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**Instrument Drafting Guidance Note No. 1.4**

**Timeframes for the development of instruments**

**Document release 1.0**

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Purpose of this document

1. The purpose of this document is to assist agencies to plan for the development of instruments.
2. Attachment A sets out OPC’s advice about the estimated timeframes for the development of instruments based on their characteristics. It also sets out the factors that will result in a longer timeframe being needed and the risks of developing instruments within a compressed timeframe.
3. Agencies should contact the OPC instrument client adviser on (02) 6120 1390 if they would like to discuss the timeframe for the development of a particular instrument.

ATTACHMENT A

**Timeframes for the development of instruments**

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| Estimated timeframe | Characteristics | What the estimated timeframe does and does not allow for | Other factors that will result in a longer timeframe being needed | Urgent instruments |
| At least 6 weeks | * small instrument of up to 5 pages * easy to identify what provisions/amendments are needed * some analysis or research may be required * involves applying well‑established drafting precedents or practices * only 1 to 3 drafts required to finalise the instrument | **The estimated timeframe for the development of an instrument starts when drafting instructions are received by OPC.**  It allows for:   * drafting of the instrument (for more information, see [OPC’s drafting services: a guide for clients](https://www.opc.gov.au/drafting-resources/drafting-manuals)) * clarification and refinement of the policy objectives by the instructing agency * the instructing agency’s capacity to respond to drafts and to issue additional instructions as required * referral of provisions to other agencies for consideration (allow at least 7 business days) (for more information about the referral requirements, see [Drafting Direction 4.2](https://www.opc.gov.au/drafting-resources/drafting-directions)) * editorial checking (allow 1 business day for small instruments, 3-5 business days for medium instruments and 5-10 business days for large or very large instruments) * preparation of instrument for signature by maker (allow 2 business days)   The estimated timeframe does **not** allow for:   * the time needed for an exposure draft process or other consultation requirements (whether internal or external) * the time needed to obtain agency or Ministerial clearances * the time needed for any other factors mentioned in the next column   For more information about judging the size and complexity of an instrument, see [Instrument Drafting Guidance Note 1.3](https://www.opc.gov.au/sites/default/files/2023-09/Instrument%20Drafting%20Guidance%20Note%20No.%201.3%20-%20Judging%20size%20and%20complexity%20for%20instrument%20projects_0.pdf). | **There are many other factors that can affect the estimated timeframe for the development of an instrument. In many cases, these factors will result in a longer timeframe being needed.**  These factors include:   * an exposure draft process * consultation requirements for the instrument (whether internal or external) * requiring legal advice * competing legislative priorities for OPC and the instructing agency * how clear and well-developed the drafting instructions are (for more information about instructions, see [OPC’s drafting services: a guide for clients](https://www.opc.gov.au/drafting-resources/drafting-manuals)) * how clear and well developed the policy objectives are * changes in the policy objectives or approach once drafting has started * the instructing agency’s timeliness in responding to drafts and issuing additional instructions as required * the need for substantial consequential amendments * the need for substantial transitional, application and saving provisions | **If the instrument is urgent, OPC can work with you to ensure it is developed within the required timeframe.**  However, the overall quality of the instrument may be impacted by a compressed timeframe because of the following:   * reduced capacity to identify the best legislative solution and to identify and solve problems, gaps or other issues * reduced capacity to identify policy, legal or implementation issues, to seek legal advice and to consult others * reduced capacity to complete drafting and editorial checks   The following are some of the risks that come with developing an instrument in a compressed timeframe:   * increased likelihood of unintended consequences or ineffective provisions * increased likelihood of amendments being needed in the future * increased likelihood of adverse comments from the Senate Standing Committee for the Scrutiny of Delegated Legislation, stakeholders and others * increased risk of disallowance in some cases |
| At least 4 months | * medium instrument of up to 15 pages or large instrument of up to 50 pages * reasonable amount of analysis or research required to identify what provisions/amendments are needed * reasonable amount of work may be required to clarify the policy objectives * involves a degree of original or novel drafting or the careful application of drafting precedents and practices * raises some constitutional or legal issues and/or some political or other sensitivities * may require 12 to 15 drafts to finalise the instrument |
| 6 to 18 months | * large instrument of 16 to 50 pages or very large instrument of more than 50 pages * significant amount of analysis or research required to identify appropriate legislative solution * significant amount of work may be required to clarify the policy objectives * involves a high degree of original or novel drafting or the careful application of drafting precedents and practices * raises significant constitutional or legal issues and/or significant political or other sensitivities * may require 15 or more drafts to finalise the instrument |