

OMNIBUS BILLS

STANDING COMMITTEE ON ADMINISTRATION AND PROCEDURE

MAY 2017

REPORT 2

COMMITTEE MEMBERSHIP

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RESOLUTION OF APPOINTMENT

In 1995 the Legislative Assembly for the Australian Capital Territory ('the Assembly') amended Standing Order 16, which established the Standing Committee on Administration and Procedure ('the Committee').

Standing Order 16 authorises the Committee to inquire into and report on, among other things, the practices and procedure of the Assembly.

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RECOMMENDATION

RECOMMENDATION

- 5.5 The Committee recommends that the Guidelines and Practice Note, prepared by the Office of Parliamentary Counsel continue to be used in the development of statute law amendment bills.

1. BACKGROUND

1.1. At its meeting on 16 February 2017 the Legislative Assembly resolved:–

“That this Assembly:

- (1) notes that:
 - (a) omnibus amendment bills are a useful tool to make policy, technical and editorial amendments to various pieces of legislation; and
 - (b) omnibus amendment bills enable legislation to be kept up-to-date and respond to changing circumstances and/or fix errors; and
- (2) refers the question of omnibus amendment bills to the Standing Committee on Administration and Procedure to examine the general basis and use of omnibus amendment bills.”

1.2. At its meeting on 23 February 2017 the Standing Committee on Administration and Procedure noted the resolution and agreed that the Parliamentary Counsel and the leaders of the parties in the Assembly be asked to provide their views on the role, function and definition of omnibus bills in making minor and technical amendments to the statute books.

1.3. Responses were received from:

- Parliamentary Counsel
- ACT Greens
- ACT Government

1.4. Copies of the responses are attached to this report.

2. ISSUE

- 2.1. Ms Lawder, MLA, in her speech in the Assembly when introducing the motion to refer the issue to the Committee, asked the Committee to examine the general basis of omnibus amendment bills and to provide some guidance or principles to Members as to what constitutes minor or technical changes as opposed to substantive change¹.
- 2.2. In particular, she made reference to circumstances in the Eighth Assembly where amendments were made that should have been the subject of consultation and debate. Her concern was that, while an amendment may seem minor and technical, there could be significant impacts on the relevant sector and on the public.
- 2.3. The debate on the motion highlighted some misunderstandings as to the use of omnibus bills and in closing Ms Lawder reaffirmed the need for the consistent application of guidelines.
- 2.4. The matter was also raised in a public hearing by the Standing Committee on Justice and Community Safety into the 2015-2016 annual reports. Mr Hanson MLA reiterated the need be clear on the definitions of “minor and technical.”

3. SUBMISSIONS

PARLIAMENTARY COUNSEL'S OFFICE

- 3.1. The submission from Parliamentary Counsel advised that the Office was responsible for the content of statute law amendment bills. Other amending bills were organised around portfolio responsibilities, such as justice and community safety legislation amendment bills and planning, building and environment legislation amendment bills and were the responsibility of the relevant agency.
- 3.2. Since 2002 the Office has, in the preparation of a statute law amendment bill, followed a government approved program, entitled “the technical amendments program”. This program provides for a statute law amendment bill to be prepared for presentation in the Assembly in each autumn and spring sittings.
- 3.3. The Office had approved guidelines and a practice note which have always been publicly available on the PCO website.
- 3.4. The guidelines provide for 4 schedules:
 1. Minor policy changes propose by government agencies;
 2. Amendments proposed by the Parliamentary Counsel to reflect best drafting practice;

¹ Hansard

3. Technical amendments proposed by the Parliamentary Counsel including minor typographical errors, improve grammar or syntax, omit redundant provisions etc; and
 4. Repeal obsolete or unnecessary legislation.
- 3.5. The guidelines and practice note are included the PCO submission at appendix A

ACT GREENS

- 3.6. In their submission to the Committee, the ACT Greens agreed with the general outline of the purposes of omnibus bills as articulated in the resolution agreed to by the Assembly.
- 3.7. In doing so, the submission noted that the term “minor’ was often difficult to define and that there is a temptation to include amendments in an omnibus bill if there was only a small number of clauses to be amended in a piece of primary legislation.
- 3.8. The ACT Greens were of the view that if an issue was in any way controversial then a separate bill, with a suitably descriptive short and long title, should be prepared and amendments be grouped into single subject areas or areas of reform.
- 3.9. The submission of the ACT Greens is at appendix B

