

OFFICE OF PARLIAMENTARY COUNSEL
**COST – RECOVERY
GUIDELINES**

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I INTRODUCTION

The main function of the Office of Parliamentary Counsel (OPC) is to draft Tasmanian legislation – Acts and statutory rules.

Although this is a core function of government, OPC is required to recover the cost of some drafting services.

2 COST - RECOVERY

Cost-recovery applies if –

- the drafting is for an off-budget Agency or statutory authority
- the drafting involves a matter that will yield a direct financial return to the State
- external funding is available
- the drafting involves a major review or rewrite of a piece of legislation (or any of its provisions)
- there is inadequate lead-time.

Drafting tasks not falling into one or more of these categories do not attract charges and are funded from OPC's budget allocation. Most of OPC's work is so funded.

3 BASIS OF COST – RECOVERY (BY CATEGORY)

3.1 Off – budget Agency or statutory authority

Off-budget Agencies and statutory authorities are charged for drafting services because the establishment and maintenance of effective legislative settings is an indispensable business cost attaching to their status and operation within the public sector.

3.2 Direct financial return to State

Legislation is sometimes required in support of initiatives that are expected to yield a direct financial return to the State.

3.3 External funding

Occasionally, some degree of external funding may be available for a drafting task. This could be funding from an industrial or professional body whose interests are affected by the relevant legislative settings.

3.4 Major review

Sometimes a drafting task may involve the wholesale repeal and remaking of a piece of legislation or the drawing of amendments affecting a substantial proportion of its provisions.

This includes legislation that is automatically repealed and remade pursuant to the Subordinate Legislation Act 1992.

3.5 Inadequate lead - time

Not allowing adequate lead-time for a drafting task usually causes difficulties for OPC and can cause serious difficulties for government more generally – see chapters 3.7 and 3.8 of the Manual for the Preparation of Bills or chapters 2.7 and 2.8 of the Guidelines for the Preparation of Statutory Rules available on this OPC website.

In determining what constitutes "adequate lead-time", allowance needs to be made for the many factors outside OPC's control – eg Parliamentary timetables for Bills and Executive Council and Gazette protocols for statutory rules.

Determining what constitutes "adequate lead-time" usually depends on circumstance. It is not possible to be prescriptive though, in the case of delegated legislation, some guidance is provided in chapter 2.7 of the Guidelines for the Preparation of Statutory Rules.

However, the determination of the Chief Parliamentary Counsel (CPC) is final.

Obtaining priority for a drafting task – whether from Cabinet or otherwise – will not exempt it from these costing requirements if the lead-time is still inadequate.

4 WHAT COSTS ARE INCLUDED

If a drafting task is being costed, then associated on-costs such as the administrative attendances of typists and proof-readers and certain EnAct production and financial processing costs are included in the overall charge.

However, charging for legislative drafting itself stops once the draft is settled. Essentially, this means that the instructing Agency does not have to pay for any professional legal attendances after the draft has been formally approved and given its quality-assurance checks.

So, with a Bill, for example, the assigned drafter will not charge for drawing any Parliamentary amendments or checking the proof-of-vellum.

However, if legislation being drafted on a cost-recovery basis is formally approved but then, say, sent out for public consultation, OPC would still be obliged to charge for drawing any amendments flowing from that consultation as the draft could not be said to have been conclusively settled.

Similarly, if a Bill being drafted on a cost-recovery basis is formally approved and then sent to the Minister (and Cabinet) for executive endorsement, OPC would still be obliged to charge for drawing any amendments the Minister (or Cabinet) may require before the Bill is introduced into Parliament as in those circumstances too the draft could not be said to have been conclusively settled.

Generally speaking, no charge is ever made for professional attendances of a minor incidental nature such as the giving of telephone progress reports to the instructing Agency.

5 RATES OF CHARGING

Similar principles apply to costing by OPC as to costing by legal practitioners in private practice. Essentially, the cost is calculated according to an hourly rate by reference to the award or contract salary of the assigned drafter or relevant administrative officer, plus a loading for the on-costs relating to the cost of production.

6 PROCEDURE

6.1 Cost determination

The CPC determines whether a particular drafting task should be done on a cost-recovery basis by reference to these guidelines.

The CPC's decision is generally made at around the same time as the drafting file is opened and assigned to a drafter.

The assigned drafter is required to note and verify the CPC's decision on being given the file.

However, it is possible for a file's costing status to change – eg an Agency may suddenly seek to add entirely new and complex matters to a partially drafted Bill or statutory rule, with the result that there is no longer adequate lead-time.

However, in such cases, the work already completed is not costed.

6.2 Costing notification

If a drafting task is to be costed, the assigned drafter will so notify the instructing Agency, usually by means of the covering memorandum for the first draft.

However, a failure to give such notification does not mean that the costs can be waived.

6.3 Accounts

If a drafting task is costed, OPC usually renders its account at the very end of the drafting process, when closing the file.

In the case of a major on-going drafting task, interim accounts may be rendered – say at the end of a financial year – to help the instructing Agency with its budgeting.

The actual invoice will be issued through the Finance Branch of Corporate Services Division of OPC's host Department: Premier and Cabinet.

6.4 Discontinued files

If a drafting task being done on a cost-recovery basis is for any reason abandoned by the instructing Agency, the costs cannot be waived.

7 QUERIES AND FURTHER INFORMATION

An Agency that has any queries regarding these guidelines or a particular account should, in the first instance, contact OPC's Administration Officer [telephone 6233 2271]

These guidelines are in accordance with Tasmania's whole of government costing fees and charges guidelines which are available online at:

[http://www.treasury.tas.gov.au/domino/dtf/dtf.nsf/LookupFiles/Costing-Fees-and-Charges-Guidelines-2006.pdf/\\$file/Costing-Fees-and-Charges-Guidelines-2006.pdf](http://www.treasury.tas.gov.au/domino/dtf/dtf.nsf/LookupFiles/Costing-Fees-and-Charges-Guidelines-2006.pdf/$file/Costing-Fees-and-Charges-Guidelines-2006.pdf)