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Introduction

1 References to Legislation Act 2001
The Legislation Act 2001 is abbreviated throughout as ‘LA’.

2 Numbering
The numbering in this guide follows the same principles as the chapter numbering in bills.

Example
1 is referred to as chapter 1
1.1 is referred to as part 1.1
1.4.1 is referred to as division 1.4.1
1 Form and contents

1.1 Page breaks

Each chapter, part and schedule begins on a new page. Parts of schedules and parts inserted by amendment need not begin on a new page. Page breaks are not included for divisions and subdivisions.

1.2 Numbering of parts, divisions, subdivisions, sections and schedule parts and divisions

In legislation with chapters, decimal numbering based on the chapter numbers should be used for parts and divisions (see example 1). If the legislation contains parts but not chapters, decimal numbering based on the part numbers should be used for divisions and subdivisions (see example 2). Section numbers should generally run continuously through the legislation (see example 3). Schedule parts and divisions should be numbered using decimal numbering based on the schedule numbers (see example 4).

Example 1
Numbering—chapters

| Chapter 17 | Transitional |
| Part 17.1  | General |
| Part 17.2  | Existing provisions |
| Division 17.2.1 | Civil proceedings |

Example 2
Numbering—parts

| Part 12 | Transitional |
| Division 12.1 | General |
| Division 12.2 | Public vehicles |
| Subdivision 12.2.1 | Definitions |

Note: Subdivisions should be avoided if possible (see pt 1.5)
Example 3
Numbering—sections

Part 1 Preliminary
1 Name of Act
2 Objects of Act
3 Dictionary
4 Notes

Part 2 Administration of road transport legislation
Division 2.1 Road transport legislation
5 What is the road transport legislation?
6 Application of definitions in other road transport legislation

Example 4
Numbering—schedule parts

Schedule 1 Minor amendments
Part 1.1 Commissioner for the Environment Act 1993
Part 1.2 Intoxicated Persons (Care and Protection) Act 1994

Schedule 2 Technical amendments
Part 2.1 Commissioner for the Environment Act 1993
1.3 Referring to parts, divisions, subdivisions, sections and schedule parts, divisions, sections

Using a decimal numbering system for groups of provisions means that all provisions have a unique reference and can be easily identified within the body of the legislation or relevant schedule (see example 1).

A reference in a schedule to a schedule part, division or section is a direct reference to the part, division or section (see example 2).

Example 1
Reference in main body to part, division or section
1 part 1.3 NOT chapter 1, part 3 and NOT chapter 1, part 1.3
2 division 2.1 NOT part 2, division 1 and NOT part 2, division 2.1
3 subdivision 12.3.1 NOT part 12, division 12.3, subdivision 12.3.1
4 section 5 NOT part 2, section 5

Example 2
Reference in schedule to schedule part, division or section
1 division 1.2 NOT schedule 1, part 1, division 1.2
2 section 1.23 NOT schedule 1, section 1.23

Example 3
Reference in main body to schedule part, division or section
1 schedule 1, part 1.2
2 schedule 1, division 1.2.1 NOT schedule 1, part 1.2, division 1.2.1
3 schedule 1, subdivision 1.2.1.1 NOT schedule 1, part 1.2, division 1.2.1, subdivision 1.2.1.1
4 schedule 1, section 1.23 (there is no need to include a reference to the part in schedule 1 if the section numbers in the schedule are unique)

1 Examples updated in version 2014-2.
1.4 Headings

1.4.1 Headings—generally

The purpose of a provision heading is to give a general indication of the contents of the provision. By glancing quickly through the contents, the reader should be able to—

- reach a good understanding of the structure of the legislation; and
- find provisions of particular interest.

A section, regulation or rule heading should therefore—

- be short
- not include unnecessary detail
- be unique (eg there should not be 2 headings saying ‘Delegation’)
- give a clear indication of the contents of the provision and not attempt to summarise the provision—
  that is, tell the reader what the subject of the provision is and not what the provision says about the subject
- use language consistent with the language of the provision
- accurately indicate the subject of the provision (eg if a provision deals with A, B and C, the heading should not indicate that it only deals with A and B).

Keywords should be put at the beginning of the heading where the first word or words are likely to catch the reader’s eye.

The section heading often supplies a useful test in deciding whether a subject should be dealt with in 2 or more provisions. If the heading cannot be made short without being vague or inaccurate, or distinctive without being long, this generally indicates that 2 or more provisions are needed.

A section heading need not be a complete grammatical sentence. A verb will not usually be necessary. The definite or indefinite article (‘a’ or ‘the’) should rarely be necessary. An ‘etc’ should not be added to a heading simply to avoid recasting, but can be used to indicate that the heading does not comprehensively indicate the subject of the provision.

Sometimes it may be appropriate to express a section heading in the form of a question. However, the heading can usually be recast in a non-question form. Consideration should be given to what form is most appropriate in the particular context.

Further reading

Ch 3 (Naming)

Words and Phrases Guide, if any
1.4.2 Headings—punctuation

If a section heading is expressed as a question, the use of the question mark is optional. If a question mark is not used or if the use may be irritating to the reader, consider whether the question could be recast in a non-question form (see example 1).

If it is necessary to emphasise or expand on the information in a heading a dash should be used in preference to a colon or semicolon, but sparingly.

If possible, avoid brackets in headings. References to provisions often include the provision heading in brackets and the resulting double brackets in the reference are not reader-friendly (see example 2).

Example 1
Recasting

## What is a fish?

recast as—

## Meaning of fish

Example 2
Double brackets—to be avoided

7 Operation of Wombat (Artificial Insemination) Program

....

27 ....

....

(4) A person commits an offence if the person—

(a) is not an authorised wombat catcher; and

(b) uses a wombat capture device under section 7 (Operation of Wombat (Artificial Insemination) Program).

1.4.3 Headings—provision abbreviations

The rules that apply to the use of provision abbreviations in notes also apply to headings (see pt 6.2).
1.4.4 Headings—mentions of definitions

Mentions of definitions in headings—see part 13.6.

Further reading
NZ Legislation Manual: pp 50–51

1.4.5 Headings—mentions of offence

Mentions of ‘Offence—’ in headings—see division 11.6.1.

1.5 Use of subdivisions

Use subdivisions only in exceptional cases and only with the parliamentary counsel’s approval. Consider alternative ways of organising the material. Use chapters if this will avoid the need for subdivisions.

1.6 Contents

Include a table of contents in all legislation if the table would go over 1 page, the legislation has parts or schedules, is principal legislation or amends more than 1 Act or regulation.

Note: A table of contents is not part of the legislation (LA, s 127 (2)).

2 Preamble or recital

A preamble (for an Act) or recital (for a subordinate law) is used to express the background to, or reason for, making the legislation. A preamble or recital is a formal device that follows a rigid structure. Preambles and recitals are most often used in landmark or unusual legislation, for example, the Native Title Act 1994 or human rights legislation, or in legislation that forms part of a national scheme (like the Gas Pipeline Access Act 1998).

A preamble or recital starts on a new page. A preamble starts after the long title and before the enacting words, with the heading ‘Preamble’. The preamble contains numbered clauses to facilitate amendment. Each clause may have more than 1 sentence. A preamble ends with the words ‘The Legislative Assembly for the Australian Capital Territory therefore enacts as follows:’. The ‘therefore’ is included only in the enacting words of Acts with preambles.

A preamble or recital is part of the Act or subordinate law.

Example 1

See the following legislation as precedents:

- Human Rights Act 2004
- Terrorism (Extraordinary Temporary Powers) Act 2006
- Native Title Act 1994.

Example 2

Native Title Act 1994 [amended]

Preamble

1 Before European settlement, land in Australia had been occupied, used and enjoyed since time immemorial by Aboriginal peoples and Torres Strait Islanders in accordance with their traditions.

2 Land is of spiritual, social, historical, cultural and economic importance to Aboriginal peoples and Torres Strait Islanders. In the Australian Capital Territory, there are sites that provide evidence of their use by various groups of Aboriginal peoples at different times for a variety of purposes.

5 In the Native Title Decision ((1992) 175 C.L.R. 1), the High Court—

(a) rejected the doctrine that Australia was terra nullius (land belonging to no-one) at the time of European settlement; and

(c) held that native title rights may be extinguished by valid government acts that are inconsistent with the continued existence of those rights, such as the grant of freehold or leasehold estates.

6 The Native Title Act 1993 (Cwlth) provides a national scheme with the following objects:…

7 The Legislative Assembly intends the Australian Capital Territory to participate in the national scheme enacted by the Commonwealth Parliament.

The Legislative Assembly for the Australian Capital Territory therefore enacts as follows:

Note: The enacting words do not have a paragraph number.
3 Naming

3.1 Inclusion of naming section

All legislation must have a naming section. The name of legislation used to be called its citation or short title.

The naming section is the first section in the legislation.

Example 1

1 Name of Act
   This Act is the *Wombat Protection Act 2003*.

Example 2

1 Name of regulation
   This regulation is the *Wombat Protection Regulation 2003*.

3.2 Naming

3.2.1 Naming—general rules

The name of legislation should reflect its subject matter, state the year of its making and provide a convenient (eg not too cumbersome) way of referring to the legislation. It must be given a unique identifying name. If it is not possible or convenient to achieve this by reference to the subject matter, for amending legislation an identifying number should be included—see division 3.2.6.

If amending legislation has a relatively common name, consideration should be given to including a description of the scope of the legislation (in brackets) as part of the name (see examples 1 and 2) However, brackets need to be used with care because they can be awkward—see division 3.2.5.

Examples 1

Non-amending Acts

1 This Act is the *Wombat Protection Act 2003*.

2 This Act is the *Road Transport (Driver Licensing) Act 1999*.
Examples 2

Amending Acts

1. This Act is the *Building (Residential Building Warranty) Amendment Act 2003*.
2. This Act is the *Crimes (Industrial Manslaughter) Amendment Act 2002*.
3. This Act is the *Fisheries Amendment Act 2003*.
4. This Act is the *Fisheries Amendment Act 2003 (No 2)*.
5. This Act is the *Fisheries Amendment Act 2003 (No 3)*.
6. This Act is the *Gaming Machine (Cap) Amendment Act 2003*.
7. This Act is the *Gaming Machine (Political Donations) Amendment Act 2003*.
8. This Act is the *Mental Health (Treatment and Care) Amendment Act 1999*.
9. This Act is the *Statute Law Amendment Act 2003*.
10. This Act is the *Wombat Levy Consequential Amendments Act 2001*.

3.2.2 Naming—omnibus amending legislation

**Common subject matter**

If the main purpose of the legislation is to amend 2 or more laws (Acts or regulations) in relation to a particular subject matter, the name should reflect the general nature of the subject matter.

Examples 1

Amending Acts

1. This Act is the *Environment Protection Legislation Amendment Act 2000*.
2. This Act is the *Land Titles Legislation Amendment Act 2000*.
3. This Act is the *Treasury and Infrastructure Legislation Amendment Act 2000*.
4. This Act is the *Road Transport Legislation Amendment Act 2002*.
5. This Act is the *Revenue Legislation Amendment Act 2002*.
6. This Act is the *Domestic Animals (Breeding) Legislation Amendment Act 2014*.

Examples 2

Amending regulations

1. This regulation is the *Road Transport Legislation Amendment Regulation 2005 (No 1)*.
2. This regulation is the *Treasury (Application of the Criminal Code) Amendment Regulation 2005*.

---

**Portfolio Acts**

If the purpose of the legislation is to amend a number of laws (Acts or regulations) administered by a particular government department, but without a common theme, the ‘portfolio’ Act is given the name of the department.

**Examples**

1. This Act is the *Health and Community Care Legislation Amendment Act 2000*.
2. This Act is the *Justice and Community Safety Legislation Amendment Act 2003*.
3. This Act is the *Treasury Legislation Amendment Act 2002*.

### 3.2.3 Naming—repeal legislation

If an Act consequentially amends legislation because of the enactment of other legislation and also repeals legislation, there is no need to mention ‘Repeal’ in the Act name (see example 1).

But, if the main purpose of an Act is to repeal legislation (whether or not it also makes amendments consequential on the repeal), the Act name should include ‘Repeal’ (see examples 2 and 3). If there are amendments to other legislation the schedule heading should be ‘Consequential amendments’.

**Example 1**

*Not include ‘Repeal’*

This Act is the *Wombat Levy Consequential Amendments Act 2003*.

*not*

This Act is the *Wombat Levy (Repeal and Consequential Amendments) Act 2003*.

**Examples 2**

*Include ‘Repeal’—Act*

1. This Act is the *Cotter River Repeal Act 2000*.
2. This Act is the *Insurance Levy Legislation Repeal Act 2001*.
3. This Act is the *Subsidies (Liquor and Diesel) Repeal Act 2000*.
4. This Act is the *Exhibition Park Corporation Repeal Act 2009*.

**Example 3**

*Include ‘Repeal’—regulation*

This regulation is the *Road Transport (Public Passenger Services) Repeal Regulation 2005*. 
3.2.4 Naming—regulations/rules

The name of a regulation or rules should follow, as closely as possible, the name of the Act under which they are made unless there are special circumstances requiring a different approach. For example, there may be 2 or more regulations or rules under an Act and closely following the Act name would result in clumsy or unwieldy names.

If it is not possible to closely follow the name of the Act, the name of the regulation or rules should as far as practicable reflect the Act’s name.