ACT GOVERNMENT

- 3.10. While acknowledging the use of omnibus bills by Parliamentary Counsel to make “minor and technical” amendments to the statute books, the submission from the ACT Government discussed the usefulness of legislation amendment bills for portfolio agencies to fix unintended consequences or technical issues in a short time frame.
- 3.11. These bills are prepared on instruction from the relevant portfolio agency and there is no role for PCO to determine whether particular amendments are or are not to be included.
- 3.12. The use of portfolio based omnibus bills allows amendments to be made in a timely manner, with the better use of the Assembly’s time in reducing the number of stand-alone bills for minor amendments.
- 3.13. The submission noted that the inclusion of minor policy amendments was a key aspect of the utility of these bills as the amendments were often not significant enough to warrant stand-alone bills.
- 3.14. Specifically, the ACT Government submission stressed that the use of omnibus bills and the grouping of amendments together, in whatever form, did not reduce the Assembly’s ability to scrutinise those amendments.

- 3.15. The ACT Legislation Handbook and the ACT Cabinet Handbook (both available publicly online (<http://www.cmd.act.gov.au/policystrategic/cabinet/cabinet-office>) and http://www.cmd.act.gov.au/__data/assets/pdf_file/0011/1013789/Legislation-Handbook-March-2017.pdf) both provide guidance for directorates in the preparation of omnibus legislation amendment bills and the inclusion of amendments in these bills is matter for Cabinet.
- 3.16. The ACT Government, in its submission, recommended that the government retain the ability to be able to include more significant items (other than “minor or technical”) in omnibus bills should the need arise and that this should be subject to explanation through explanatory statements and briefings.
- 3.17. The submission of the ACT Government is at appendix C

4. DISCUSSION

- 4.1. In considering the submissions the Committee felt it was necessary to define the two types of omnibus bill referred to.
- 4.2. Parliamentary Counsel had a clear view of it’s role in the drafting of statute law amendment bills under the Government’s technical amendments program. The guidelines and practice note prepared by PCO only refers to that program.
- 4.3. For all other omnibus portfolio legislation amendment bills the onus rests with the requesting agency to make the decisions as to whether particular amendments were to be included. It was clear that PCO will take instruction in this area but the ultimate decision rests with the agency.
- 4.4. The ACT Government in its submission offered the following commentary on the various legislation amendment bills:
 - Justice and Community Safety Legislation Amendment Bills—include amendments that do not represent major changes to existing policy but may touch on areas of government policy that are inherently controversial.
 - Treasury Omnibus taxation amendment program—amendments often align the ACT’s tax provision with other States, identify opportunities for red tape reduction and improved efficiency.
 - Planning, Building and Environment Legislation Amendment Bill program—majority of amendments are editorial or technical and typically correct minor errors or to improve clarity.

5. CONCLUSION AND RECOMMENDATION

- 5.1. There appears to be a role for guidelines and practice note in the development of statute law amendment bill by the Parliamentary Counsel. If an agency were to propose amendments for inclusion in a SLA bill that failed the “minor or technical:” test set out in the guidelines, then the agency could then initiate the drafting of a portfolio omnibus bill.
- 5.2. The ACT Cabinet Handbook and the ACT Legislation Handbook would then provide guidance to the proponents.
- 5.3. The Committee was of the view that, for the purposes of statute law amendment bills, the PCO guidelines should continue to be observed.
- 5.4. In relation to other omnibus bills the Committee’s view was that where those bills made controversial or contentious changes this should be clearly spelt out in the relevant Explanatory Statements.

RECOMMENDATION

- 5.5 The Committee recommends that the Guidelines and Practice Note, prepared by the Office of Parliamentary Counsel continue to be used in the development of statute law amendment bills.

Joy Burch MLA, Chair

May 2017

APPENDIX A: SUBMISSION FROM PARLIAMENTARY COUNSEL



ACT
Government

Justice and Community Safety

Parliamentary Counsel's Office

Mr Tom Duncan
Secretary
Standing Committee on Administration and Procedure
Legislative Assembly for the Australian Capital Territory
GPO Box 1020
Canberra ACT 2601

Tom
Dear Mr Duncan

Thank you for your letter of 1 March 2017 referring to the resolution passed by the Legislative Assembly on 16 February 2017 about omnibus bills. You have asked for my views on the role, function and definition of omnibus bills in making minor and technical amendments to the ACT statute book.

I take the term 'omnibus bill' to encompass bills that propose amendments to a number of different pieces of legislation, and on a number of different topics rather than a single issue.

Statute Law Amendment Bills are the most obvious example. Other common examples in the Territory are bills organised around portfolio responsibilities; for example, the *Justice and Community Safety Legislation Amendment Bill 2016* and the *Planning, Building and Environment Legislation Amendment Bill 2016*.

