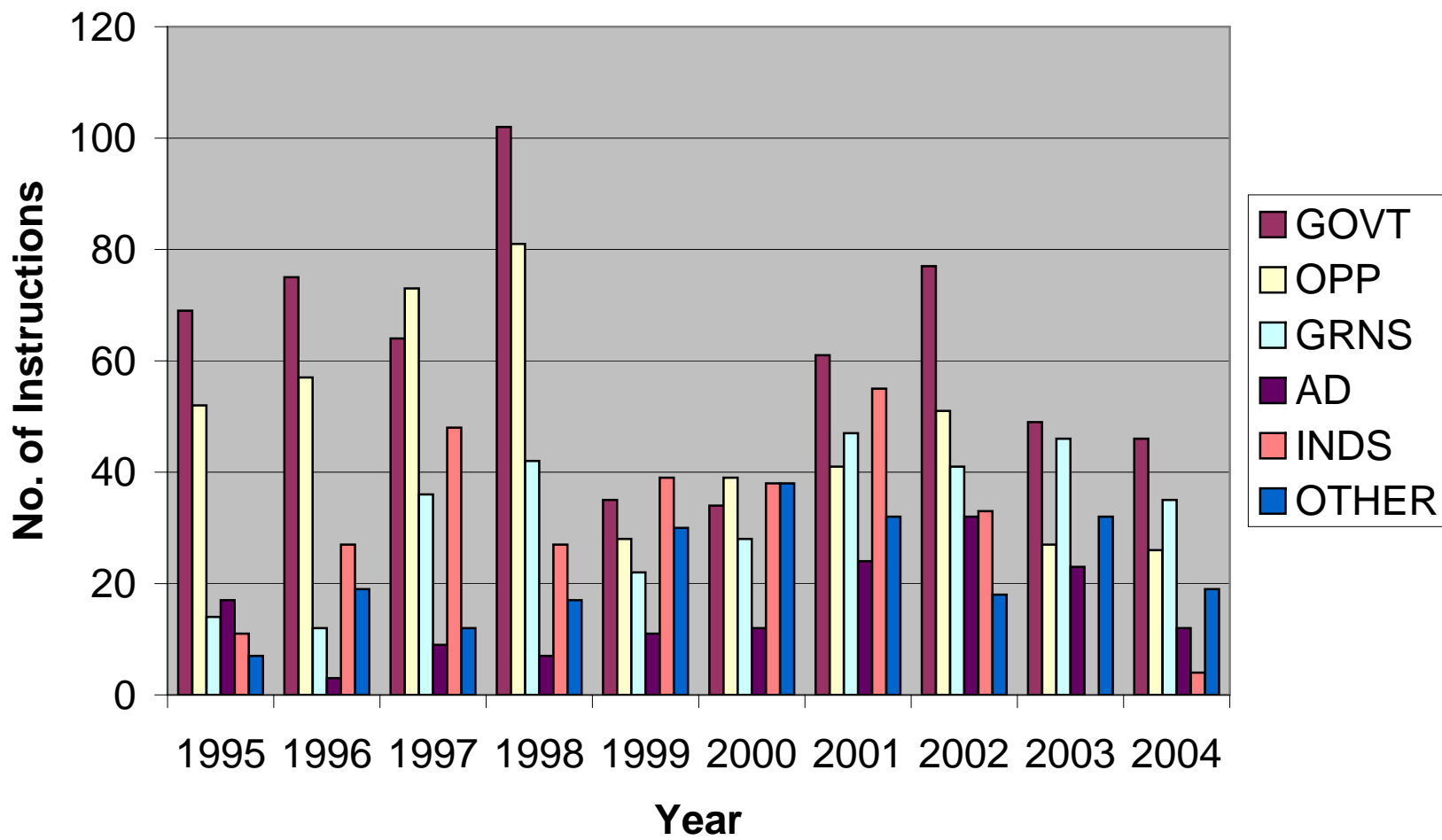
Between 1995 and 2004 the PCO drafted almost 1,900 separate sets of amendments in committee. 30 % of these were for the government, 22% for the Opposition and 16% for the Greens. It should be noted that this figure includes the one-liners that take a few minutes to prepare as well as those jobs containing well over a hundred or so amendments that take days to draft. As you may imagine the Shooters Party's amendments to the 1996 Firearms Bill were not short and simple. The total figure also does not take into account the frequent occasions on which multiple versions are drafted.

I should also mention that the majority of the amendments we draft are for members of the Legislative Council, where there are more cross-benchers and the Government is frequently in negotiations to ensure the passage of its legislation.