**Examples 1**

**Principal regulation**—(under *Road Transport (General) Act 1999*)

1. This regulation is the *Road Transport (Offences) Regulation 2003*.
2. This regulation is the *Road Transport (Third-Party Insurance) Regulation 2003*.
3. This regulation is the *Road Transport (General) Regulation 2000*.

In this example, even though each regulation dealing with different subject matters is made under the *Road Transport (General) Act 1999*, the inclusion of the word ‘(General)’ in each of the names would have resulted in clumsy regulation names with double brackets.

**Example 2**

**Amending regulation**

This regulation is the *Casino Control Amendment Regulation 2005 (No 1)*.

This regulation is the *Electoral Amendment Regulation 2005 (No 1)*.

**Example 3**

**Amending rules**

These rules are the *Supreme Court Amendment Rules 2005 (No 1)*.

The names of all regulations current at the beginning of November 2005 have been changed editorially under the Legislation Act. The name of each regulation now uses the singular ‘Regulation’ rather than the plural ‘Regulations’. The names of earlier regulations have not been changed.

The name of new regulations should use the singular ‘Regulation’.
3.2.5 Naming—use of brackets

The word ‘Amendment’ never appears in brackets.

‘Consequential Amendments’ should also generally not appear in brackets. However, brackets may be used for more complex names to separate the words indicating the purpose of the legislation (that is, the ‘Consequential Amendments’) from the words indicating the scope of the amendments.

If amending legislation has a relatively common name, consideration should be given to including a description of the scope of the legislation (in brackets) as part of the name. If the name of the legislation being amended contains brackets, the description of the scope should still be contained in brackets (see example 3).

However, the use of multiple brackets in names for principal legislation should be avoided.

Example 1

This Act is the Health and Community Care Services (Repeal and Consequential Amendments) Act 2002.

Examples 2

1 This Act is the Mental Health (Treatment and Care) Consequential Amendments Act 2002.

   not

   This Act is the Mental Health (Treatment and Care) (Consequential Amendments) Act 2002.

2 This regulation is the Magistrates Court (Land Planning and Environment Infringement Notice) Regulations 2003.

   not

   This regulation is the Magistrates Court (Land (Planning and Environment) Infringement Notice) Regulations 2003.

Examples 3

This Act is the Road Transport (Public Passenger Services) (Taxi Industry Innovation) Amendment Act 2015.

This Act is the Road Transport (Safety and Traffic Management) (Police Pursuit) Amendment Act 2015.
3.2.6 Naming—name containing number

Amending bills/Acts

Bills with the same name are numbered in chronological order of presentation for the year in which they are presented. The first bill for a year is not numbered. Later bills with the same name for the year are numbered (No 2), (No 3) etc.

Acts are numbered in chronological order of enactment for the year in which they are enacted (see LA, s 27). The Legislative Assembly is responsible for Act numbering.

Example

Before the Assembly—

*Crimes Amendment Bill 2001*

*Crimes Amendment Bill 2002 (No 2)*

*Crimes Amendment Bill 2003 (*A)*

Bills passed (in 2003)—

*Crimes Amendment Bill 2002 (No 3) [Act name: Crimes Amendment Act 2003]*

*Crimes Amendment Bill 2002 [Act name: Crimes Amendment Act 2003 (No 2)]*

*Crimes Amendment Bill 2003 (No 2) [Act name: Crimes Amendment Act 2003 (No 3)] (*B)*

In this example, the next Crimes Amendment Bill presented in 2003 would be the *Crimes Amendment Bill 2003 (No 3)* because in 2003 there have already been 2 Crimes Amendment Bills: the *Crimes Amendment Bill 2003 (at *A)* and the *Crimes Amendment Bill 2003 (No 2) (at *B)*. The next bill passed will be enacted as the *Crimes Amendment Act 2003 (No 4)*.
Amending regulations/rules

Regulations and rules are required to have a unique name because they are legislative instruments. This allows them to be referred to by that name.

The name of a draft amending regulation or rules should contain ‘(No’s)’ (left blank) after the year when they are supplied for making. The number is inserted before making (or, failing this, by the notifications team before notification). The number must reflect the order in which regulations or rules with the same name are made.

Examples

1 This regulation is the Construction Practitioners Registration Amendment Regulation 2005 (No 1).
2 This regulation is the Construction Practitioners Registration Amendment Regulation 2005 (No 2).

Further reading

LA, s 100 (1) (a) (Referring to particular ACT laws)
Legislation Regulation, s 6 (2) (Requirements about form of legislative instruments (other than approved forms)—Act, s 61 (2))

3.2.7 Naming—legislative instruments

The name of legislative instruments (other than bills, Acts, regulations and rules) should contain each of the following, in the order listed:

1 the Act name, without year and without the word Act
2 a brief indication of subject
3 the kind of instrument
4 the year
5 the number of the instrument.

Examples

1 Road Transport (Public Access) Guidelines 2004 (No 3)
2 Planning and Land (Chief Planning Executive) Appointment 2003 (No 8)
**Act name**

See division 3.2.4 for more information on how to refer to the Act.

---

**Brief indication of subject**

The indication of the subject should be brief. Its purpose is to give users of the legislation register an idea of what the instrument covers, like a snapshot. Brackets rather than hyphens should be used, consistent with other legislation.

**Example**

*Wombat Protection (Fence Levy) Determination 2003 (No 1)*

*not*

*Wombat Protection (Fence Levy to Address the Funding Crisis Caused by the Decision in Woolmer v Feebot) Determination 2003 (No 1)*

---

**Kind of instrument**

The kind of instrument being made can be worked out from what the instrument is doing. If the Minister approves something, the instrument is an approval. If the chief executive directs, the instrument is a direction. If someone notifies something, the instrument is a notice.

However, if the thing being approved or notified is a code of practice or guidelines, the instrument is a code of practice or guidelines.

---

**Instrument number**

Instruments should always include a number. If the instrument is the 1st of its kind in a year, it should include ‘(No 1)’ in its name.
4 Commencement

4.1 Commencement section—generally

All legislation should have a commencement section.

The commencement section is the 2nd section in the legislation.

Commencement details should be checked with the instructor. Some commonly used commencements are included in the drafting template. Most commencements include notes explaining how LA affects commencements.

LA, chapter 8 deals with commencement. It sets out when legislation commences, including the standard commencement rule (s 73), the special commencement rules for naming and commencement provisions (s 75), and when statutory instruments may commence retrospectively (s 76). It also deals with automatic commencement of postponed laws (s 79) and the exercise of powers between notification and commencement (s 81).

It is preferable to say '12 months' rather than '1 year' for commencement provisions.5

4.2 Republication practice—generally6

When a principal law commences, a republication is published on the register as R1. If this law is only partially commenced, each provision of the republished law that has not commenced has the symbol \[ \text{U} \] immediately before the provision heading. When the remaining provisions commence, another republication is published and the symbol \[ \text{U} \] is removed from those provisions.

When an amending law commences, a republication of each law that is affected by the amending law is published on the register. It is no longer republication practice to mark each amended provision with the symbol \[ \text{U} \] before the amending law commences to show uncommenced amendments. Any uncommenced amendments that affect the republished law are noted on the item page for that law and are hyperlink to their item page on the register.

---

5 Sentence added in version 2015-4.
6 Part added in version 2015-3.
4.3 Standard commencement

LA, section 73 states that all legislation commences on the day after its notification day unless another date or time for commencement is provided. LA, section 74 qualifies this further by stating that when legislation commences on a day it commences at the beginning of the day unless otherwise provided. If legislation commenced on its notification day, there would be a time on that day before notification when the legislation would be taken to have commenced and so apply. Potentially, people could, for example, commit an offence against legislation before the time the legislation was notified.

Example

2  **Commencement**

This Act/regulation/these rules commence/s on the day after its/their notification day.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).
4.4 Commencement by commencement notice

4.4.1 Commencement with standard 6-month default

LA, section 77 provides for a commencement day or time to be fixed by the Minister.

LA, section 79 qualifies this further by requiring legislation that commences by commencement notice to automatically commence on the 1st day after 6 months from the legislation’s notification day.

This provision, requiring automatic commencement, was enacted because of criticism over the time for which some uncommenced provisions remained uncommenced. Long-term uncommenced provisions caused uncertainty for the community, operational areas and drafters who had to work, operate and draft around amendments that might or might not come into force. Also, because law changes over time, an amendment passed more than 6 months previously may no longer appropriately amend the legislation as intended. The open-ended commencement of provisions is also objectionable in principle because it allows the Executive to choose whether a law passed by the Legislative Assembly ever commences.

Example

2 Commencement

This Act/regulation/these rules commence/s on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).
4.4.2 Commencement with set default date (less than 6 months)

The standard 6-month default may be shortened to another set date.

Example

2 Commencement

(1) This regulation commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

(2) If this regulation has not commenced before 1 July 2009, it automatically commences on that day.

4.4.3 Commencement with displacement of LA, s 79

A commencement may be expressly delayed more than 6 months in accordance with instructions, although instructors should be warned about the potential for criticism of a longer period without adequate justification. However, legislation should always have a set commencement or a default commencement unless otherwise approved by the parliamentary counsel. An alternative to not having a default commencement may be to link the commencement to a happening, such as the commencement of another piece of legislation (including the legislation of another jurisdiction) (see part 4.7).

Example 1

2 Commencement

(1) This Act/regulation/these rules commence/s on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

(2) If this Act/regulation/these rules has/have not commenced within 9 months beginning on its/their notification day, it/they automatically commence/s on the first day after that period.

(3) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to this Act/regulation/these rules.
Example 2

2 Commencement

(1) This Act/regulation/these rules commence/s on—

(a) 1 July 2010; or

(b) if, before 1 July 2010, the Minister fixes another day by written notice—the day fixed.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

(2) If this Act/regulation/these rules has/have not commenced within 18 months beginning on its notification day, it/they automatically commence/s on the first day after that period.

OR

(2) If this Act/regulation/these rules has/have not commenced by 1 July 2011, it/they automatically commence/s on that day.

(3) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to this Act/regulation/these rules.

Example 37

2 Commencement

(1) This Act (other than sections 13 and 14) commences on 1 January 2013.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

(2) Sections 13 and 14 commence on a day fixed by the Minister by written notice.

Note A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

(3) If sections 13 and 14 have not commenced within 12 months beginning on this Act’s notification day, they automatically commence on the first day after that period.

(4) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to sections 13 and 14.

7 Example updated in version 2014-2.
4.5 Commencement after stated period of time

A 7-day or 14-day commencement is usually used for amending rules of court to allow time for implementation arrangements to be put in place and the legal profession to be told about the changes (see example 1).

Amendments made by omnibus legislation (for example, statute law amendment bills and portfolio amendment bills) should usually commence 7 or 14 days after their notification day (see example 1). The delayed commencement allows time for republications of amended laws to be prepared for the commencement of the amendments. Drafters should liaise with the republications team about whether a 7-day or 14-day commencement is preferred.

If a bill is making amendments to a large number of Acts and regulations a longer delay in the commencement may be necessary (for example, the Administrative (One ACT Public Service Miscellaneous Amendments) Act 2011 was consequential on the government’s Hawke review and amended 178 pieces of legislation). Drafters should liaise with the republications team about the number of days.

Another commencement commonly used in statute law amendment bills is a 7-day or 14-day commencement with individual special commencement provisions (see example 3). The commencement of particular provisions is used where the majority of the amendments are made in schedules and cross-references are difficult to keep track of while drafting.

The more usual method for separately commencing provisions is to mention each provision in the commencement (see example 4). See also part 4.9 (Split commencement).

In some cases a longer period of time is needed to delay commencement, for example, 3 months (see example 2).

Example 1
Commencement after 7 / 14 days

2 Commencement

This Act/regulation/these rules commence/s on the 7th / 14th day after its/their notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Example 2
Commencement after 3 months

2 Commencement

This Act/regulation/these rules commence/s 3 months after its/their notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).
Example 3
Commencement after 7 / 14 days with individual commencements

2 Commencement

(1) This Act/regulation/these rules commence/s on the 7th / 14th day after its/their notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

(2) However, a date or time provided by a special commencement provision for an amendment made by this Act/regulation/these rules has effect as the commencement date or time of the amendment.

(3) In this section:

special commencement provision, for an amendment made by this Act/regulation/these rules, is a provision, in brackets beginning with the text ‘commencement:’, at the end of the amendment.

Example

An amendment followed by ‘(commencement: the 90th day after this Act’s/regulation’s/these rules’ notification day)’ means that the amendment commences on the 90th day after the notification day.

Note An example is part of the Act/regulation/these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Individual commencement authorised by special commencement provision

[3.2] Part 9

omit

(commencement: the 90th day after this Act’s/regulation’s/these rules’ notification day)
Example 4
Separate / split commencement

2 Commencement

(1) The following provisions commence on the day after this Act’s/regulation’s/these rules’ notification day:
   • part 6 (part heading)
   • part 7 (part heading)
   • part 11 (part heading)
   • part 15 (part heading).

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

(2) The remaining provisions commence on the 7th / 14th day after this Act’s/regulation’s/these rules’ notification day.
4.6 Fixed date and time commencement

4.6.1 Commencement—fixed date

A fixed date commencement is usually used for new principal legislation that is implementing a new scheme or law to provide a lead-in time to, for example, publicise the scheme or law or allow time for administrative arrangements to be put in place. It is also used for legislation dealing with financial matters such as taxes or rates.