Portfolio amendment bills are the responsibility of the relevant portfolio agency. Parliamentary Counsel's Office (PCO) drafts these bills on instructions from the agency but is not responsible for deciding whether particular amendments are or are not appropriate to be included. This is a matter for the relevant portfolio agency and the approval under which the portfolio bill is prepared.

However, PCO is responsible for preparing Statute Law Amendment Bills. It does this under a program approved by government, known as the technical amendments program. The program has been operating in its current form since 2002 and provides for a Statute Law Amendment Bill to be presented to the Legislative Assembly in each autumn and spring sittings. Guidelines were approved for the program, and a practice note dealing with procedural matters. Both the guidelines and practice note are publicly available on the PCO website (www.pco.act.gov.au). Copies are attached for your reference.

Overall, the aim of the program is to develop a simpler, more coherent and accessible statute book for the Territory. In summary, the guidelines provide for Statute Law Amendment Bills to include 4 schedules as follows:

Schedule 1 contains minor policy changes proposed by government agencies.

Amendments are included in the schedule only if—

- the Chief Minister has given drafting approval for the amendments; and
- they are not controversial, not important enough to justify the introduction of a separate amending bill and otherwise meet the guidelines for inclusion in the technical amendments program.

Schedule 2 contains amendments proposed by the Parliamentary Counsel to ensure the overall structure of the statute book is developed to reflect best practice. These amendments are generally of the *Legislation Act 2001*.

Schedule 3 contains technical amendments proposed by the Parliamentary Counsel. The amendments may correct minor typographical or clerical errors, improve grammar or syntax, omit redundant provisions or otherwise update or improve the form of the legislation amended. Amendments are included only if they are technical (that is, they do not change the effect of the law in significant respects) and are not controversial.

Schedule 4 contains repeals of obsolete or unnecessary legislation.

PCO assesses the suitability of each amendment proposed to be included in the technical amendments program. Amendments that have significant policy implications or are controversial are not included. The guidelines include the following examples of amendments that would not be made as technical amendments:

- amendments creating or abolishing offences
- amendments increasing or reducing penalties for offences
- amendments imposing liabilities, particularly retrospective liabilities
- amendments of Acts dealing with a controversial subject matter
- amendments prejudicing the rights of anyone
- amendments that may be perceived as favouring or disadvantaging a particular person
- amendments removing or restricting jurisdiction of a court or tribunal
- amendments imposing or changing liability to pay tax
- amendments appropriating public money
- amendments that directly affect a government agency other than the sponsoring government agency if the amendments have not been agreed between agencies
- amendments that are lengthy or voluminous (unless they are of a minor, repetitive nature)
- amendments proposed for an earlier statute law amendment bill that were found to be inappropriate
- amendments previously rejected by the Legislative Assembly.

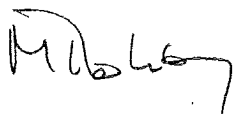
In assessing the suitability of proposed amendments, PCO takes a conservative, cautious approach. On numerous occasions we have responded to agencies that proposed amendments are not suitable for inclusion for one or more of the reasons set out in the guidelines.

In relation to whether something is a minor policy change, or likely to be controversial, it is accepted that opinions can differ. But PCO's overriding concern is to preserve the integrity of the technical amendments program, and if we have any doubts about the suitability of a particular amendment we take the view that it should not be included.

In my view, Statute Law Amendment Bills have been and remain a very useful vehicle for minor and technical amendments, that would not justify separate bills, to be dealt with in an efficient and timely way. The technical amendments program has enabled a significant amount of cleaning up and updating of the ACT statute book to be done. It has been useful in repealing a large amount of redundant legislation, and over time much modernisation and consistency across the statute book has been achieved. Similar programs operate in other jurisdictions. I have no doubt that there is ongoing value in the program.

I hope these comments are useful for the Committee, and would be happy to provide further information if that would be of assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M Toohy', written in a cursive style.

Mary Toohy
Parliamentary Counsel

31 March 2017

Australian Capital Territory

Subject: ACT legislation—technical amendments program—guidelines

Background

1 The object of the technical amendments program is to make ACT legislation simpler and more coherent, and to keep it up to date. The program deals only with minor or technical amendments and repeals that are not controversial.

2 The program is implemented by—

- presenting a statute law amendment bill in each sitting of the Legislative Assembly (Spring and Autumn); and
- including schedules of technical amendments in other amending legislation (where appropriate).

Statute law amendment bills

3 A statute law amendment bill will be prepared for each sitting of the Legislative Assembly.

4 Statute law amendment bills usually have 4 schedules but may contain more if needed.

5 Schedule 1 contains minor policy changes proposed by government agencies. Amendments will be included in the schedule only if—

- the Chief Minister has given drafting approval for the amendments; and
- they are not controversial, not important enough to justify the introduction of a separate amending bill and otherwise meet the guidelines for inclusion in the technical amendments program.