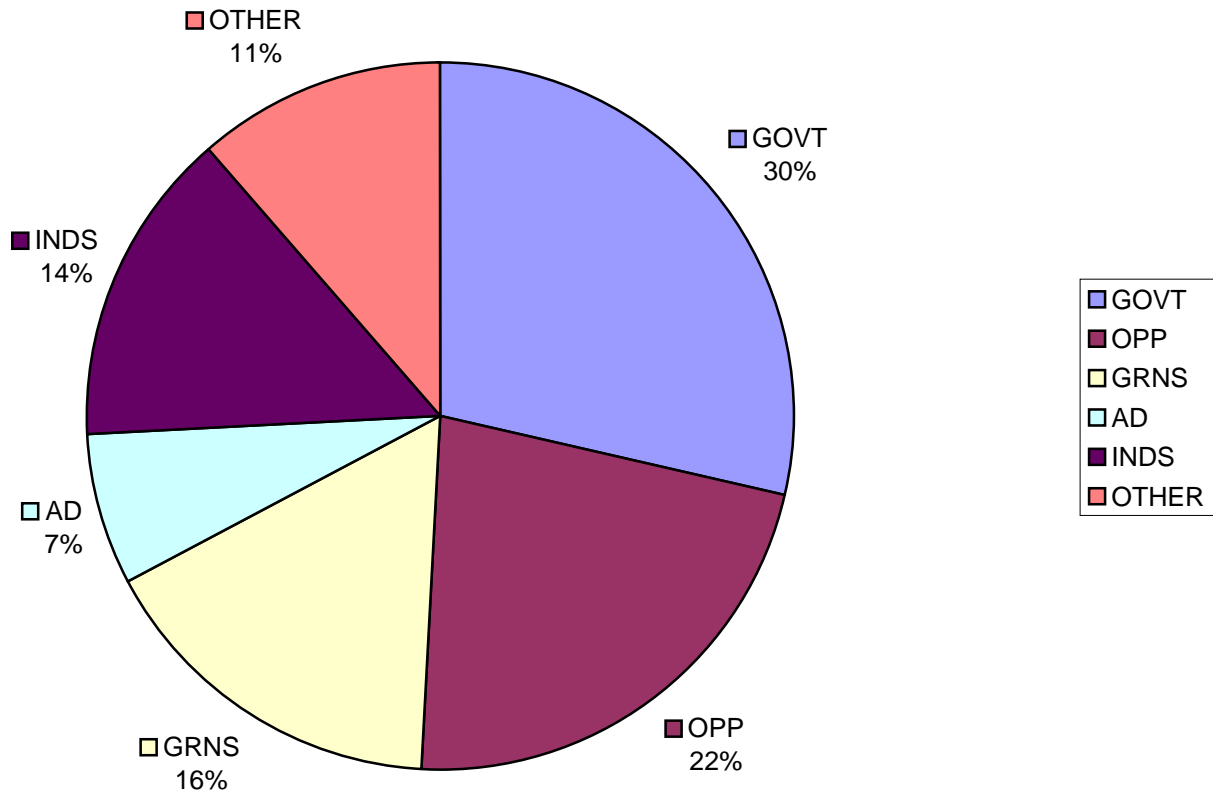
The figure of 1,900 amendments in committee over the past 10 years would come as no surprise to my colleagues in NSW who prepare for the usual avalanche of amendments at the end of each session. Indeed, these days it comes as a surprise when any significant Bill is introduced and passed without a flurry of activity involving the drafting of amendments in committee.

The following tables and information, compiled by Ian Failes and Libby Peacock of the NSW PCO, are included as part of this paper.