Example

2 Commencement

This Act/regulation/these rules commence/s on 1 July 2004.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

4.6.2 Commencement—fixed date and time

A fixed date and time commencement is rare but is sometimes used so that the legislation's commencement coincides with an event.

This type of commencement displaces LA, section 74.

LA, section 74 provides that, if legislation commences on a day, it commences at the beginning of the day unless a different time is provided for by the Act, another Act, a statutory instrument (for the commencement of a statutory instrument) or commencement notice for the legislation.

Example

Civil Law (Wrongs) Bill 2002 [with changes]

2 Commencement

(1) Part 7.1 (Traveller accommodation providers liability) commences at 12 noon on 1 July 2003.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

(2) The remaining provisions commence on a day fixed by the Minister by written notice.

Note 1 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 2 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

In this example, part 7.1 is introducing new legislation dealing with notices that accommodation providers are required to display in guests rooms about their liability for lost or stolen goods. The commencement is connected to the time that guests are to check out by.
4.7 Commencement on commencement of other law

The commencement of legislation on the commencement of another law is useful for consequential amendment bills or legislation belonging to packages or schemes. If possible, the commencement should be tied to a provision of the other law. This removes any confusion if the other law is not all commenced at the same time.

Example 1 shows the standard provision to be used for the commencement of legislation on the commencement of another law. Example 2 should be used in cases where the other law may commence before the legislation's notification day. Example 3 may be used in the rare case that the order of commencement of the laws is crucial.

It is not necessary to require a law that amends an uncommenced law to commence immediately after the amending law (see LA, s 79A (3)).

If the other law has disapplied LA, s 79 it is not necessary to also disapply LA, s 79 in the commencement.

Bills

When linking a bill commencement to another law that is still a bill, the current drafting practice is to cite the bill name (including its year and number (if applicable)) but with ‘Act’ instead of ‘Bill’. If the year or number of the other law changes when it is made the legislation’s commencement provision will be updated during the bill to Act process under the Legislative Assembly standing orders.

Regulations

When linking a regulation commencement to another law that is still a bill it is necessary to anticipate what the Act name will be when the bill is passed (ie year and number (if applicable)). This is because there is no opportunity for corrections in between the final being sent to the client and legislation’s notification. There aren’t any LA powers for corrections in a commencement provision.

Example 1

2 Commencement

This Act/regulation/these rules commence/s on the commencement of the *XYZ Act 2004*, section ##.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).
Example 2

2 **Commencement**

This Act/regulation/these rules commence/s on the later of—

(a) the day after this Act’s/regulation’s/these rules’ notification day; and

(b) the commencement of the *XYZ Act 2003*, section ##.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Example 3

2 **Commencement**

This Act/regulation/these rules commence/s on the later of—

(a) immediately after the commencement of the *XYZ Act 2003*, section ##; and

(b) the day after this Act’s/regulation’s/these rules’ notification day.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

**NOTE:** In most cases it is unnecessary to specify ‘immediately after’ the commencement of another law. Only use if the order of amendments occurring is critical.

---

8 Revised in 2017-1 to provide the ‘later of’ to avoid any confusion about when the legislation commences.
4.8 Retrospective commencement

4.8.1 Retrospective commencement—general

**NOTE:** A retrospective commencement MUST have the Parliamentary Counsel’s approval.

A retrospective commencement is to be used only in exceptional cases and only with the parliamentary counsel’s approval. ACT legislation is republished as in force at a particular time so a retrospective amendment to legislation means ‘point-in-time’ republications of the legislation are inaccurate and must be reissued. Since legislation is republished every time it is amended, many republications may need to be reissued for a single retrospective amendment.

The note mentioning the automatic commencement of the naming and commencement provisions on notification day is not used for a retrospective commencement. LA, section 75 (2) provides that the naming and notification provisions are taken to have commenced on the earliest day any other provision of the Act commences.

LA, section 73 (2) (c) provides that a statutory instrument can commence before the day after its notification day only if an Act provides for the earlier date or time. However, LA, section 73 is subject to section 76, which only allows non-prejudicial provisions in the instrument to commence retrospectively.

Example 3 is to cater for a specific matter and must be used only with the parliamentary counsel’s approval.

**Example 1**

2 **Commencement**

This Act/regulation/these rules is/are taken to have commenced on 1 January 2001.

**Example 2**

2 **Commencement**

This Act/regulation/these rules commences, or is/are taken to have commenced on the commencement of the *XYZ Amendment Act 2010*, section 3.

**Example 3**

2 **Commencement**

This Act is taken to have commenced on the day the bill for this Act was presented to the Legislative Assembly.\(^9\)

---

4.8.2 Retrospective commencement—preferred approach

The preferred approach is to retrospectively apply the provisions that would otherwise have been commenced retrospectively to stated circumstances before commencement. Because the provision has only a transitional effect, it should include an expiry.

Example
Retrospectively applying provision: Land (Planning and Environment) (Compliance) Amendment Bill 2003, cl 9 [with changes]

<table>
<thead>
<tr>
<th>9</th>
<th>Conversion of Commonwealth leases</th>
</tr>
</thead>
<tbody>
<tr>
<td>New section 291 (4) to (6)</td>
<td>insert</td>
</tr>
</tbody>
</table>

(4) This section (as in force on the day this subsection commences) applies to a rescission, revocation, amendment or variation of a declaration mentioned in subsection (1)—

(a) that happens on or after the day this subsection commences; or

(b) that happened on or after 21 December 2000 and before the day this subsection commences.

(5) Subsection (4) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

(6) Subsections (4) and (5) and this subsection expire 3 months after the day this subsection commences.10

---

4.9 Split commencement

LA, section 77 (1) (b) states that different days or times may be fixed or determined for different provisions.

A split commencement is used for new principal legislation that is implementing a new scheme or law to provide for a staged implementation process or for operational reasons such as setting up new systems. It is also used for amending legislation that requires the amendments to certain Acts or regulations to commence at different times.

It is preferred to use the wording ‘The remaining provisions commence...' instead of listing out the remaining provisions.

4.9.1 Commencement on specified date

Example 1

1 Commencement

(1) Sections ## and ## commence on the day after this Act’s notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

(2) The remaining provisions commence on 1 July 2004.

Example 2

1 Commencement

(1) This Act (other than section ##) commences on 1 July 2004.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

(2) Section ## commences on the day after this Act’s notification day.
Chapter 4  Commencement

Example 3
Commencement with 3 or less provisions mentioned in subsection (1)

2  Commencement

(1) This Act (other than sections 6 to 8 and 27) commences on 1 July 2004.

Note  The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

(2) Sections 6 to 8 and 27 commence on a day fixed by the Minister by written notice.

Note 1  A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 2  If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

Example 4
Commencement with 3 or more provisions mentioned in subsection (1)

2  Commencement

(1) This Act (other than the following provisions) commences on 1 July 2004:

• section 6
• section 8
• section 10
• section 27
• section 30.

Note  The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

(2) The provisions mentioned in subsection (1) commence on a day fixed by the Minister by written notice.

Note 1  A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 2  If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

Example 5

_Territory Records Act 2002_ [with changes]

2 Commencement

(1) Part 3 (Access to records) commences on 1 July 2007.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

(2) The remaining provisions commence on a day fixed by the Minister by written notice.

*Note* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

(3) If a provision of this Act has not commenced before 1 July 2003, it automatically commences on that day.

(4) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to this Act.

Example 6

_Road Transport Legislation Amendment Regulation 2011 (No 1)_ [with changes]

2 Commencement

(1) Parts 1 and 2\(^\text{12}\) commence on the day after this Act’s notification day.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

(2) The remaining provisions commence on 1 July 2011.

In this example, part 1 consists of sections 1, 2 and 3. Although sections 1 and 2 automatically commence under LA, section 75 (1) it is clearer for legislation users if it is stated that ‘part 1’ commences instead of just stating that ‘section 3’ commences. Also, by stating that ‘part 1’ commences there is no question about when/if the heading to part 1 commences.

\(^{12}\) Example updated in version 2014-2.
Example 7

Tobacco Amendment Act 2008 [with changes]

2 Commencement

(1) The following provisions commence on the day after this Act’s notification day:
   • section 3
   • sections 16 to 18
   • section 22.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

(2) The remaining provisions commence on a day fixed by the Minister by written notice.

Note 1 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 2 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

NOTE: The commencement of section 3 (Legislation amended) should be provided for in the commencement provision. (See div 4.9.2, example 1 for when legislation amended provisions should rely on LA, section 75AA (Commencement of provisions identifying amended laws).
4.9.2 Commencement on ‘the later of’

In the example below a ‘later of’ commencement is needed because the amendments in the provisions listed are drafted taking into consideration amendments to be made by the ACT Civil and Administrative Tribunal Legislation Act 2008 (No 2). Because both that Act and the Unit Titles Amendment Bill 2008 have commencements to be fixed by the Minister it is unknown and unable to be predicted when each piece of legislation may commence so it needs to be set out in the commencement section.

Example 1
Unit Titles Amendment Act 2008 (No 2)

2 Commencement

(1) This Act (other than the following provisions)\(^{13}\) commences on a day fixed by the Minister by written notice:

- section 7
- section 16
- ...
- section 53
- schedule 1, amendment 1.3.

\textit{Note 1} The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

\textit{Note 2} A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

(2) The provisions mentioned in subsection (1) commence on the later of—

(a) the commencement of the ACT Civil and Administrative Tribunal Act 2008, section 6; and

(b) the commencement of this Act, section 3.

(3) If this Act has not commenced within 12 months beginning on its notification day, it automatically commences on the first day after that period.

(4) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to this Act.

\textit{NOTE:} Section 3 (Legislation amended) will have to rely on LA, section 75AA (Commencement of provisions identifying amended laws) to commence because the timing of each commencement event is unknown. (See div 4.9.1, example 5 for when legislation amended provisions should be included in the commencement provision.)

\(^{13}\) Example updated in version 2014-2.
Example 2

Residential Tenancies Legislation Amendment Bill 2016

2 Commencement

(1) Sections 19, 23, 24 and 28 commence on the later of—

   (a) the commencement of the Family Violence Act 2016, section 6;
   and

   (b) the commencement of this Act, section 3.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

(2) The remaining provisions commence on a day fixed by the Minister by written notice.

Note A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

(3) If the remaining provisions have not commenced within 12 months beginning on this Act’s notification day, they automatically commence on the first day after that period.

(4) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to this Act.

Example 3

Magistrates Court (Smoke-Free Public Places Infringement Notices) Regulation 2010

2 Commencement

This regulation commences on the later of—

(a) 9 December 2010; and

(b) the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

NOTE The wording in subsection (b) does not need to refer to ‘the day after this regulation’s notification day’ because the commencement clause is simple and it is clear that it is this regulation.

---

14 Added in 2017-1
Example 4

Justice and Community Safety Legislation Amendment Act 2010

2 Commencement

(1) Schedule 1, part 1.3 (Fair Trading (Consumer Affairs) Act 1973), amendment 1.24 commences on the day after this Act’s notification day.

Note: The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

(2) Schedule 1, part 1.8 (Trustee Companies Act 1947) commences on the later of—

(a) the commencement of the Justice and Community Safety Legislation Amendment Act 2009 (No 4), part 1.5 (Trustee Companies Act 1947); and

(b) the day after this Act’s notification day.

(3) The following provisions commence on 1 July 2010:

(a) section 4;

(b) schedule 1, part 1.3 (Fair Trading (Consumer Affairs) Act 1973), amendments 1.21 to 1.23;

(c) schedule 1, part 1.6 (Road Transport (Mass, Dimensions and Loading) Act 2009).

(4) The remaining provisions commence on the 28th day after this Act’s notification day.

NOTE: The wording in subsection (2) (b) needs to refer to ‘the day after this Act’s notification day’ because the commencement clause is complex so it needs to be clear that it is this Act.
Example 5
National Gas (ACT) Act 2008

2 Commencement

(1) This Act (other than section 19 (1) and schedule 1) commences, or is taken to have commenced, on the commencement of the National Gas (South Australia) Act 2008 (SA), section 7 (Application of National Gas Law).

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

(2) Section 19 (1) and schedule 1 commence on the later of—

(a) the commencement of the Offshore Petroleum Act 2006 (Cwlth), section 7 (Offshore areas); and

(b) the day section 10 commences, or is taken to have commenced.

Example 615
Justice and Community Safety Legislation Amendment Bill 2009 [with changes]

2 Commencement

(1) Section 3 and schedule 1, parts 1.2, 1.7 and 1.9 commence on the day after this Act’s notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

(2) Schedule 1, parts 1.1 and 1.5 commence immediately after the later of—

(a) the commencement of the Domestic Violence and Protection Orders Act 2008; and

(b) the commencement of this Act, section 3.

(3) Schedule 1, parts 1.3 and 1.4 commence immediately after the later of—

(a) the commencement of the Children and Young People Act 2008, schedule 1, part 1.4; and

(b) the commencement of this Act, section 3.

(4) Schedule 1, parts 1.6 and 1.8 commence immediately after the commencement of the Crimes Legislation Amendment Act 2008, schedule 1, part 1.1.