6 Schedule 2 contains amendments proposed by the Parliamentary Counsel to ensure the overall structure of the statute book is developed to reflect best practice. Structural issues are particularly concerned with making the statute book more coherent and concise, and therefore more accessible. These amendments generally relate to Acts of general application (eg the *Legislation Act 2001*) and are directed at avoiding unnecessary duplication of provisions and ensuring the maximum degree of standardisation of provisions, consistent with operational and policy requirements. Amendments are only included if they are not controversial.

7 Schedule 3 contains technical amendments proposed by the Parliamentary Counsel. The amendments may correct minor typographical or clerical errors, improve grammar or syntax, omit redundant provisions, remove gender specific references or otherwise update or improve the form of the legislation (eg, administrative and machinery provisions about appointments and delegations etc to take advantage of the *Legislation Act 2001*). Amendments are only included if they

are technical (that is, they do not change the effect of the law in significant respects) and are not controversial. This schedule may include editorial amendments that could be made under the *Legislation Act 2001* but are appropriate to refer to the Legislative Assembly.

8 Schedule 4 contains repeals of obsolete or unnecessary legislation, proposed by government agencies or the Parliamentary Counsel's Office. Repeals will be included in the schedule only with the Chief Minister's approval.

Technical amendment schedules in amending legislation

9 Technical amendments (of the kind suitable for a statute law amendment bill, schedule 3) may also be added to particular items of amending legislation if appropriate. The amendments would be proposed by the Parliamentary Counsel, and included in a separate schedule that indicates that they are technical amendments. The Parliamentary Counsel's Office will prepare explanatory notes for the amendments and include them in the schedule.

Matters inappropriate for the technical amendments program

10 The Parliamentary Counsel assesses the suitability of each amendment proposed to be included in the technical amendments program.

11 Amendments that have significant policy implications or are controversial are not included in the technical amendments program. The following are examples of amendments that would not be made as technical amendments:

- amendments creating or abolishing offences
- amendments increasing or reducing penalties for offences
- amendments imposing liabilities, particularly retrospective liabilities
- amendments of Acts dealing with a controversial subject matter
- amendments prejudicing the rights of anyone
- amendments that may be perceived as favouring or disadvantaging a particular person
- amendments removing or restricting jurisdiction of a court or tribunal
- amendments imposing or changing liability to tax
- amendments appropriating public money
- amendments that directly affect a government agency other than the sponsoring government agency if the amendments have not been agreed between agencies
- amendments that are lengthy or voluminous (unless they are of a minor, repetitive nature)
- amendments proposed for an earlier statute law amendment bill that were found to be inappropriate
- amendments previously rejected by the Legislative Assembly.

April 2002

Australian Capital Territory

Subject: ACT legislation—technical amendments program—practice note

Purpose

1 This practice note is to help agencies decide whether an amendment or repeal is suitable for inclusion in the technical amendments program. It should be read with the technical amendments program guidelines and the Legislation Handbook.

Issues

2 The technical amendments program is only for minor or technical amendments (or repeals) that are not controversial.

3 The Parliamentary Counsel's Office will prepare the legislation proposal form for the inclusion of a statute law amendment bill in the Government's legislation program for each sittings of the Legislative Assembly.

4 Minor policy changes (schedule 1) and proposed repeals (schedule 4) will not be made under the program without, at least, the Chief Minister's in principle agreement.

Initial consultation

5 Before briefing the responsible Minister about a proposed minor policy change, agencies should consult the Parliamentary Counsel's Office and Executive and Cabinet Support in the Chief Minister's Department. The Parliamentary Counsel's Office will assess whether the proposed amendment is suitable for inclusion in the technical amendments program and will consult Executive and Cabinet Support as necessary. Agencies may be asked to provide additional information about proposed amendments.

6 The Parliamentary Counsel's office will consult with the sponsoring agency about the proposed inclusion of a technical amendments schedule in a non-statute law amendment bill being prepared for the agency for other reasons.

Briefing and agreement of Minister

7 Agencies are responsible for briefing their Ministers and seeking the Minister's agreement to inclusion of minor policy changes and proposed repeals initiated by them under the technical amendments program. The brief to the Minister should confirm that the Parliamentary Counsel has agreed that each proposed amendment or repeal is suitable for the technical amendments program. A copy of the drafting instructions, confirming that the amendment is not controversial, should be attached.