### AIC Instructions Received (1995-2004)



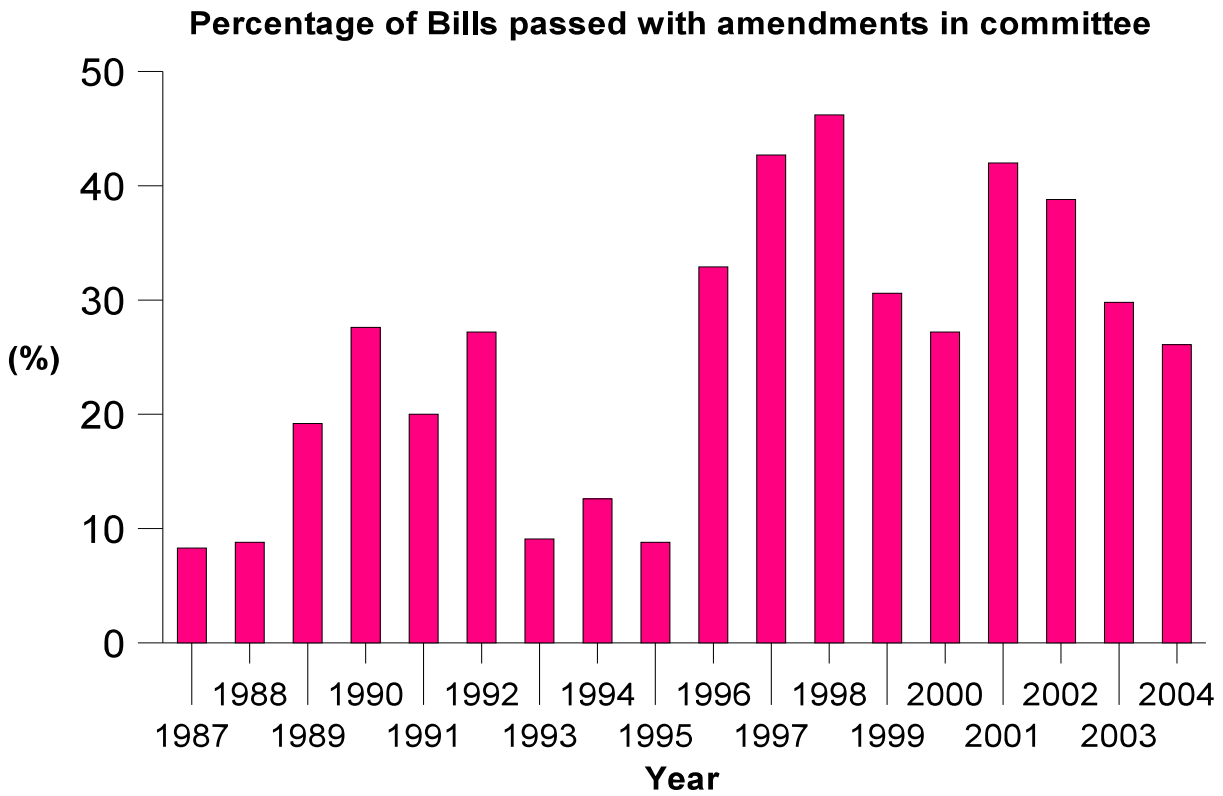
### AIC Instructions Received (1995-2004)



## AMENDMENTS IN COMMITTEE

Year	Total No of Bills passed	Total No of Bills passed with amendments in committee	Percentage of Bills passed with amendments in committee (%)
1987	300	25	8.3
1988	137	12	8.8
1989	239	46	19.2
1990	123	34	27.6
1991	100	20	20.0
1992	114	31	27.2
1993	112	11	9.1
1994	95	12	12.6
1995	102	9	8.8
1996	146	48	32.9
1997	157	67	42.7
1998	173	80	46.2
1999	98	30	30.6
2000	114	31	27.2
2001	131	55	42.0
2002	139	54	38.8
2003	104	31	29.8
2004	115	30	26.1

1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
8.3	8.8	19.2	27.6	20.0	27.2	9.1	12.6	8.8	32.9	42.7	46.2	30.6	27.2	42.0	38.8	29.8	26.1



**AMENDMENTS IN COMMITTEE—  
Amended in which House?**

Year	Total No of Bills passed	No of Bills passed with amendments in committee			Percentage of Bills amended in each house (%)		
		Amended in LC	Amended in LA	Amended in both	LC	LA	Both
1987	300	0	25	0	0	100.0	0
1988	137	10	1	1	83.4	8.3	8.3
1989	239	25	14	7	54.4	30.4	15.2
1990	123	15	14	5	44.1	41.2	14.7
1991	100	7	13	0	35	65	0
1992	114	6	18	7	19.4	58.1	22.5
1993	112	1	9	1	9.1	81.8	9.1
1994	95	2	7	3	16.7	58.3	25
1995	102	6	3	0	66.7	33.3	0
1996	146	24	15	9	50	31.3	18.7
1997	157	46	9	12	68.7	13.4	17.9
1998	173	48	17	15	60	21.3	18.7
1999	98	22	4	4	73.4	13.3	13.3
2000	114	24	2	5	77.4	6.5	16.1
2001	131	46	4	5	83.6	7.3	9.1
2002	139	41	7	6	75.9	13.0	11.1
2003	104	22	7	2	71.0	22.6	6.4
2004	115	18	9	3	60.0	30.0	10.0

	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Amended in LC	0	83.4	54.4	44.1	35	19.4	9.1	16.7	66.7	50	68.7	60	73.4	77.4	83.6	75.9	71.0	60.0
Amended in LA	100	8.3	30.4	41.2	65	58.1	81.8	58.3	33.3	31.3	13.4	21.3	13.3	6.5	7.3	13.0	22.6	30.0
Amended in both	0	8.3	15.2	14.7	0	22.5	9.1	25	0	18.7	17.9	18.7	13.3	16.1	9.1	11.1	6.4	10.0

**Bills Amended in Committee - Percentage amended in each House**