---

15 Example updated in version 2014-2—see Standards Committee decision on 27/5/14.
4.9.3 Commencement of part of a section / amendment

The following is an example of how to word the commencement of part of a section or amendment. Use the wording ‘so far as it...’ rather than ‘to the extent that...’.

However, this approach should only be used with the Parliamentary Counsel's approval and only if absolutely necessary.

Example 16

Work Health and Safety (Asbestos) Amendment Regulation 2014 (No 1)

2 Commencement

(1) Section 6, so far as it inserts the following provisions, commences on 1 July 2015:
   • section 460 (1)
   ...  
   • section 518 (a) (i).

   Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

(2) Section 6, so far as it inserts section 493 (1) (e), section 498 (b) and section 520 (1) (e), and section 10 commence on 1 January 2016.

(3) Section 6 remainder and the remaining provisions of this regulation commence on 1 January 2015.

Other examples

For examples of more complex split commencement provisions see the following legislation:

• Planning and Development (Capital Metro) Legislation Amendment Repeal Bill 2015 (J2015-44)17
• Administrative (Miscellaneous Amendments) Act 2006
• Financial Management Legislation Amendment Act 2005

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16 Example updated in version 2015-5.
17 Example added in version 2015-4.
4.10 Amendments of uncommenced laws

4.10.1 General

An amending section and the amendment it makes normally commence at the same time.

However, LA, section 79A applies to the amendment of an uncommenced law and governs the commencement of the amendment. It provides that the amendment of the uncommenced law does not of itself commence that law (see s (2)). It also provides that the amendment made by the amending law commences on the commencement of the uncommenced law (s (3)).

LA, section 79A is a determinative provision, which can only be displaced expressly or by a manifest contrary intention, for example a conflicting law (see LA, s 6). LA, section 6 (4) provides that if a determinative provision is to be displaced in a particular case, a more deliberate displacement is required than if the provision were non-determinative. LA, section 6 also provides that an LA provision is not to be displaced by a provision of an Act or statutory instrument—

(a) so far as the provisions can operate concurrently (see s 6 (6)); or
(b) because the Act or provision deals with the same or similar subject matter (see s 6 (7)).

General commencement provisions (ie that don't distinguish between amendments of commenced and uncommenced provisions) would normally operate concurrently with LA, section 79A. They apply to the amendments of commenced provisions but not to uncommenced provisions because LA, section 79A prevails in the latter cases. This reflects the common law presumption that specific provisions prevail over general provisions (generalia specialibus non derogant).

The following cases illustrate the application of LA, section 79A:

<table>
<thead>
<tr>
<th>amending law amends</th>
<th>amending law commencement provision</th>
<th>LA, s 79A displaced?</th>
</tr>
</thead>
</table>
| commenced provisions; and uncommenced provisions | General provision, ie law commences  
- day after notification  
- day fixed by CN  
- day/event stated  
- default day | No |
| only uncommenced provisions | General provision, ie law commences  
- day after notification  
- day fixed by CN  
- day/event stated  
- default day | Yes |
| s 10 (uncommenced) | s 10 commences  
- day fixed by CN  
- day/event stated | Yes |
4.10.2 Drafting practice

An amendment of an uncommenced law should not be expressed to commence before the commencement of that law.

Do not use a general commencement provision for amendments to both commenced and uncommenced provisions.

For these amendments use a particular commencement for the uncommenced provision to commence—on the commencement of the uncommenced law (same effect as LA, section 79A but not relying on it); or on a later day/event stated.

This practice should be followed unless the parliamentary counsel approves otherwise in a particular case.

4.10.3 Republication practice

If an amendment of an uncommenced provision commences when the provision commences, the amendment law would be republished then. This is our usual practice.

Approval to depart from our usual drafting practice is not expected to be necessary, except perhaps in the rarest circumstances.

In that case—

the amended law would be republished with the uncommenced amendment incorporated but marked by the symbol \[\text{U}\] to show its status; and

on the register, the version notes for the amended law would indicate the reason for the republication (ie for uncommenced provisions inserted by the amending law).

4.11 Amendments of commencement provisions\(^\text{18}\)

It is best practice to amend a commencement provision before the original date of commencement. Although an amendment of a commencement provision expressed to commence at the same time as the original date of commencement is effective, it is clearer and easier for readers to understand if the amendment happens earlier.

Further reading

LA, ch 8 (Commencement and exercise of powers before commencement)

\(^{18}\) Part added in version 2014-2.
5 Dictionary and dictionary section

5.1 Dictionary

All new principal legislation must have a dictionary unless otherwise approved by the parliamentary counsel.

A dictionary that only includes the notes (ie no definitions) may be used if the terms listed in the dot points are considered important enough to note or it is beneficial to alert legislation users to the terms.

In general, the parliamentary counsel will approve not having a dictionary if there aren't any definitions and if there aren't any relevant or important Legislation Act or authorising Act definitions used in the legislation.

The dictionary is at the end of the legislation after the body of the legislation and any schedules.

Definitions in dictionaries use the standard definition style and end with a full stop (see ch 9 (Definitions)).

See division 9.1.10 (When to use a stand-alone definition provision) and division 9.1.11 (Where to insert definitions) on the drafting standards that apply when considering whether to put definitions in a dictionary (or another general definitions section).

If bold italics are used for a defined term that applies to 2 or more provisions, a signpost definition for the term should be included in the dictionary.

If there are qualifying words in the definition these should also be used in the signpost definition.

Example

*interest*, in relation to land or property—see the Legislation Act, dictionary.

Sometimes, a concept is too vague or complex to be expressed in a term convenient for a bold italics format. In these cases, a signpost definition should be included in the dictionary for any key term if the provision addressing the concept gives meaning to the term, or limits or extends its meaning.
5.2 Dictionary section

If a dictionary is used, a dictionary section should also be included. The dictionary section is not legally necessary, but helps raise awareness of the status of dictionaries, signpost definitions and LA provisions that deal with them.

A dictionary section also alerts a reader who starts to read the Act or subordinate law at the beginning (and who may expect to find a list of definitions at the beginning) about the existence of a list of definitions at the back, in the dictionary (see div 9.1.3 (Keeping the reader in mind…the multiple-entry principle)).

The dictionary section is after the naming and commencement sections and before the notes section.

Example 1

Dictionary section—Acts, regulations and rules with signpost definition to definition in another piece of legislation

3 Dictionary

The dictionary at the end of this Act/regulation/these rules is part of this Act/regulation/these rules.

Note 1 The dictionary at the end of this Act/regulation/these rules defines certain terms used in this Act/regulation/these rules, and includes references (signpost definitions) to other terms defined elsewhere.

For example, the signpost definition 'motor vehicle—see the Road Transport (General) Act 1999, dictionary.' means that the term ‘motor vehicle’ is defined in that dictionary and the definition applies to this Act/regulation/these rules.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act/regulation/rules unless the definition, or another provision of the Act/regulation/these rules, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

The example in the dictionary section needs to be taken from the dictionary of the legislation in which the example is given.

If there is a signpost definition to a term in the legislation and a signpost definition to a term in other legislation, use the signpost definition to the term in the other legislation in the example: it is the least understood signpost definition.
Example 2
Dictionary section—Acts, regulations and rules with signpost definition in same piece of legislation

3 Dictionary

The dictionary at the end of this Act/regulation/these rules is part of this Act/regulation/these rules.

Note 1 The dictionary at the end of this Act/regulation/these rules defines certain terms used in this Act/regulation/these rules, and includes references (signpost definitions) to other terms defined elsewhere in this Act/regulation/these rules.

For example, the signpost definition ‘disease—see section/rule 5.’ means that the term ‘disease’ is defined in that section/rule.

OR

For example, the signpost definition ‘fee, for part 3 (Court and tribunal fees)—see section 12.’ means that the term ‘fee’ is defined in that section for part 3.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act/regulation/rules unless the definition, or another provision of the Act/regulation/these rules, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

The example in the dictionary section needs to be taken from the legislation itself.

Example 3
Dictionary section—Acts, regulations and rules without signpost definitions

3 Dictionary

The dictionary at the end of this Act/regulation/these rules is part of this Act/regulation/these rules.

Note 1 The dictionary at the end of this Act/regulation/these rules defines certain terms used in this Act/regulation/these rules.

Note 2 A definition in the dictionary applies to the entire Act/regulation/rules unless the definition, or another provision of the Act/regulation/these rules, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

Further reading

LA, s 130 (What is a definition?)
LA, s 155 (Definitions apply subject to contrary intention)
LA, s 156 (Application of definitions in dictionaries and sections)
LA, dict pt 1, def definition
5.3 Dictionary notes

Although not legally necessary, notes are included in the dictionary to alert users to terms used in the legislation without definition because they are defined in LA or in the authorising Act. Only terms used in the particular legislation and defined in LA or the authorising Act should be included.

Example 1
Dictionary notes for Acts

Dictionary
(see s #)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1 defines the following terms:
- ACT
- contravene
- exercise
- found guilty
- function
- law, of the Territory
- must (see s 146)
- police officer.

19NOTE: The Legislation Act, dictionary definition of found guilty includes the qualifying words ‘, of an offence’. It is not necessary to include the qualifying words for ‘found guilty’ in note 2. If the drafter deems it necessary to include a note about ‘found guilty’ being defined in the Legislation Act the following signpost note should be used:

Note Found guilty, of an offence—see the Legislation Act, dictionary, pt 1.

19 Updated in version 2014-2—see Standards Committee decision on 19/9/12.
Example 2
Dictionary notes for regulations: *(Public Health Regulation 2000)* [with changes]

**Dictionary**
*(see s #)*

*Note 1*  The Legislation Act contains definitions and other provisions relevant to this regulation.

*Note 2*  For example, the Legislation Act, dict, pt 1 defines the following terms:
- ACT
- administrative appeals tribunal
- appoint
- chief health officer
- disallowable instrument *(see s 9)*
- doctor
- document
- function
- nurse
- State
- the Territory.

*Note 3*  Terms used in this regulation have the same meaning that they have in the *Public Health Act 1997* *(see Legislation Act, s 148).*  For example, the following terms are defined in the *Public Health Act 1997*, dict:
- authorised medical officer
- authorised officer
- insanitary condition
- transmissible notifiable condition.

If a definition listed in Note 2 or 3 of a dictionary is a signpost definition, for example ‘see section 117’ then include *(see s 117)* after the term.

If a definition listed in Note 2 or 3 of a dictionary is defined for a part or division, for example ‘for part 3.18, see section 117’ do not include *(see s 117)* after the term.  This is because directing the reader to the dictionary first gives them more information, ie that the definition is only for the part not the whole Act.
# 6 Notes

## 6.1 Notes section

All new principal legislation that contains notes should have a notes section.

The notes section is located after the definitions/dictionary section.

The notes section is not legally necessary, but it helps raise awareness of the status of notes and LA provisions dealing with them.

### Example

**4 Notes**

A note included in this Act/regulation/these rules is explanatory and is not part of this Act/regulation/these rules.

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

### Further reading

LA, s 127 (1), (4) and (5)
6.2 Use of provision abbreviations

A reference in a note to a provision of an Act/regulation/rules should always be expressed using the appropriate provision abbreviation.

Use a provision abbreviation as the first word of a sentence cautiously. For example, a sentence in a note should start with ‘Section 40’ rather than ‘S 40’, which looks awkward. But a sentence in a note may start with ‘Ch 10’ or ‘Div 10’. If unclear, consult the parliamentary counsel.

Similarly, the abbreviation for Dictionary (dict) can look awkward when used in a note for a signpost definition. Note ABC—see dict. may be changed to Note ABC—see the dictionary. In general the abbreviation ‘dict’ should be used only when inside brackets and the full word used when not in brackets.

Example 1

Note A fee may be payable under s 143 before a dog may be released.

Example 2

Note The registrar is not obliged to release a dog if its keeper has relinquished ownership (see s 70 (Relinquishing ownership of dogs)).

Example 3

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

Example 4

Use of ‘dictionary’

Note Adult—see the Legislation Act, dictionary, pt 1.

Note Operating entity—see the dictionary.

Example 5

Use of ‘dict’

Note State includes the Northern Territory (see Legislation Act, dict, pt 1).

Note Jurisdiction means a State or Territory (see dict).

Further reading

Pt 5.3 (Dictionary notes)

Spelling, Abbreviations and Symbols Guide, pt 4 (Abbreviations and contractions) for a full list of provision abbreviations
6.3 Origin notes

Notes (origin notes) explaining the origin of a provision are sometimes included in the provision heading (see example 1) because they are helpful to the reader to make the transition from an existing law they are familiar with to a new law.

However, origin notes should only be used with the parliamentary counsel's approval as eventually the notes will become unnecessary and are expired (see example 2). The expiry of each origin note has to be individually recorded in the endnotes for the legislation. This slows republication and increases the administrative burden of the republications team for only a short-term gain.

Example 1

8 Owners corporation—establishment
(UTA s 38)

Example 2

Workers Compensation Act 1951, R13 [with changes]

4 Notes

(1) A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

(2) In this section:

note includes material enclosed in brackets in section headings.