Chief Minister's approval

8 The responsible Minister should seek the Chief Minister's in principle agreement, in writing, to the making of minor policy changes (schedule 1) and proposed repeals (schedule 4) initiated by agencies under the technical amendments program. The Parliamentary Counsel's Office will seek the Chief Minister's in principle agreement for proposed repeals initiated by it under the technical

amendments program. Requests should be made in accordance with the Legislation Handbook.

9 If the Parliamentary Counsel's Office initiates a repeal, it will consult with the responsible agency before seeking the Chief Minister's approval.

Drafting instructions

10 For amendments and repeals initiated by agencies, instructions should be given to the Parliamentary Counsel's Office as soon as possible after the Chief Minister's agreement is received.

11 Drafting instructions for amendments to be included in the statute law amendment bill for a particular sitting period of the Legislative Assembly (ie Spring or Autumn) should be provided to the Parliamentary Counsel's Office before the end of the previous sitting period. If instructions are received after this deadline, it may not be possible to include the amendments in the next statute law amendment bill and they may have to be deferred until a future sitting period.

Cabinet consideration

Statute law amendment bills

12 The Parliamentary Counsel's Office will prepare the Cabinet submission, explanatory memorandum and presentation speech for each statute law amendment bill. The Attorney-General will sponsor the submission in Cabinet.

Technical amendments in other bills

13 The Parliamentary Counsel's Office will consult the sponsoring agency about the inclusion of any technical amendments schedule in a non-statute law amendment bill being prepared for the agency for other reasons. A schedule will only be included if appropriate, and the inclusion will be noted in the Parliamentary Counsel's Office memorandum for the bill.

14 The Parliamentary Counsel's Office will include explanatory notes in technical amendments schedules to explain the effect of the amendments.

Presentation and debate in the Legislative Assembly

Statute law amendment bills

15 The Attorney-General will present each statute law amendment bill. The Minister administering particular legislation is responsible for handling the debate on any minor policy changes to that legislation.

Technical amendments in other bills

16 The Minister who presents the bill is responsible for handling the debate on the bill. The schedule of technical amendments will contain explanatory notes (included by the Parliamentary Counsel's Office) about particular technical amendments.

Further Information

17 For further information about the technical amendments program, contact the Parliamentary Counsel's Office on 6207 0620 or Executive and Cabinet Support on 6205 0543.

April 2002

APPENDIX B: SUBMISSION FROM THE ACT GREENS

Rafferty, Janice

From: Esguerra, Indra
Sent: Tuesday, 11 April 2017 5:37 PM
To: Rafferty, Janice
Subject: Greens position on omnibus bills

Hi Janice,

Thank you for your letter in relation to omnibus bills, and noting the resolution passed in the Assembly on 16th February:

“(1) notes that:

- (a) omnibus amendment bills are a useful tool to make policy, technical and editorial amendments to various pieces of legislation; and
 - (b) omnibus amendment bills enable legislation to be kept up-to-date and respond to changing circumstances and/or fix errors; and
- (2) refers the question of omnibus amendment bills to the Standing Committee on Administration and Procedure to examine the general basis and use of omnibus amendment bills.”.

The Greens support the general outline of the role of omnibus amendment bills as agreed to in the resolution of 16 February 2017. We agree that omnibus legislation is a practical way for government to bring forward legislation on minor issues that can range across a portfolio. We note that ‘minor’ is often difficult to define, but generally should be non-controversial, noting that this can also be difficult to judge.

Omnibus legislation allows the government to cover a range of issues in a portfolio, such as PABELABS – Planning, building and environment legislation amendment bills, without needing to outline specifically in the title what all the separate provisions are within the bill. For example, without needing to do separate bills for each issue within the bill (a heritage bill, an environment bill, a planning and development bill and a building bill), which may only have a few clauses for each matter.

If an issue is controversial, then it is important that the bill has a clear title, and any amendments fall within the long title of the bill. i.e. controversial legislation shouldn’t be hidden within a SLAB – statute law amendment bill. But it is logical if justice-related amendments, even if controversial, are able to sit within a justice and community safety legislation amendment bill. If the issue is substantive or controversial, it is generally best to have a stand-alone bill. Where possible, amendments can be grouped into a single subject or area of reform, and it would be preferable to use an appropriate descriptive title.

I hope that provides enough guidance on the Greens position on omnibus legislation, but of course happy to discuss further, noting that Mr Rattenbury will be present at the Administration and Procedures Committee meeting where this will be discussed.

