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# Drafting in a Taskforce Environment

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## Background

This paper is about drafting as part of a large drafting taskforce. It deals with issues such as what makes for a successful drafting taskforce; what makes drafting different in a taskforce environment; what are the key challenges to the success of a drafting taskforce and what it is that a drafter needs to bring to taskforce drafting.

The paper is based on my observations as a drafting member of the Aviation Safety Regulatory Development Taskforce which was established in March 2010 to progress the drafting of new and amending provisions of the *Civil Aviation Regulations 1988* and the *Civil Aviation Safety Regulations 1998*. The Taskforce is an initiative of the Department of Infrastructure and Transport, the Civil Aviation Safety Authority (CASA) and the Commonwealth Attorney General's Department and is a response to the National Aviation Policy White Paper, *Flight Path to the Future*, December 2009.

The aim of the Taskforce is to bring together a dedicated team of legislative drafters from the Office of Legislative Drafting and Publishing (OLDP) (a Division of the Commonwealth Attorney General's Department), CASA technical experts and CASA special legal counsel, to draft the regulations in the most time effective way, to a negotiated timeframe. The Taskforce operates from offices at OLDP in the ACT. When the task is complete, it is expected that the Taskforce will have completed approximately 2,000 pages of draft regulation.

## What is a Taskforce?

Noting the military origins of the term, the Macquarie Dictionary (5th edition) defines a **taskforce** as:

*“a temporary grouping of units under one commander, formed for the purpose of carrying out a specific operation or mission.”*

Whilst one who has worked on a drafting taskforce might feel, on occasion, that they have “been through the wars”, the term is often more broadly used to refer to the **bringing together of dedicated resources** to complete a **large and complex task** in the **most efficient and effective manner**.

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Governments are increasingly using taskforces to achieve policy and legislative outcomes. The Secretary of the Commonwealth Attorney-General's Department, for example, has indicated that the Department will increasingly use taskforces to achieve its objectives.

## **Key elements of an effective drafting Taskforce**

From the writer's observations, there appears to be three key elements that are necessary for an effective drafting taskforce. Firstly, the objectives of the taskforce and the expectations and deliverables of all parties to the taskforce must be clear. Secondly, the taskforce must have excellent governance and management. Thirdly, resourcing of the taskforce must be such that it can deliver on its objectives. I will now consider each of these issues in more detail.

### *Taskforce objective and the expectations and obligations of all parties must be clear*

The simplest and most effective way to ensure that taskforce objectives, and the expectations and obligations of all parties to the taskforce, are met, is to clearly document these matters when the taskforce is established. This can be done through the use of governance documents such as a Memorandum of Understanding or Terms of Reference document.

The more robust these documents, the less likelihood that disputes will arise between parties during the life of the taskforce.

The kinds of matters that should be considered for inclusion in all taskforce governance documentation (whether it is for a drafting taskforce or a taskforce for any other purpose), include:

- A statement of who is establishing the taskforce and why.
- A clear and precise statement of the work to be undertaken, by whom and the time frame by which the work must be completed (including procedures for dealing with any time frame slippage).
- Details about how the taskforce will be managed.
- Details about how the taskforce will be resourced.
- Details about how disputes will be resolved.

In addition to these more general matters, drafting taskforce governance documentation should also include details about the relationships between drafters and instructors, and the processes by which drafts will be prepared and considered. This might include detail about:

- How drafting instructions are to be prepared. For example, instructions must be provided in narrative form rather than "lay drafts".
- How drafts are to be prepared and the process for drafter/instructor engagement. The documentation should set out how draft development will occur within the taskforce and the roles of the drafter and instructor in that development.
- How internal and external consultation on drafts is to occur.

In short, detailed governance documents are essential in providing a drafting taskforce with its source of authority and details of the obligations and responsibilities of parties.

### Good governance and management

Critical to the success of a drafting taskforce is superior day-to-day management and good governance at senior management level.

Given the strict deadlines and intense nature of most taskforce work, day-to-day management must be clear, effective and constant.

In the case of the Aviation Safety Regulatory Development Taskforce, day-to-day management is shared between a CASA standards manager and OLDP drafting manager.

Drafters meet one-on-one with the drafting manager each week, update the manager on the status of their work and discuss any other issues in relation to the Taskforce. In addition, all drafters meet once a week to discuss and share progress and to deal with any matters of a drafting nature that need to be considered by all Taskforce drafters.

The Taskforce as a whole (drafters, instructors and special legal counsel) meet once a week for updating purposes and to track Taskforce progress. It is very useful having the whole Taskforce in one room each week as it allows for a full expression of ideas and concerns across the entire Taskforce.

The managers of the Taskforce report on its progress to a monthly Steering Committee consisting of senior managers of the participating agencies. The Steering Committee sets timelines, tracks progress and milestones, deals with resourcing issues and considers progress reports.

In addition, the managers of the Taskforce report to a quarterly Deputy Secretaries Committee who provide a broad oversight of the work of the Taskforce and provide advice to portfolio Ministers on progress.

Governance and management to this standard ensures that any significant issues that are likely to affect Taskforce outcomes are quickly identified and dealt with at an appropriate authority level.

### Resourcing

A taskforce must be properly resourced to achieve its goals.

The physical location of the taskforce is an important matter. It is preferable that a taskforce be located in the one central location. Also it is preferable that that the location be "neutral" and not the office of one of the parties to the taskforce. This assists in downplaying any "power struggles" that may occur and helps in establishing an individual character to the taskforce.

Careful consideration also needs to be given to the resourcing of IT and communications systems, administrative resources and, most importantly, the people to be appointed to the taskforce.

Of all the elements critical to the success of a drafting taskforce, the appointment of the taskforce personnel is possibly the most crucial. A taskforce is assessed on its output and without the correct mix of people, a taskforce is likely to struggle to achieve its goals.