Note For comparison, a number of sections of this Act contain bracketed notes in their headings drawing attention to equivalent or comparable (though not necessarily identical) provisions of other Acts. Abbreviations in the notes include the following:

- ACT WCA: Workers Compensation Act 1951, as in force immediately before the commencement of the Workers Compensation Amendment Act 2001, s 4
- ACT WC Regs: Workers Compensation Regulations, as in force immediately before the commencement of the Workers Compensation Amendment Act 2001, s 4
- CW WRR: Workplace Relations Regulations (Cwlth)
- NSW WIMWCA: Workplace Injury Management and Workers Compensation Act 1998 (NSW)

(3) Subsection (2), this subsection, and the material enclosed in brackets in section headings, expire 2 years after the day this section commences.

See also the following legislation as precedents:

- Unit Titles (Management) Act 2011 (as notified version)
- Commercial Arbitration Act 2017 (as notified version)
6.4 SLAB explanatory notes

Provision abbreviations are not used in explanatory notes (except within brackets). For examples of these, see the latest Statute Law Amendment Act.

6.5 Notes to paragraphs and subparagraphs

Notes to paragraphs and subparagraphs should be used with care as they can visually disrupt the flow of ideas in the paragraph structure (see example 1).

However, the disruption is reduced if the paragraphs are structurally unconnected, as in a list, and the note is short.

Consider grouping paragraph notes at the end of the relevant section/subsection to avoid this disruption (see example 2). The notes are indented to the subsection position.

Example 1

*Protection Orders Act 2001*

(1) In deciding an application for a final order, the Magistrates Court must consider the following:

(a) …

(e) if the court proposes to include in the protection order a prohibition or requirement of a kind mentioned in section 42 (3)—the income, assets and liabilities of the respondent and the aggrieved person (other than an aggrieved person who is a child);

*Note* A prohibition under s 42 (3) (a) prohibits the respondent from taking possession of personal property needed by the aggrieved person or a child of the aggrieved person. A requirement under s 42 (3) (b) requires the respondent to give the aggrieved person personal property needed by the aggrieved person or a child of the aggrieved person.

(f) …

(g) if the respondent has previously engaged in behaviour that is domestic violence, personal violence or personal violence in relation to a workplace—that behaviour;

*Note* This may include behaviour that was an offence under the *Motor Traffic Act 1936* (see s 113).

(h) …

(j) …

*Note* This section does not apply to consent orders (see s 29 (2) (b)).
Example 2

**Protection Orders Act 2001** [alternative]

(1) In deciding an application for a final order, the Magistrates Court must consider the following:

(a) …

(e) if the court proposes to include in the protection order a prohibition or requirement of a kind mentioned in section 42 (3)—the income, assets and liabilities of the respondent and the aggrieved person (other than an aggrieved person who is a child);

(f) …

(g) if the respondent has previously engaged in behaviour that is domestic violence, personal violence or personal violence in relation to a workplace—that behaviour;

(h) …

(j) …

**Note 1** For par (e), a prohibition under s 42 (3) (a) prohibits the respondent from taking possession of personal property needed by the aggrieved person or a child of the aggrieved person. A requirement under s 42 (3) (b) requires the respondent to give the aggrieved person personal property needed by the aggrieved person or a child of the aggrieved person.

**Note 2** For par (g), this may include behaviour that was an offence under the *Motor Traffic Act 1936* (see s 113).

**Note 3** This section does not apply to consent orders (see s 29 (2) (b)).
6.6 Notes to headings

Notes to chapter, part and division headings should use the normal note style. There is no need to use the words ‘Note to ch 18’, ‘Note to pt 15.2’ etc. The location of the note makes the context clear and notes, in general, should be kept as simple as possible.

Example 1
Chapter heading note

Chapter 18 Offences

Note See also s 133 to s 135 (which relate to penalty units and penalty provisions) and s 161 (Corporations liable to offences).

Example 2
Part heading note

Part 15.2 Definitions

Note See also s 130 (What is a definition?), s 131 (Signpost definitions) and s 148 (Terms used in instruments have same meanings as in authorising laws).

Example 3
Schedule heading note

Schedule 3 Notifiable low risk dealings

Part 3.1 Appointments—general

Note For sch 3, pt 3.1, because of s 12 (1), a dealing mentioned in this part is not a notifiable risk dealing if it is also a dealing of a kind mentioned in this schedule, pt 3.3.
6.7 Standard notes

There are a number of standard notes that can be included in a draft to assist users of legislation. Example 1 lists the standard notes that a drafter must include in a Bill or statutory instrument. Example 2 lists the standard notes that a drafter may consider including in a Bill or statutory instrument to assist users of legislation.

The text of a note should be revised only with the approval of the parliamentary counsel or deputy parliamentary counsel.

### Example 1—mandatory notes

<table>
<thead>
<tr>
<th>Item</th>
<th>Text of note</th>
<th>Guidance for use</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Application Form</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>A single application form may be approved for this section and the ## Act, s ## (see Legislation Act, s 255 (7)).</td>
<td>Must be used in a provision for which a single form is likely to be approved for more than 1 purpose.</td>
</tr>
<tr>
<td>2</td>
<td>The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).</td>
<td>Must be used in the standard provision about the making of determinations about fees.</td>
</tr>
</tbody>
</table>

**Examples**

- *Land Tax Act 2004*, s 24 (2), note 2
- *Rates Act 2004*, s 26 (2), note 2
- *Land Rent Act 2008*, s 31 (1), note 3

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20 Added in 2017-1 (Standards decision 15/6/16)
### Example 1—mandatory notes

<table>
<thead>
<tr>
<th>column 1</th>
<th>column 2</th>
<th>column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>item</td>
<td>Text of note</td>
<td>Guidance for use</td>
</tr>
<tr>
<td><strong>Appoint</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td><strong>Note 1</strong> For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Note 2</strong> In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>OR</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Note 2</strong> In particular, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Note 3</strong> Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).</td>
<td></td>
</tr>
<tr>
<td><strong>Reappoint</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def <em>appoint</em>).</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Must be included if an appointment provision sets out the term of the appointment.</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Examples</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td><em>Veterinary Surgeons Act 2015</em>, s 108 (3), note</td>
<td></td>
</tr>
<tr>
<td></td>
<td><em>Information Privacy Act 2014</em>, s 27 (1), note</td>
<td></td>
</tr>
<tr>
<td></td>
<td>For more information about reappointment notes, see pt 10.5.</td>
<td></td>
</tr>
</tbody>
</table>
### Example 1—mandatory notes

<table>
<thead>
<tr>
<th>column 1</th>
<th>column 2</th>
<th>column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>item</td>
<td>Text of note</td>
<td>Guidance for use</td>
</tr>
</tbody>
</table>

#### Resign

| 5 | A person’s appointment also ends if the person resigns (see Legislation Act, s 210). | Must be included if an appointment provision provides that the position-holder’s appointment ends in stated circumstances.  
**Examples**  
*Information Privacy Act 2014*, s 32 (2), note  
*Public Trustee and Guardian Act 1985*, s 53 (2), note  
For more information about resignation notes, see pt 10.6. |

#### Delegate

| 6 | For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4. | Must be used in provisions about delegating functions.  
For more information about delegation provisions, see pts 10.7 and 10.8. |

#### Evidenced Delegate

| 7 | In particular, the delegation must be made, or evidenced, by writing (see Legislation Act, s 232). | Must be used in provisions about delegating functions.  
For more information about delegation provisions, see pts 10.7 and 10.8.  
**Example**  
*Prohibited Weapons Act 1996*, s 17 (2), note 2 |
### Example 1—mandatory notes

<table>
<thead>
<tr>
<th>column 1 item</th>
<th>column 2 Text of note</th>
<th>column 3 Guidance for use</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Regulations</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.</td>
<td>Must be used in the standard regulation-making power generally included in Acts. For more information about regulation-making powers, see pt 10.14.</td>
</tr>
<tr>
<td><strong>Disallowable</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.</td>
<td>Must be used in a provision that gives an entity power to make a disallowable instrument. For more information about disallowable and notifiable instruments, see pt 10.10.</td>
</tr>
<tr>
<td><strong>Notifiable</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>A notifiable instrument must be notified under the Legislation Act.</td>
<td>Must be used in a provision that gives an entity power to make a notifiable instrument. For more information about disallowable and notifiable instruments, see pt 10.10.</td>
</tr>
</tbody>
</table>
### Example 1—mandatory notes

<table>
<thead>
<tr>
<th>column 1</th>
<th>column 2</th>
<th>column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>item</td>
<td>Text of note</td>
<td>Guidance for use</td>
</tr>
<tr>
<td><strong>Apply Other Instruments</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| 11 | **Note 1** The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)). | Must be used if—  
- a law provides for a law to be applied, adopted or incorporated; and  
- the Legislation Act, s 47 (5) or (6) is not disapplied.  
For more information about notes for applying other instruments, see pt 10.21.  
For more information about incorporation of external material by reference, see ch 12, in particular, pts 12.3 and 12.4.  
**Example**  
*Working with Vulnerable People (Background Checking) Act 2011*, s 27 (2), notes 1 and 2 |
|  | **Note 2** A notifiable instrument must be notified under the Legislation Act. | |
| **Disapply LA, s 47** | | |
| 12 | **Note** The [insert instrument name or type] does not need to be notified under the Legislation Act because s 47 (5)/(6) does not apply (see Legislation Act, s 47 (7)). The [insert instrument name or type] is accessible at [insert place/website address]. | Must be used if a law provides that a named instrument or type of instrument does not need to be notified because the Legislation Act, s 47 (5)/(6) doesn’t apply.  
See pt 10.22 for more information about the note to disapply LA, s 47.  
**Examples**  
*Lifetime Care and Support (Catastrophic Injuries) Act 2014*, s 93 (3), note  
*Utilities (Technical Regulation) Act 2014*, s 14 (3), note  
*Public Pools Act 2015*, s 56 (2), note |
|  | **OR**  
**Note** AS [insert standard number] does not need to be notified under the Legislation Act because s 47 (5)/(6) does not apply (see Legislation Act, s 47 (7)). The standard may be purchased at www.standards.org.au. | |
### Example 1—mandatory notes

<table>
<thead>
<tr>
<th>column 1 item</th>
<th>column 2 Text of note</th>
<th>column 3 Guidance for use</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Act Dictionary</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td><strong>Note 1</strong> The dictionary at the end of this Act defines certain terms used in this Act, and includes references (signpost definitions) to other terms defined elsewhere in this Act. For example, the signpost definition ‘insert definition’ means that the term ‘definition’ is defined in that dictionary/section and the definition applies to this Act.</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Note 2</strong> A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).</td>
<td></td>
</tr>
<tr>
<td><strong>Reg Dictionary</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14</td>
<td><strong>Note 1</strong> The dictionary at the end of this regulation defines certain terms used in this regulation, and includes references (signpost definitions) to other terms defined elsewhere in this regulation. For example, the signpost definition ‘insert definition’ means that the term ‘definition’ is defined in that dictionary/section and the definition applies to this regulation.</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Note 2</strong> A definition in the dictionary (including a signpost definition) applies to the entire regulation unless the definition, or another provision of the regulation, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).</td>
<td></td>
</tr>
</tbody>
</table>

Standard notes that must be inserted after the dictionary section in an Act.

See pt 5.2 for information about the dictionary section.
### Example 1—mandatory notes

<table>
<thead>
<tr>
<th>column 1</th>
<th>column 2</th>
<th>column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>item</td>
<td>Text of note</td>
<td>Guidance for use</td>
</tr>
<tr>
<td>15</td>
<td>Definitions Contrary Intention</td>
<td>Must be used in a provision in an Act (the <strong>first Act</strong>) that provides that the terms used in another Act have the same meaning in the first Act. May be used to clarify that a definition applies except where there is a contrary intention.</td>
</tr>
</tbody>
</table>

**Examples**

*Lifetime Care and Support (Catastrophic Injuries) Act 2014*, s 8, note 1

*National Energy Retail Law (ACT) Act 2012*, s 4, note

*Common Boundaries Act 1981*, s 2, note

### Note for Dictionary - Act

| 16 | Note 1 The Legislation Act contains definitions and other provisions relevant to this Act. Note 2 For example, the Legislation Act, dict, pt 1 defines the following terms: |
| Note 3 Terms used in this regulation have the same meaning that they have in the **Act name** (see Legislation Act, s 148.) For example, the following terms are defined in the **Act name**, dict: |
| Standard notes that must be included at beginning of the dictionary to an Act. For more information about dictionary notes, see pt 5.3. |

### Note for Dictionary - Reg

| 17 | Note 1 The Legislation Act contains definitions and other provisions relevant to this regulation. Note 2 For example, the Legislation Act, dict, pt 1 defines the following terms: |
| Note 3 Terms used in this regulation have the same meaning that they have in the **Act name** (see Legislation Act, s 148.) For example, the following terms are defined in the **Act name**, dict: |
| Standard notes that must be included at beginning of the dictionary to a regulation. For more information about dictionary notes, see pt 5.3. |
### Example 1—mandatory notes