Regards, Indra

Indra Esguerra | Chief of Staff | **ACT Greens MLAs**

Shane Rattenbury MLA | ACT Greens Member for Kurrajong | Minister for Climate Change and Sustainability; Minister for Justice, Consumer Affairs and Road Safety; Minister for Corrections; Minister for Mental Health

Caroline Le Couteur MLA | ACT Greens Member for Murrumbidgee | ACT Greens Spokesperson for Planning, Transport, City Services, Housing and Community Services
t: 02 6205 8500

APPENDIX C: SUBMISSION FROM THE ACT GOVERNMENT



Government Submission to the Standing Committee on Administration and Procedure review of Omnibus bills

Omnibus bills are bills that amend a number of Acts and regulations, on a number of different topics. The omnibus bills drafted by Parliamentary Counsel's Office (PCO) are statute law amendment bills and legislation amendment bills.

Legislation amendment bills are the responsibility of the relevant portfolio agency. PCO drafts the bills on instructions from the agency but is not responsible for deciding whether particular amendments are or are not appropriate to be included. This is a matter for the relevant portfolio agency and the Cabinet or Ministerial approval under which the legislation amendment bill is prepared.

Benefits of omnibus bills

The value of omnibus bills is the opportunity to fix unintended consequences of technical issues within a short time frame, allowing government to be more responsive. Omnibus bills address technical errors that can have significant impacts. Omnibus bills can additionally reduce the impact of consultation on stakeholder groups by reducing the need for consultation on minor and technical matters.

Omnibus bills are particularly useful in operational areas that have a large piece of legislation to implement, such as the *Children and Young People Act 2008*. Omnibus bills can efficiently resolve minor and technical issues regarding the implementation of this legislation on a regular basis. They may be more useful in an operational area than in an area where changes to legislation are less frequent and are more likely to modify policy or the intent of legislation.

Omnibus bills can be useful for rectifying unintended consequences of legislation. For example, in a recent case, technical amendments to the *Adoption Act 1993* (the Act) in 2008 had inadvertently removed the Court's power to undo an adoption order made under an earlier adoption law. An amendment to the Act through an omnibus bill corrected this oversight and enabled an adoption order under the earlier law to be discharged. Although omnibus bills make minor changes to legislation, they can have significant outcomes for the individuals impacted by them, as was the case here.

The ability to combine a number of different amendments into a single bill allows them to be made in a timely and efficient manner, and it means that they are in a single location, which enhances the accessibility and transparency of amendments to legislation.

There are a number of benefits of consolidating amendments into a single bill:

- a) It is a more efficient process, and is a better use of the Assembly's time, than having multiple stand-alone bills for minor amendments.
- b) It allows amendments to be made in a timely manner without having to wait several years for a major amendment bill or review of a relevant Act. This

means legislation is kept more up to date and the government is proactive in responding to changing circumstances.

- c) It makes legislation clearer and more accessible, because there is one mechanism through which multiple amendments are made.

The inclusion of minor policy amendments is a key aspect of the utility of omnibus bills. While more significant than technical and editorial amendments, these are not significant enough to warrant a stand-alone bill. It is important to note that the amendments classified as minor policy often simply change a particular provision so that it better operates to achieve the existing objectives of the Act. They do not involve large changes to the overall policy or existing legislative framework of an Act.

Statute Law Amendment Bills

PCO is responsible for preparing statute law amendment bills, which it does under the authority of the technical amendments program. This program, in its current form, was approved by Cabinet in 2002. Cabinet agreed to the maintenance of a technical amendments program for minor, non-controversial and technical amendments of ACT legislation, to be implemented by statute law amendment bills presented in the Spring and Autumn sittings of the Legislative Assembly.

The objectives of the program are to develop a simpler, more coherent and accessible statute book for the Territory by means of minor legislative changes prepared from time to time in accordance with the program. The program allows minor amendments that would not justify separate bills to be dealt with in an efficient and timely way.

Cabinet approved guidelines for the program, and a practice note dealing with procedural matters. Both are available on the PCO website (www.pco.act.gov.au). Statute law amendment bills usually have four schedules but may contain more if needed.

Legislation Amendment Bills

Legislation Amendment Bills are used to group amendments together to avoid multiple small bills. This assists the government to deal with legislative reform more promptly and effectively.

The Justice and Community Safety Legislation Amendment Bill program

The Justice and Community Safety Legislation Amendment Bill (JACS Bill) program is one of several omnibus bills (or Legislation Amendment Bill) programs run by the Justice and Community Safety Directorate.

The JACS Bill program commenced with the Justice and Community Safety Legislation Amendment Bill 1999¹. The Explanatory Statement of this first JACS Bill provided that

¹ Justice and Community Safety Legislation Amendment Bill 1999 at http://www.legislation.act.gov.au/b/db_12400/19990902-14151/pdf/db_12400.pdf

the bill was intended to 'amend the law relating to justice and community safety and for other purposes'².