In terms of a drafting taskforce, there are likely to be 2 or 3 categories of personnel - legislative drafters, technical instructors, and in some cases, special legal counsel assisting in the preparation of the drafting instructions.

In every case, a person should only be appointed to a taskforce if he or she:

- is **sufficiently skilled** to undertake taskforce duties.
- is made available as a **dedicated resource** to the taskforce for a defined period.
- has a **desire to commit** to the taskforce agenda and timelines.
- has a **willingness and ability to work closely with taskforce colleagues** both in terms of physical proximity and in respect to the work being undertaken.

It would seem that of all the elements that may result in a drafting taskforce failing to achieve its goals, issues relating to staffing are the most likely to cause concern. Well chosen, dedicated and committed team members are essential to a successful drafting taskforce.

## **Some key challenges to the success of a drafting Taskforce**

### *Establishing taskforce dynamic*

A key challenge when a taskforce is first set-up is establishing a productive taskforce culture and generating the energy needed to drive the work program. Often, members of the taskforce have come together from different areas and may not have worked together before. Every effort must be made to have the taskforce functioning as a cohesive unit in the shortest possible time. Many of the matters mentioned earlier, including good governance documents, regular meetings, clear timelines and targets and well chosen personnel will assist in this process.

The sooner that regular taskforce routines and processes are established, the sooner the taskforce will start generating its own energy and team dynamic.

### *Complexity and interconnectedness of subject matter*

A drafting taskforce is usually established because a particular drafting job is exceptionally large and complex. Clearly, an early goal of a drafting task force should be to establish a work plan based on the best available knowledge as to how best deal with the subject matter at hand. For example, if it is known that certain parts of the regulatory scheme cannot be drafted until other parts are drafted, the work plan should be structured to account for this.

However, although policy development may have been comprehensive, it is not uncommon in the drafting process for complexities and unexpected interconnectedness of subject matter to emerge that can adversely affect the drafting work plan. For the manager of the taskforce, this may mean having to seek changes to deadlines and reassigning or reprioritising work, while for the drafter it may mean not being able to complete sections of work until policy holes are filled.

A well managed drafting taskforce must have clear strategies for dealing with emerging complexities.

### *Managing continuity of drafters, burn-out, and succession planning*

One of the things that make a drafting taskforce a very effective structure to complete a large and complex drafting task is that drafters on the taskforce develop expertise in the subject matter and legislative framework. Accordingly, a key goal (and challenge) for any drafting taskforce is to retain continuity of its drafters for the duration of its work plan.

Generally, the work plan and associated deadlines of a drafting taskforce are so tight that there simply isn't the time for a new drafter to get up to speed with the subject matter (it can sometimes take months) and still achieve taskforce outcomes. Therefore, everything must be done to ensure that drafters join a taskforce with a view to committing to a certain "tour of duty".

However, once a drafting taskforce is up and running, and significant output is being achieved, appropriate measures need to be put in place to ensure that burn-out does not occur and that drafters receive adequate breaks after intense drafting periods. Further, despite the best planning and recruitment techniques, drafters are going to want to leave the taskforce from time to time. Not surprisingly, after several years, most drafters might be looking for a new challenge (or a rest!). Accordingly, a drafting taskforce should have a developed plan for managing the movement of drafters in and out of the taskforce in a way that allows new drafters to come up to speed with the subject matter without compromising the work plan of the taskforce.

### **Is drafting as part of a Taskforce for you?**

So, would drafting as part of a taskforce be "your thing"?

Firstly, you must be prepared to work very closely with your colleagues. As drafters, we work closely with instructors each time we undertake a drafting task, but in a taskforce situation, the "closeness" is amplified.

Unlike a usual drafting situation, you will be physically on site with your instructor (and sometimes) special legal counsel colleagues. Often, when deadlines are looming, you may be drafting with an instructor by your side as last late changes are being made. This is not for everyone. However, provided you have developed good working relations with taskforce members, and don't mind working as part of a tight team, taskforce drafting generally works very well.

Secondly, you must be prepared to work on a single project for a long period of time - sometimes years.

As mentioned earlier, depending on the size of the drafting task, it will take you some months (maybe longer) to develop expertise in the subject matter and legislative framework. The taskforce will be very keen to retain that corporate knowledge and to have you stay with the taskforce for as long as possible.

In this sense there are several things to consider. Moving to work on a drafting taskforce may mean that you are seconded, or in some other way, temporarily transferred from your normal employment. Clearly you will need to take that into consideration in terms of your career development and how you retain contact with your "home" office.

Also, you may have concerns about drafting for such a long period about a single subject matter. Depending on the nature of the project, this concern may not be made out. Certainly in large drafting projects such as the Aviation Safety Regulatory Development Taskforce, the range of subject matter is so great that you are unlikely to feel like you are being bogged down in monotonous content.

Thirdly, given the very structured nature of a drafting taskforce, and the need for consistency across the regulatory material being developed, it may be that you are slightly more limited in your drafting creativity in a taskforce environment than you might otherwise be. The counter-side to this is that there is a certain satisfaction in helping to create, and then consistently applying, the drafting structures, styles, language and formatting developed for the taskforce.

Finally, you must enjoy working to what seems like permanently approaching deadlines. Just as one is achieved it is often the case that another is just around the corner. Many drafters like the rush of working to tightly managed deadlines but just as many prefer a situation where deadlines are a little less frequent.

In summary, I would strongly recommend considering working as a drafter on a large well managed drafting taskforce. Personally and professionally I have found it a very rewarding experience. I hope this paper may help you decide whether to get on board if the opportunity comes your way.

It also looks pretty good on your CV.