<table>
<thead>
<tr>
<th><strong>Evidential Burden</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>18</td>
<td>The defendant has an evidential burden in relation to the matters mentioned in s (#) (see Criminal Code, s 58).</td>
</tr>
<tr>
<td></td>
<td>Must be used in a provision that creates an exception, excuse, qualification or justification for an offence (eg, of reasonable excuse).</td>
</tr>
<tr>
<td></td>
<td>For more information about the form of a provision creating an exception, see div 11.7.2.</td>
</tr>
<tr>
<td></td>
<td>For more information about reasonable excuse defence, see div 11.8.2.</td>
</tr>
<tr>
<td></td>
<td><strong>Examples</strong></td>
</tr>
<tr>
<td></td>
<td><em>Public Unleased Land Act 2013</em>, s 90 (5), note</td>
</tr>
<tr>
<td></td>
<td><em>ACT Teacher Quality Institute Act 2010</em>, s 70 (4), note</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Legal Burden</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>19</td>
<td>The defendant has a legal burden in relation to the matters mentioned in s (#) (see Criminal Code, s 59).</td>
</tr>
<tr>
<td></td>
<td>Must be used in a provision that creates a defence to an offence that requires the defendant to prove certain matters.</td>
</tr>
<tr>
<td></td>
<td>For more information about defences, see pt 11.8.</td>
</tr>
<tr>
<td></td>
<td><strong>Examples</strong></td>
</tr>
<tr>
<td></td>
<td><em>Nature Conservation Act 2014</em>, s 238 (4), note</td>
</tr>
<tr>
<td></td>
<td><em>Workplace Privacy Act 2011</em>, s 36 (1), note</td>
</tr>
</tbody>
</table>
## Example 1—mandatory notes

<table>
<thead>
<tr>
<th>column 1</th>
<th>column 2</th>
<th>column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>item</td>
<td>Text of note</td>
<td>Guidance for use</td>
</tr>
</tbody>
</table>

### False or Misleading

<table>
<thead>
<tr>
<th>item</th>
<th>Text of note</th>
<th>Guidance for use</th>
</tr>
</thead>
</table>
| 20 | It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4). | Must be used if a provision requires a person to give information or a document to the Territory or a person exercising a function under a territory law, or information or a document is given in compliance with a territory law. **Example**

*Nature Conservation Act 2014*, s 321 (1), note 2 |

### Commencement

<table>
<thead>
<tr>
<th>item</th>
<th>Text of note</th>
<th>Guidance for use</th>
</tr>
</thead>
</table>
| 21 | Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

*Note 3* If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79). | Must be used in commencement provision. For more information about commencement provisions, see ch 4. |

### LA, s 88

<table>
<thead>
<tr>
<th>item</th>
<th>Text of note</th>
<th>Guidance for use</th>
</tr>
</thead>
<tbody>
<tr>
<td>22</td>
<td>Transitional provisions are kept in the Act/Regulation for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see Legislation Act, s 88).</td>
<td>Must be inserted after the expiry provision for a transitional part. For more information on notes about the effect of the Legislation Act, s 88, see pt 17.3.</td>
</tr>
</tbody>
</table>
## Example 1—mandatory notes

<table>
<thead>
<tr>
<th>column 1</th>
<th>column 2</th>
<th>column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>item</td>
<td>Text of note</td>
<td>Guidance for use</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Self-incrimination</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| 23 | The Legislation Act, s 170 and s 171 deal/s with the application of the privilege against self-incrimination and client legal privilege. | Must be used in a provision that requires a person to give an official particular information, answer questions or produce documents.  
**Example**  
*Public Unleased Land Act 2013*, s 110 (1), note |
|  |  |  |
| **Example** |  |  |
| 24 | An example is part of the Act/regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132). | Must be used if an example is given for a provision, including if the words ‘for example’ are used in the body of the provision.  
Should only be used once in each provision.  
For more information about examples and example notes, see pt 15.4, esp div 15.4.6. |
|  |  |  |
| **Statutory Declarations Act (Cwlth)** |  |  |
| 25 | *Note 1* The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.  
*Note 2* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4). | Must be used if a provision requires a person to give a statutory declaration about something.  
Use only once for each provision. |
|  |  |  |
| **Statement of Reasons** |  |  |
| 26 | For what must be included in a statement of reasons, see the Legislation Act, s 179. | Must be used if a provision requires a person to give a statement of reasons for the doing of a thing. |
## Example 1—mandatory notes

<table>
<thead>
<tr>
<th>column 1</th>
<th>column 2</th>
<th>column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>item</td>
<td>Text of note</td>
<td>Guidance for use</td>
</tr>
</tbody>
</table>

### State includes Territory

| 27 | State includes the Northern Territory (see Legislation Act, dict, pt 1). | Must use if a provision refers to a State. |
|    | (For more information on formatting of signpost definitions, see div 9.1.3). | Example |
|    | Information Privacy Act 2014, s 14, def Australian law, note |

#### Reviewable Decision Notice

| 28 | Note 1 | Must be used in provisions about reviewable decision notices if review is available to any person whose interests are affected by a decision as well as the people mentioned in the particular Act. |
|    | The registrar-general must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see ACT Civil and Administrative Tribunal Act 2008, s 67A). | Examples |
|    | Note 2 | Surveyors Act 2007, s 76, notes |
|    | The requirements for reviewable decision notices are prescribed under the ACT Civil and Administrative Tribunal Act 2008. | Nature Conservation Act 2014, s 361, notes |

#### Reviewable Decision Notice

| 29 | Note | Must be used in provisions about reviewable decision notices if review is to be available only to the people mentioned in the particular Act. |
|    | The requirements for reviewable decision notices are prescribed under the ACT Civil and Administrative Tribunal Act 2008. | Example |
|    | | ACT Teacher Quality Institute Act 2010, s 89, note |
### Example 2—optional notes

<table>
<thead>
<tr>
<th>Item</th>
<th>Text of note</th>
<th>Guidance for use</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Approved Form</strong></td>
<td></td>
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</tbody>
</table>
| 1 | If a form is approved under s ## for this provision, the form must be used.  
 *or for provisions dealing with applications*  
 If a form is approved under s ## for an application, the form must be used. | May be used in a provision for which a form is likely to be approved. Alternative may be used for a provision dealing with applications.  
 For more information about the order in which fee and form notes should appear, see pt 10.6.  
 For more information about approved forms, see pt 10.12.  
 **Example**  
 *Liquor Act 2010, s 38 (1), note 1* |
| **Fee** | | |
| 2 | A fee may be determined under s ## for this provision.  
 *or for provisions dealing with applications*  
 A fee may be determined under s ## for an application. | May be used in a provision for which a fee is likely to be determined. Alternative may be used for a provision dealing with applications.  
 For more information about fee determination provisions, see pt 10.6.  
 **Example**  
 *Tree Protection Act 2005, s 22, note 2* |
| **Delegate Conditions** | | |
| 3 | In exercising a delegation, the delegate is subject to any conditions, limitations or directions in the instrument making or evidencing the delegation (see Legislation Act, s 239). | May be used in provisions about delegating functions.  
 For more information about delegation provisions, see pts 10. 4 and 10.5.  
 **Example**  
 *Environment Protection Act 1997, s 13, note 3* |
<table>
<thead>
<tr>
<th>column 1 item</th>
<th>column 2 Text of note</th>
<th>column 3 Guidance for use</th>
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</thead>
<tbody>
<tr>
<td>Delegate – Territory Laws</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Territory laws apply to a delegate of a person in the exercise of a delegation as if the delegate were the person who appointed the delegate (see Legislation Act, s 239 (2)).</td>
<td>May be used in provisions about delegating functions. For more information about delegation provisions, see pts 10. 4 and 10.5. <strong>Example</strong> Corrections Management Act 2007, s 15 (2), note</td>
</tr>
<tr>
<td>Service</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>For how documents may be given, see the Legislation Act, pt 19.5.</td>
<td>May be used in a provision that authorises or requires a document to be given (whether ‘serve’, ‘give’, ‘notify’, ‘send’ or ‘tell’ or any other word is used) (see Legislation Act, s 245). Consider using if the context requires delivery in a formal way to the person to whom it is to be given or if proof of service may be required. <strong>Example</strong> Utilities Act 2000, s 42 (1) (a), note Not to be used in relation to internal workings of government. <strong>Examples</strong> Financial Management Act 1996, s 24 (1) Crimes (Sentence Administration) Act 2005, s 116M (1) Not to be used if, in the context, proof of service would not be an issue. <strong>Example</strong> Crimes (Sentence Administration) Act 2005, s 215A (3)</td>
</tr>
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</table>
### Example 2—optional notes

<table>
<thead>
<tr>
<th>column 1</th>
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<tbody>
<tr>
<td>item</td>
<td>Text of note</td>
<td>Guidance for use</td>
</tr>
<tr>
<td><strong>Functions</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def <em>entity</em>).</td>
<td>May be used in a provision that sets out an entity’s functions.</td>
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<td></td>
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<tr>
<td><strong>Ref to Stat Instrument</strong></td>
<td></td>
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</tr>
<tr>
<td>7</td>
<td>A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).</td>
<td>May be used in a provision that refers to things that are able to be done ‘under this Act’ to make it clear that ‘this Act’ includes statutory instruments in force under the Act.</td>
</tr>
<tr>
<td></td>
<td>Examples</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Utilities (Technical Regulation) Act 2014, s 7 (2), note</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Public Pools Act 2015, s 11 (1), note 2</td>
<td></td>
</tr>
<tr>
<td><strong>Power to Make Provision for Difference Categories</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Power to make a statutory instrument (including a regulation) includes power to make different provision in relation to different matters or different classes of matters, and to make an instrument that applies differently by reference to stated exceptions or factors (see Legislation Act, s 48).</td>
<td>May be used in a provision that gives an entity power to make a statutory instrument, particularly to make clear to users of legislation (and instructing officer) that the provision itself doesn’t have to state that the entity has power to make different provision in relation to different matters etc as the Legislation Act, s 48 already does this.</td>
</tr>
<tr>
<td><strong>Power to Make Includes Power to Amend or Repeal</strong></td>
<td></td>
<td></td>
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<tr>
<td>9</td>
<td>The power to make an instrument includes the power to amend or repeal the instrument. The power to amend or repeal the instrument is exercisable in the same way, and subject to the same conditions, as the power to make the instrument (see Legislation Act, s 46).</td>
<td>May be used in a provision that gives an entity power to make a statutory instrument, to make clear to users of legislation (and instructing officer) that the provision itself doesn’t have to state that the entity has power to amend or repeal the instrument as the Legislation Act, s 46 already does this.</td>
</tr>
</tbody>
</table>
## Example 2—optional notes

<table>
<thead>
<tr>
<th>item</th>
<th>Text of note</th>
<th>Guidance for use</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Instrument Amendment / Repeal</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>An amendment or repeal of a notifiable/disallowable instrument is also a notifiable/disallowable instrument (see Legislation Act, s 46).</td>
<td>May be used in a provision that gives an entity power to make a notifiable or disallowable instrument to make it clear to users of legislation that a repeal or amendment of the instrument is also notifiable or disallowable. Consider carefully whether to include note as PCO discourages amendments of notifiable or disallowable instruments. <strong>Examples</strong> <em>Corrections Management Act 2007, s 14 (2), note 2</em> <em>Fisheries Act 2000, s 7 (2), note 2</em></td>
</tr>
<tr>
<td><strong>False Information</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Giving false or misleading information is an offence against the Criminal Code, s 338.</td>
<td>May be used if a provision requires a person to give information to the Territory or a person exercising a function under a territory law, or information is given in compliance with a territory law. <strong>Example</strong> <em>Nature Conservation Act 2014, s 264 (2), note 2</em></td>
</tr>
</tbody>
</table>
### Example 2—optional notes

<table>
<thead>
<tr>
<th>column 1 item</th>
<th>column 2 Text of note</th>
<th>column 3 Guidance for use</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Law Reference</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>A reference to a law/Act (including a Cwlth Act) includes a reference to the law/Act as originally made and as amended (see Legislation Act, s 102).</td>
<td>May be used if referring to a law in a provision and to make it clear to users of legislation that the reference is to the law (including an instrument) as amended. For more information about reference to laws of jurisdictions other than the ACT, see pt 13.3. <strong>Example</strong> Planning and Development Act 2007, dictionary def land management agreement, note</td>
</tr>
<tr>
<td><strong>Amount Owing</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Amount Owing An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see Legislation Act, s 177).</td>
<td>May be used if a provision requires a person to pay an amount to another person. Do not use this note for an amount owing under a court order, which is enforced under the Court Procedures Rules 2004, pt 2.18. <strong>Example</strong> Litter Act 2004, s 24B (1), note</td>
</tr>
</tbody>
</table>
### Example 2—optional notes

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<tr>
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<th>Text of note</th>
<th>Guidance for use</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Offence Includes Ancillary</strong></td>
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<td></td>
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</table>
| 14 | A reference to an offence against a territory law includes a reference to a related ancillary offence, eg attempt (see Legislation Act, s 189). | May be used in offence provisions to make it clear to users of legislation that a reference to an offence includes a reference to ancillary offences. For more information about ancillary offences, see pt 11.9.  
**Examples**  
*Working with Vulnerable People Background Checking) Act 2011, s 26, def *relevant offence*, note*  
*Utilities (Technical Regulation) Act 2014, s 24 (2), note 1* |
| **Other notes** | | |
| 15 | *Licensee* has a meaning corresponding to the meaning of *licence* (see Legislation Act, s 157).  
*Established* includes continued in existence (see Legislation Act, dict, pt 1, def *establish*). | May be used if other forms of a defined term are used in the body of the Act or legislative instrument.  
**Examples**  
*Human Cloning and Embryo Research Act 2004, s 23, def *use*, note*  
*Planning and Development Act 2007, dictionary, def *environment*, note* |
| 16 | *Fail* includes refuse (see Legislation Act, dict, pt 1). | May be used if provision refers to a person failing to do something. (For more information on formatting of signpost definitions, see div 9.1.3).  
**Example**  
*Utilities (Technical Regulation) Act 2014, s 61, note* |
## Example 2—optional notes