During debate of this Bill, Mr Humphries (the Minister for Justice and Community Safety in the 4th Legislative Assembly) said:

*"...it is largely a Bill comprised of a series of technical and procedural amendments to legislation in the justice portfolio to ensure that the legislation meets the needs of the community... I am glad that at this stage at least the Bill will be passed and there will be opportunity for the enlargement of the rights of citizens of the ACT. I hope that the process of reviewing the law in this way through what are more or less omnibus Bills dealing with a particular portfolio area will continue as a way of dealing with a succession of relatively small matters for the most part which arise in the administration of justice, but which certainly are important to some people in the community if those matters cannot be dealt with in a timely way"*³.

JACS Bills include amendments that do not represent major changes to existing policy. In seeking to make technical or minor amendments, these bills may touch on areas of government policy that are inherently controversial, even where the amendment in isolation may not result in a major policy change.

This reflects that the legislation under the responsibility of the Justice and Community Safety Directorate covers broad and diverse areas, including significant parts of the criminal and civil law.

Treasury Omnibus taxation amendment program

The ACT Revenue Office (the office) instituted an omnibus taxation amendment program to support its management of the ACT's taxation system. The program has been successful, with full support from all sides of government.

Omnibus Bills are important to ensure ACT taxation legislation is efficient, of high quality and fair in operation. The Office regularly reviews taxation legislation to identify opportunities for red tape reduction and improved efficiency, such as where provisions are uncertain, obsolete or onerous for customers.

Many omnibus amendments align the ACT's tax provisions with other States and Territories to improve consistency and understanding, particularly in the field of payroll tax where administration is harmonised across Australia.

Omnibus Bills have the vital functions of enhancing taxpayers' rights under the legislation and clarifying their responsibilities to the ACT Revenue Office. This maintains fairness and equity between taxpayers in the ACT community.

Planning, Building and Environment Legislation Amendment Bill program

The first Planning, Building and Environment Legislation Amendment Bill (PABELAB) was passed in June 2011 and there are typically two per year. Usually the majority of

² Explanatory Statement, Justice and Community Safety Legislation Amendment Bill 1999 at http://www.legislation.act.gov.au/es/db_12402/19990902-14154/pdf/db_12402.pdf

³ Hansard, ACT Legislative Assembly 15 February 2000 at <http://www.hansard.act.gov.au/hansard/2000/pdfs/20000215.pdf>

amendments are editorial or technical and typically correct minor errors, such as incorrect section references, or fine-tune statutory requirements to improve the clarity and operation of provisions. These bills typically include approximately 20 amendments. Amendments are to the range of legislation administered by the Environment, Planning and Sustainable Development Directorate. There have been 11 PABELABs passed through the Legislative Assembly.

One of the reasons for the introduction of the Planning, Building and Environment Legislation Amendment Bill (PABELAB) was in response to concerns that making amendments through a variety of other means is potentially confusing for community, industry and government users of legislation.

Examples of previous minor policy amendments made through PABELAB include:

- a) Changing the threshold in the definition of 'small and medium scale generation' in the *Utilities (Technical Regulation) Act 2014*. This was a change made to reduce unnecessary regulation and was done in response to a rapidly changing sector. The change better targeted regulation to installations of sizes that pose a significant risk.
- b) An amendment to the *Electricity Feed-in (Renewable Energy Premium) Act 2008* to retrospectively correct a wording error in a Disallowable Instrument which determined the premium feed-in rate for renewable energy. This was an important amendment that was necessary to make quickly to fix a mistake and cover the Territory against any future liabilities. PABELAB provided the means to make this amendment very soon after the issue was discovered.
- c) An amendment to the *Heritage Act 2004* to clarify the operation of one of the heritage significance criterion which determines whether a place or object can be suitable for registration of the Heritage Register.

BACKGROUND

Position in Legislation and Assembly Standing Orders

There is limited guidance in either the legislation or the standing orders about the appropriate contents of any kind of bill. The inclusion of particular matters tends to be determined by convention.

Self-Government Act

Part IV of the *Australian Capital Territory (Self-Government) Act 1988* (Self-Government Act) sets out the powers of the Legislative Assembly, including the power of the Assembly to make laws⁴. The Self Government Act does not provide for specific Assembly procedure relating to enacting legislation including Legislation Amendment Bills. The Self Government Act excludes some matters from the Assembly's power to make laws (eg the coining of money) and expressly permits the Assembly to make laws with respect to some matters (eg the repealing of legal sanctions against attempted suicide), but does not specifically deal with omnibus bills.

