

Issues for drafting for private members of Parliament

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In this paper I will set out a number of issues arising in drafting for Private Members in Victoria.

The drafting of Private Members' Bills

In Victoria, a non-Government Member of Parliament who wishes to have the assistance of parliamentary counsel to prepare a Private Members' Bill must first seek the written approval of the Premier. It would not be usual for a Government member to introduce a Private Members' Bill.

The member writes to the Premier seeking drafting services and stating the topic of the Bill. There is no requirement to include any details about the Bill in the request. I am asked if resources are available to draft Bill. The primary concern is to ensure that the drafting of Private Members' Bills will not affect the delivery of the Government's legislative program. This can sometimes be a difficult question if little is known about the Bill. Most requests for drafting services in recent years have come from the Greens and the Independent Members of Parliament.

We have no quota system or hourly limit on the provision of drafting services which can be difficult if the drafter is trying to juggle Government and Private Members' Bill work and time is getting tight. If a Member wants several Bills drafted we will negotiate with the Member to spread the drafting of the Bills over the course of the year.

The Premier writes to the Member consenting to the drafting of the Bill and advising the Member to contact me to give drafting instructions and arrange for the drafting to be done.

The drafting work is dealt with on a confidential basis with the Member of Parliament. Members do not usually have a great deal of research assistance and often need assistance from the drafter in developing the legislative proposal. The drafter may need to take on the role of researcher to ensure that the Bill is properly developed as a legislative scheme. Often the instructions are fairly minimal. The Member may ask for a Bill based on an Act in another jurisdiction thinking this would be simple but will not have worked through the decisions required to make the legislation work in Victoria or to determine the transitional provisions and consequential amendments required. The drafter must help with this. With no Departmental policy officer or legal adviser available to assist, it can be very challenging work.

Once the drafting is completed and the Member is happy with the Bill, the Clerk of the relevant House of Parliament will order the printing of the Bill. As Government Printer, my office is responsible for the printing of the Bill.

Sometimes a Member does not want drafting assistance with a Bill and produces a Bill for introduction from other sources. In that case the Clerk will order the printing of the Bill. As Government Printer, my office will template the Bill so it is in the proper format. We cannot advise on the Bill except to point out formatting difficulties. This can lead to some misunderstanding because members may believe that because the Bill is printed by the Chief Parliamentary Counsel, we have also drafted it. A recent example of a Private Member's Bill we did not draft is the Medical Treatment (Physician Assisted Dying) Bill 2008. This Bill went to a conscience vote in the Legislative Council but did not receive support from the previous Government and did not proceed.

It can be very difficult for a Member to get space on the notice paper for a Private Member's Bill. While notice can be given, there is no effective provision in the standing and sessional orders at present for Private Members' Bills and the proper handling of a Private Member's Bill depends largely on the goodwill of the government of the day.

Private Members' Bills do not have a high success rate in Victoria. The only Private Member's Bill to pass in Victoria in the past 100 years was the Petroleum Products (Terminal Gate Pricing) Bill 2000 introduced by the Independent member for Mildura, Russell Savage. This was during a period of minority Government in Victoria when three Independents held the balance of power in the Legislative Assembly. The Bill received bipartisan support but was only passed in the Legislative Assembly after it was heavily amended, with Government advisers having a significant involvement. The standing orders were suspended to allow debate on the Bill in the time set aside for debate on a matter of public importance.

Even if a Private Member's Bill gets space on the notice paper, and the Legislative Council is more accommodating about this, it can run into trouble. Colleen Hartland, a Member of the Greens in the Legislative Council introduced a Private Member's Bill in 2008 to provide for a 10 cent deposit on beverage containers. With the support of the then Opposition, the Bill passed the Legislative Council only to be rejected by the Legislative Assembly. The Bill was sent back to the Council with a message informing the Council that the Legislative Assembly refused to entertain the Bill as it sought to impose a levy which was unlawful, being the exclusive power of the Legislative Assembly as set out in the Constitution Act 1975.

As drafters we advise Members on the constitutional risks affecting a Bill but a member will often wish to test the Bill even if there is a risk. Colleen Hartland reintroduced her Bill into the Council recently following the election. It will be interesting to see if the new Government supports the Bill.

House amendments

The formal processes for seeking approval for drafting support for a Bill do not apply to amendments to Bills. Any Member can seek assistance from my office to prepare an amendment to a Bill. This can become quite onerous as Members seek to produce whole Bills by House amendment or if a conscience vote results in many Members seeking amendments to a Bill. In the case of the conscience vote on the Abortion Law Reform Bill in 2008, we prepared amendments for 14 different Government and non-Government Members, many of whom had never moved amendments before.

We do not impose a quota on the amount of drafting time a Member can have for amendments and try to meet the demands as well as we can. Often a Member will give us very little time to prepare an amendment. Sometimes instructions come in the morning for amendments to a Bill to be debated the same afternoon. This can be very stressful for the drafter, particularly if the instructions are unclear or non-existent. Work on House amendments is given priority when the House is sitting. When the Independents held the balance of power in the Assembly in 1999 to 2002, we often drafted whole Bills by House amendment, if the Member could find a convenient Bill to tack the amendments onto. The same problems arise with House amendments as with Private Members' Bills. Members lack research support and the drafter is left to create a legislative scheme from very little information.

This can be stressful for a drafter as we never know when an amendment may be accepted by the Government.

There are constraints on the types of amendments that a Member can move. In the Assembly, a Member cannot move an amendment that imposes a tax or requires the expenditure of money from public funds. A Governor's message is required for an amendment that requires expenditure and this can only be obtained by the Government. In the Council, a Member can only suggest an amendment that requires an expenditure on public funds. In Victoria, the circumstances in which an amendment requires a message are fairly broad. The addition of members to a Board, the giving of substantive new functions to a public body, the conferral of a substantive new jurisdiction on a Tribunal will all require a message.

Once the drafting of House amendments for a Bill is finished, the drafter can be called on to assist the Clerks in preparing a running sheet for the amendments, particularly if there are several sets of amendments for one Bill. The aim is to ensure that each Member is given the opportunity to test his or her amendments on the floor of the House. This principle ensures that each set of amendments is drafted with as little impact on the structure of the Bill as possible to enable all amendments to be moved.

As discussed, the work of drafting Private Members' Bills and House amendments can be difficult, particularly because of lack of time, the pressure of other work and the additional level of support Private Members need, but we regard it as an important contribution to the functioning of Parliament and the democratic process.