<table>
<thead>
<tr>
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<th>Text of note</th>
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</thead>
</table>
| 17   | X must comply with this section as soon as possible after Y is done (see Legislation Act, s 151B). [The text of the note may vary, depending on what the provision requires.] | May be used if a provision doesn’t fix a time for doing something. Legislation Act, s 151B provides that if, under an Act or statutory instrument, something must or may be done but no time is provided for doing the thing, the thing must or may be done as soon as possible and as often as needed. **Examples**  
*Public Interest Disclosure Act 2012*, s 23 (1), note  
*Information Privacy Act 2014*, s 37, note 1 |
| 18   | Power given by a law to make a decision includes power to reverse or change the decision. The power to reverse or change the decision is exercisable in the same way, and subject to the same conditions, as the power to make the decision (see Legislation Act, s 180). | May be used if a provision requires a person to make a decision and it needs to be made clear that the person also has the power to reverse or change the decision. **Examples**  
*Auditor-General Act 1996*, s 9B (1), note  
*Road Transport (Third-Party Insurance) Act 2008*, s 184 (6), note |
| 19   | For the taking of an oath or the making of an affirmation, see the Oaths and Affirmations Act 1984 | May be used if, under a provision, a person may be required to take an oath or make an affirmation. **Examples**  
*Auditor-General Act 1996*, s 14A (1), note  
*Confiscation of Criminal Assets Act 2003*, s 175 (1), note  
*Electoral Act 1992*, s 237 (10), note |
### Example 2—optional notes

<table>
<thead>
<tr>
<th>column 1 item</th>
<th>column 2 Text of note</th>
<th>column 3 Guidance for use</th>
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</table>
| 20            | Words in the singular number include the plural (see Legislation Act, s 145 (b)). | May be used to clarify that a reference to something in the singular includes the plural. **Examples**
|               |                         | *Heritage Act 2004, s 3B (4), def, note* |
|               |                         | *Planning and Development Act 2007, s 395B (1), note 2* |
| 21            | For working out periods of time generally, see Legislation Act, s 151. | May be used if a provision prescribes a period of time within which something under the provision must be done. **Examples**
|               |                         | *Legal Profession Regulation 2007, s 44 (4), note 1* |
|               |                         | *Court Procedures Rules 2006, r 6008 (1), note 2* |
| 22            | *Found guilty*, of an offence—see the Legislation Act, dictionary, pt 1. | May be used in provisions referring to a person ‘found guilty’. Insert reference to ‘found guilty’ in dot point in dictionary, note 2 if several references to term. |
7 Offences against Act section

A standard information provision about the Criminal Code is included in the preliminary part of all principal legislation that contains offence provisions that are subject to the Code. It is headed ‘Offences against Act—application of Criminal Code etc’ and appears after the ‘notes’ section.

The provision should be included in all new Acts and regulations, and in existing Acts and regulations the first time they are amended in a way that will attract the Code.

The following examples illustrate the different versions of the provision that should be used.

Example 1
Code applies to all offences—new Acts / pre-2003 Act with all offences harmonised by omission and remaking

In these cases the Criminal Code applies automatically.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code
The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (e.g. conduct, intention, recklessness and strict liability).

Note 2 Penalty units
The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.
Example 2
Pre-2003 Act with Code applying to some offences only

This version has a different note 1 listing the offences to which the Code applies. If further offence provisions become subject to the Code before the whole Act is harmonised, the note should be amended to keep it up-to-date. Once the whole Act is harmonised, the note should be replaced by note 1 in example 1.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to the following offences against this Act (see Code, pt 2.1):

- s 96 (1) (Use of information on ACT DNA database)
- s 97 (3) (Permissible matching of DNA profiles)
- s 98 (Recording, retention and removal of identifying information on ACT DNA database).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg conduct, intention, recklessness and strict liability).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

To avoid the dot point list getting overly long, offences need not always be individually identified. They could eg be identified by reference to the relevant part of the Act. For example—

- offences against pt 3 (Firearms licences)
- offences against pt 3C (Permits to acquire firearms)
- offences against pt 4 (Registration of firearms and firearm users)
- s 62 (Offence—failing to comply with storage requirements)
- offences against pt 6 (Firearms dealers) (other than s 70 (1) to (3) and s 71)
- offences against pt 7 (Enforcement)
- offences against pt 8 (Offences) (other than s 80 to s 82, s 85 to s 92, s 94 to s 96, s 97 (1) and (2), s 100, s 101, s 103, s 104 and s 106 to s 109).
8  Purpose, objects, application etc sections

8.1  Purpose and objects sections

8.1.1  General

A purpose or objects section is a formal way of explaining what legislation, or part of it, is intended to do. Generally, a policy officer will ask for a purpose or objects section and give instructions for its content.

Although a purpose or objects section is not legally necessary, it can be used to interpret other provisions of the Act if their meaning is unclear. LA, section 139 provides that in working out the meaning of an Act, an interpretation that gives effect to the purpose of the Act is to be preferred to an interpretation that does not. The purpose of the Act does not need to be express for this rule to apply (see LA, s 139 (2)), but an express purpose or object makes the rule easier to apply.

A purpose or objects section can be useful in presenting the policy objectives of legislation in a short, readily understandable form and providing an accessible overview of the legislation.

Example 1
Confiscation of Criminal Assets Act 2003

# Purposes of Act

The *purposes of this Act* include the following:

(a) to encourage law-abiding behaviour by the community;

(b) to give effect to the principle of public policy that a person should not be enriched because of the commission of an offence, whether or not anyone has been convicted of the offence;

…

(e) to enable the effective tracing and seizure by law enforcement authorities of property used, or intended by an offender to be used, in relation to the commission of an offence and all material advantage derived from the offence;

(f) to provide for the enforcement in the ACT of orders, notices or decisions (however described) made under corresponding laws.
Example 2
LA

# Objects of Act

(1) The main object of this Act is to make legislation more accessible.

(2) This is to be achieved particularly by—

   (a) encouraging access to legislation through the internet, while maintaining access to printed legislation; and…

Example 3
Standard headings

# Objects of Act / pt # / div #
# Purposes of Act / pt # / div #
# Application of Act / pt # / div #

A purpose or objects section must be consistent with the provisions of the legislation (or part), including its scope. For example, the section should not purport to set out all of the purpose objects if it does not. For sections that are not fully comprehensive, it can be useful to refer to the legislation’s ‘main’ purpose or objects (see example 2) or express the section in an inclusive way (see example 1).

The more concrete the terms in which a purpose or objects section is expressed, the more useful it is in interpreting legislation. However, concrete purpose or objects sections are difficult to draft if the policy objects are not well settled.

A vaguely expressed purpose or objects section is unlikely to be of much assistance in interpretation. Its inclusion can call into question both the usefulness of the section and the value of the policy objectives of the legislation.

The drafting of a purpose or objects section early in the drafting process can provide a useful way of testing whether the policy has been sufficiently developed to be expressed in legislation, whether the drafter has a clear understanding of the policy, and whether that understanding is shared with the instructor.
8.1.2 Location—objects and application sections

A purpose or objects section follows the ‘Offences against Act’ section (see example 1).

An application section follows the ‘Objects’ or ‘Purpose’ section (see example 1).

If the piece of legislation has a ‘Preliminary’ part followed by a ‘Objects and important concepts’ part (or similar)—the application section follows the ‘Offences against Act’ section and the ‘Objects’ section is the first section in the ‘Objects and important concepts’ part (see example 2).

Example 1

Part 1  Preliminary
  1 Name of Act
  2 Commencement
  3 Dictionary
  4 Notes
  5 Offences against Act—application of Criminal Code etc
  6 Objects of Act
  7 Application of Act

Example 2

Part 1  Preliminary
  1 Name of Act
  2 Commencement
  3 Dictionary
  4 Notes
  5 Offences against Act—application of Criminal Code etc
  6 Application of Act

Part 2  Objects and important concepts
  7 Objects of Act
8.2 Explanatory notes

Explanatory notes can be used as an alternative to purpose or objects sections.

An example of the use of notes to explain the effect of part of an Act is in the Workers Compensation Act 1951, chapter 3, notes about ch 3. The notes use a flow chart to explain how to work out who is a worker and include extensive examples.

Explanatory notes do not form part of the legislation, but are extrinsic material that may be considered under LA, section 141, and may help the reader to get an overview of the legislation, particularly its concepts (see example).

Example

Confiscation of Criminal Assets Act 2003

9 General overview

The notes to this section provide a general overview of the scheme of this Act.

Note 1 Restraining orders

A court may make an order (a restraining order) preventing the disposal or other dealing with property. A restraining order may also be made to secure a property for the payment of a penalty order (see note 4).

Property may be restrained even though it is not the offender’s property.

Note 2 Confiscation of property on conviction

A court that convicts a person of an indictable offence may make an order (a conviction forfeiture order) for the forfeiture to the Territory of tainted property in relation to the offence (whether or not the tainted property is restrained)…

Property may be forfeited even though it is not the offender’s property…

…

Note 5 Exclusion of property from forfeiture and return or compensation for forfeited property

Provision is made for a order that property be excluded from forfeiture (an exclusion order) and forfeited property can be returned or compensation paid for it in certain circumstances. Provision is also made for the buyback of interests in forfeited property.
8.3 Outlines

An outline is less formal than a purpose or objects section. An outline can be a part dedicated to explaining the operation of a scheme in an Act or a single provision. The outline approach could have been used instead of the explanatory notes that are used in the Workers Compensation Act 1951. If using an outline (which is a substantive provision), consideration should be given to including a provision to ensure that the outline is not used to read down substantive provisions of the legislation (see example). The example is of a section for an outline part, but may be adapted for use as a subsection in an outline section.

Example

# Outline of Act

The provisions in this part are intended only as a guide to readers about the general scheme and effect of the Act.

8.4 Reader’s guides

A reader’s guide can be used in the same way as an outline, but is not a substantive provision. A reader’s guide comes after the long title of the legislation (or, for subordinate legislation, the contents). If the legislation also has a preamble or recital, the reader’s guide would come before the preamble or recital. A reader’s guide is not part of the Act (see LA, s 127 (2)).

Example

Commonwealth Authorities and Companies Act 1997 (Cwlth)

Reader’s guide
This guide aims to give you a general overview of the matters covered by this Act. It also gives you some information about the way this Act is organised.

Overview of this Act
The rules in this Act apply to Commonwealth authorities and Commonwealth companies. Commonwealth authority is defined in section 7. Commonwealth company is defined in section 34.

This Act regulates certain aspects of the financial affairs of Commonwealth authorities. In particular, it has detailed rules about reporting and accountability. This Act also deals with other matters relating to Commonwealth authorities, such as banking and investment and the conduct of officers.

For Commonwealth companies, this Act has reporting requirements and other requirements that apply in addition to the requirements of the Corporations Act 2001.
Summary of this Act

Part 1 Preliminary: This Part deals with the commencement of this Act, its application to things outside Australia and its application to the Crown.

Part 2 General provisions about definitions, offences and civil penalties: This Part contains definitions of terms that are frequently used throughout this Act and general provisions about offences and civil penalty provisions. Schedule 2 sets out the civil and criminal consequences of contravening a civil penalty provision.

Part 3 Reporting and other obligations for Commonwealth authorities: This Part sets out reporting and accountability rules for Commonwealth authorities. It also deals with matters such as banking, investment and the conduct of officers. Schedule 1 deals with the content of the annual report, financial statements and auditor's report.

Part 4 Reporting and other obligations for Commonwealth companies: This Part sets out reporting and other rules for Commonwealth companies. These requirements are additional to those that apply under the Corporations Act 2001.

Part 5 Miscellaneous: This Part deals with miscellaneous matters such as Finance Minister's Orders and regulations.

Related legislation

The following Acts are directly relevant to the operation or interpretation of this Act.

The Auditor-General Act 1997 establishes the Office of Auditor-General and sets out the functions of the Auditor-General.

The Acts Interpretation Act 1901 contains many general rules about the meaning or effect of various terms and provisions that are commonly used in Commonwealth Acts.

This list is not exhaustive. Acts other than those listed above might also affect the operation or interpretation of this Act.

Another related Act is the Financial Management and Accountability Act 1997. Its main purpose is to establish a framework for the proper management of public money and public property (broadly, money or property that is owned or held by the Commonwealth). Public money and public property is usually handled by Departments and other Agencies that act on behalf of the Commonwealth.

Further reading

LA, s 126, s 127, s 139
9 Definitions

9.1 Definitions—general principles

9.1.1 Why use definitions?

We use definitions to make legislation easier to read and understand. Definitions package text to—

- *avoid tedious repetition* by shortening a reference to a concept used in a number of places in legislation—the most common reason

- *improve flow* for readers who don’t need the detailed definition

- *enhance clarity* by bringing out the logic and key features of substantive provisions, and thus allowing the most important elements to be understood more clearly.

9.1.2 When to use definitions

In deciding whether to use a definition, the drafter must consider the following issues:

- **Can the concept be described without a definition?**

  Is its ordinary meaning, or firmly established technical or legal meaning—undefined—sufficient to meet the client's needs and unambiguous? (see example 1)

- **Definitions require the reader to look in 2 places to understand a law fully**

  Is it possible to avoid using a definition by stating the relevant concept in full rather than defining a shorthand term for it?