⁴ *Australian Capital Territory (Self-Government) Act 1988 (Cth)*
<https://www.legislation.gov.au/Details/C2016C00802>

Legislation Act

The *Legislation Act 2001* refers to amending laws (see e.g. part 9.3), however the guidance provided is for the drafting, rather than the content, of amending laws.

Standing Orders

Chapter 15 of the ACT Legislative Assembly Standing Orders (as at December 2016) sets out the procedures relating to the initiation and passage of bills in the Assembly, including the information required in the notice of intention to present a bill and the documents required to be presented to the Assembly⁵. The Standing Orders do not contain any orders about the matters which may be dealt with by bills, including omnibus bills.

Accordingly, the contents and procedure of omnibus bills are not prescribed by legislation or standing orders, but are instead the subject of internal government policy and convention.

Position in Government Policy and Procedure

The *ACT Machinery of Government* series is a compilation of guidance material outlining key governance conventions, procedures and standards. This series includes the ACT Cabinet Handbook and the ACT Legislation Handbook, both of which are available to the public online⁶.

Legislation Handbook

The ACT Government Legislation Handbook is intended as a guide for directorate officials and ministerial offices to better understand the ACT legislative process. It details legislative procedures and other practical considerations involved in making and amending legislation.

The Legislation Handbook outlines the procedure for amendment bills and sets out exceptions to the normal bills process.

Cabinet Handbook

The ACT Government Cabinet Handbook outlines the procedures and conventions for the operation of the ACT Cabinet and its support processes. These procedures and conventions encompass the entire Cabinet process through preparation, lodgement and consideration of Cabinet business, as well as ongoing administrative aspects of the maintenance of Cabinet records.

Cabinet Office is responsible for monitoring and enforcing compliance with the Cabinet Handbook and Cabinet Liaison Officers ensure that procedures set out in the Cabinet Handbook are followed in their directorate.

⁵ Standing Orders, 9th Legislative Assembly, December 2016 at http://www.parliament.act.gov.au/data/assets/pdf_file/0015/614040/Standing-Orders_9th-Assembly_December-2016.pdf

⁶ <http://www.cmd.act.gov.au/policystrategic/cabinet/cabsec>

Page 26 of the Cabinet Handbook sets out the following:

Legislation Amendment Bills that relate to minor and uncontroversial amendments may be approved by Cabinet in a combined pass process. A normal two pass process (as outlined in flowchart 4) must be undertaken where the Legislation Amendment Bill seeks to make a change in Government policy⁷.

Legislation Amendment Bills are distinct from the technical amendments program provided for on page 26 of the ACT Government Cabinet Handbook that deals with Statute Law Amendment Bills.

Whether or not proposed amendments in a Legislative Amendment Bill are sufficiently minor and uncontroversial to be approved by Cabinet in a combined pass process is a question for Cabinet alone. Therefore, while it is open to the Legislative Assembly to develop its own processes to deal with bills depending on the extent to which they seek to make major or minor policy change, the reasoning behind confidential decisions made by Cabinet cannot form part of this consideration.

Significant Bills

The Parliamentary Agreement for the 9th Legislative Assembly made a commitment to executive reform including that 'significant bills will be presented to Cabinet and the Assembly with full Human Rights compatibility statements and a summary of community and stakeholder consultation'. The Government is progressing this commitment, including exploring options for defining a 'significant bill'.

When considering the value of omnibus bills, it is important to distinguish between the purpose served by various bills. For example, Crimes Legislation Amendment Bills will often be used, at least once each year, to bring together a number of very disparate issues under one bill.

Amendments in these Bills, normally referred to as CLABs, will often include minor and technical changes that could often fall within JACS Bills as well as more complex and even highly controversial proposals. Each amendment is clearly explained and justified in the explanatory statement.

Grouping amendments together does not reduce the Legislative Assembly's ability to scrutinise those amendments.


CONCLUSION

The role, function and purpose of omnibus bills are governed by internal government policy and procedure, namely the Cabinet Handbook and the Legislation Handbook. Whether or not the matters dealt with by an omnibus bill are sufficiently minor and uncontroversial enough to be approved by Cabinet in a combined pass process is ultimately a matter for Cabinet.

It is recommended the government retain the ability to be able to include more significant items in omnibus bills, should the need arise. This could continue to be subject to clear explanation through explanatory statements and briefings to Ministers and other members of the Legislative Assembly.

⁷ <http://injac/documentcentre/Policy%20Documents/Cabinet%20Handbook%20-%20PILOT.pdf>

A precise definition or threshold for omnibus bills could unnecessarily limit the avenues that the Government has to amend its legislation to fix issues as they arise or change policy settings to efficiently implement the Government's agenda.



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Chief Minister

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