  A definition should be used only if it will aid comprehension by avoiding repetition, improving flow or enhancing clarity (see div 9.1.1).

  If the concept is used infrequently (even just once or twice), a definition may still be used if there is a significant advantage in terms of comprehension (see examples 2 and 3). These definitions are rather like notes (but have legislative effect)—the 'packaged' material is legislatively necessary to avoid ambiguity or uncertainty, but is not essential to a general understanding of the substantive provision. The drafter must judge whether the inclusion of the packaged material in the substantive provision would significantly interrupt the narrative flow of the provision.
• **Location of definition**

**Standard**—In general a definition only used within one section should be located at the end of the section (before any notes, examples or tables).

**Alternative**—If the term needs to be defined first to be able to easily understand the provision the definition can be located at the start of the section.

**Example 1**

**No need for definition**

The *Zoo Bill 2003* contains a number of references to monotremes. This is a well-understood scientific classification; there is no dispute in the zoological community about *The Macquarie Dictionary* definition of ‘monotreme’ (‘...any of the Monotremata, an order of mammals restricted to the Australian region, etc…”). Thus there is no need to define the word ‘monotreme’ in the bill.

**Example 2**

**Definitions of concepts used only once or twice: Criminal Code**

405  **Causing bushfires**

(1) A person commits an offence if the person—

(a) intentionally or recklessly causes a fire; and

(b) is reckless about the spread of the fire to vegetation on property belonging to someone else.

Maximum penalty: 1 500 penalty units, imprisonment for 15 years or both.

*Note* The fault element of recklessness can be satisfied by proof of intention, knowledge or recklessness (see s 20 (4)).

(2) In this section:

**causes** a fire—a person **causes** a fire if the person does any of the following:

(a) lights a fire;

(b) maintains a fire;

(c) fails to contain or extinguish a fire that was lit by the person if it is not beyond the person’s capacity to contain or extinguish it.

**spread**, of a fire, means spread of the fire beyond the capacity of the person who caused the fire to contain or extinguish it.
Example 3
Definitions of concepts used only once or twice: Planning and Land Act 2002

45 Contents of land agency business plans

... (2) A land agency business plan for a financial year must contain—

(a) a copy of the statement of intent; and

....

(d) ...

(3) In this section:

statement of intent, for a financial year, means the statement of intent for the year provided under the Financial Management Act 1996, section 58 (Statements of intent).

9.1.3 Keeping the reader in mind: the proximity principle & the multiple-entry principle

Readers of legislation do not generally read a law from front to back. Acts and subordinate laws are approached like reference books (eg encyclopaedias, dictionaries, the Bible/Q'ran/Torah), not like novels. Readers use the table of contents or a search engine, and 'dip in' to find the particular provisions they need. Definitions should be handled with this reading behaviour in mind—by applying the following 2 principles:

- the proximity principle—inserting definitions close to the first or primary context in which the defined concepts are used gives the reader access to relevant definitions close to where they are used (see div 9.1.11)
  - tagged-term definitions provide the ‘definition’ in the context of the provision in which the defined term is first, or most significantly, used (see div 9.2.6)
  - most relevant chapter/part/division—insert definitions at the beginning of the most relevant chapter, part or division (even if the terms are used outside the chapter, part or division). Definitions may be included in general lists or stand-alone provisions at the start of the relevant chapter, part or division (see div 9.1.10).

- the multiple-entry principle allows readers to ‘dip in’ to legislation by providing different access points:
  - the dictionary section alerts readers to the existence of a general list of definitions at the back if they start reading at the front (see ch 5)
  - meaningful defined terms allow readers to avoid having to immediately jump to a definition by giving a general understanding of what is intended (see div 9.1.6)
if it is particularly important to alert the reader to the existence of a definition, a definition note at the foot of the provision may be helpful (see example)—though the practice of inserting notes should not be overdone. The abbreviation for dictionary (dict) can look awkward when used in a note for a signpost definition. In general the abbreviation ‘dict’ should be used only when inside brackets and the full word used when not in brackets (see examples 2, 3 and 4).

most importantly, if definitions are placed close to where the defined terms are most significantly used, or are placed at the front of a law because they are ‘key terms’, signposts in the dictionary and (if helpful) other general definitions provisions allow these lists to provide a central reference point(s) for all definitions (except those that apply only to a single provision) (see div 9.2.5).

Example 1
Definition note if section uses the terms noted

Note

- advance is defined for this chapter in s 174D
- commercial purpose is defined for this chapter in s 174E
- common commercial purpose is defined for this chapter in s 174F
- liability day is defined for this chapter in s 174I
- mortgage is defined for this chapter in s 174C.

Example 2
Using ‘dict’

Note School-leaving age is 15 years old (see dict).
Note Offender includes a young offender (see dict).
Note See dict, def offender (it includes a young offender).

Example 3
Using ‘dictionary’

Note Offender—see the dictionary.
Note Operating entity—see the dictionary.
Note Business—see the dictionary.
Note For the meaning of business, see the dictionary.

Example 4
Definition in other law

Note State includes the Northern Territory (see Legislation Act, dict, pt 1).
Note Adult—see the Legislation Act, dictionary, pt 1.
Note Adult is defined in the Legislation Act, dict, pt 1.

21 Division updated and examples 2 to 4 added in version 2015-5.
Example 5
Reference to multiple definitions in a note

Note  

*Excluded treatment and care*—see the LTCS Act, s 9.

*LTCS Act*—see the dictionary.

*LTCS commissioner*—see the LTCS Act, dictionary.

*LTCS scheme*—see the LTCS Act, dictionary.

*Participant, in the LTCS scheme*—see the LTCS Act, dictionary.

*Treatment and care needs, of a participant in the LTCS scheme*—see the LTCS Act, s 9.

*Work injury*—see the LTCS Act, dictionary.

9.1.4 Terms defined in LA

Do not include a definition of a term that is defined in LA (unless the term is intended to be defined differently—see example 1).

The dictionary notes deal with terms defined by LA (see pt 5.3).

If a term is defined in LA consider alternatives before defining the term in other legislation in a different way.

If a term defined in LA is to be defined differently in other legislation, the relationship between the definitions should be clear (see example 2).

Example 1
Displacement of LA definition: LA, s 7

(1) In this Act:

*Act* does not include a subordinate law under this Act.

Example 2
Alternative to using term defined in LA, dict, pt 1

*[territory authority* means a body established under an Act.]*

unacceptable:

*territory authority* means a body established under an Act with the object of promoting the welfare of animals.

acceptable alternative:

*animal welfare agency* means a body established under an Act with the object of promoting the welfare of animals.
9.1.5 Substantive provisions in definitions

Do not include substantive statutory requirements in a definition.
Definitions should not give functions or powers.
However, this rule does not apply to tagged-term definitions (see div 9.2.6).

Example

Unacceptable

*protected mammal* means a mammal to which this Act applies because of a declaration the Minister may make, having regard to an assessment by the conservator of mammals.

Acceptable

*protected mammal* means a mammal that is declared a protected mammal under section #.

## Declaration of protected mammals

(1) The Minister may, in writing, declare that a mammal is a protected mammal.

(2) The Minister must take into account an assessment by the conservator of mammals in making a declaration.
9.1.6 Choosing a defined term

**Descriptive defined terms**

Use as descriptive a defined term as possible. Avoid colourless terms like *prescribed officer* (avoid ‘prescribed’ entirely unless a reference to prescription by regulation is intended) and *defined mammal* or *relevant mammal* (though as a last resort, *defined mammal* does at least alert the reader to the existence of a definition).

**Example**

*Confiscation of Criminal Assets Act 2003, s 10 def tainted property*

[‘Tainted property’ is preferable to a less colourful term (eg ‘defined property’). This enables a reader to identify in general terms the concept concerned—property somehow ‘tainted’ by association with a crime—without, for many purposes, needing to look elsewhere for this detailed and complex definition.]

**Artificial defined terms**

The natural meaning of a defined term should not differ radically from its defined meaning.

**Example 1**

Unacceptable: *Thornton, p 149*

railway includes all ferries, ships, boats and craft used for the traffic of the railway.

**Example 2**

Acceptable

railway related transport includes all ferries, ships, boats and craft used for the traffic of a railway.

**Example 3**

Acceptable: *Australian Centennial Roads Development Act 1988 (Cwlth), s 3 (1) [with changes]*

railway includes—

(a) railway signs; and
(b) railway control equipment; and
(c) railway lighting equipment; and
(d) a bridge or tunnel associated with a railway.
9.1.7 Definition by reference

**General**

Before applying a definition by reference from outside the relevant Act or subordinate law, consider whether it would be more appropriate to reproduce the definition concerned.

However, it may be necessary or appropriate to apply definitions from another law by reference, for example:

- in legislation that is to form a part of an interlocking ACT scheme, or a complementary federal scheme
- if the other definition is too long or complex—it may, for example, include further defined terms from the other law (which would automatically be picked up by an incorporation of the primary definition by reference)
- if the other definition is subject to frequent change
- to ensure a defined concept is used consistently in related legislation.

LA, section 102 provides that references in ACT Acts and statutory instruments to interstate and Commonwealth laws are taken to be references to those laws as originally made, and as amended from time to time after making (but the situation is different in subordinate laws—see division 9.1.7—definitions in subordinate laws).

But if definitions outside the ACT statute book are applied by reference as in force from time to time, also consider whether this is appropriate. This involves a subdelegation of legislative power to a body outside of the control of the Legislative Assembly. Except in cases like those above (interlocking schemes etc), prefer to include the content of the definition in a law rather than apply the other definition by reference.

Use signpost definitions—see division 9.2.5.

**Examples**

[see div 9.2.5 (Signpost definitions) for more examples]

1. *financial records*—see the Corporations Act, section 9.
2. *prescribed authority*—see the *Freedom of Information Act 1989*, dictionary.
Definitions in subordinate laws

A subordinate law may apply a law of another jurisdiction, a statutory instrument (other than a subordinate law or disallowable instrument) or a non-legislative instrument, only as in force at a particular time (LA, s 47 (3)). ‘Rolling’ incorporation of a definition from such a law or instrument by the subordinate law (that is, incorporation as in force from time to time after the subordinate law is made) is only permissible if the authorising law under which the subordinate law is made displaces the operation of LA, section 47 (3) for this purpose (see also LA, s 47 (4)).

This rule overrides the non-determinative general rule in LA, section 102 that a reference in a statutory instrument to a provision of a law of another jurisdiction is taken to be a reference to that provision as originally made and as amended from time to time (see LA, s 102 (2)).

The example illustrates the displacement of LA, section 47 (3) by express provision to apply a non-legislative instrument (a ‘gas association standard or code’) as in force from time to time.

Example

Act provision

123 Minimum standards

(1) A regulation may prescribe minimum standards for this Act.

(2) A regulation may apply, adopt or incorporate a law or instrument, or a provision of a law or instrument, as in force from time to time.

Note 1 The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

Note 2 A notifiable instrument must be notified under the Legislation Act.

Regulation provision

456 Minimum standards—gasfitting work—Act, s123

(1) Type A gasfitting work must be carried out by a registered gasfitter in accordance with AGA3107.

(2) Type B gasfitting work must be carried out by a registered gasfitter in accordance with AGA2011.

(3) In this section, a reference consisting of the letters ‘AGA’ followed by a number is a reference to the standard or code so numbered, published by the Australian Gas Association (a gas association standard or code).

(4) A gas association standard or code incorporated by this regulation is applied as in force from time to time.
9.1.8 Spaghetti definitions

Avoid creating complex interweaving ‘spaghetti’ strands of definitions within legislation.

In particular, try to avoid defining concepts used only in other definitions.

However, if a definition does involve a number of complex concepts that need to be separately ‘packaged’ as secondary definitions, do not include these all in the dictionary. Instead, use a stand-alone provision for the definition and secondary definitions.

Example

Planning and Land Act 2002 [with changes]

[Here, 2 secondary defined terms are used in a primary definition (and are not used elsewhere in the Planning and Land Act). This approach is acceptable because it uses a separate definition provision, combined with a signpost to the primary definition in the dictionary.]

74 Meaning of sustainable development

(1) In this Act:

sustainable development means the effective integration of social, economic and environmental considerations in decision-making processes, achievable through implementation of the following principles:

   (a) the precautionary principle;

   (b) the inter-generational equity principle;

   (c) conservation of biological diversity and ecological integrity;

   (d) appropriate valuation and pricing of environmental resources.

(2) In this section:

the inter-generational equity principle means that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.

the precautionary principle means that, if there is a threat of serious or irreversible environmental damage, a lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
9.1.9 Related definitions

Related definitions may be defined in 1 section with a heading referencing the main term being defined.

Example

Workplace Privacy Bill 2010

11 Meaning of surveillance etc

(1) In this Act:

*conduct* surveillance—a person is taken to *conduct* surveillance if the person causes someone else to conduct the surveillance.

*data surveillance device*—

(a) means a device or program capable of being used to record or monitor the input of information into or the output of information from a computer; but

(b) does not include an optical surveillance device.

*optical surveillance device*—

(a) means a device capable of being used to record visually or observe an activity; but

(b) does not include spectacles, ...

*surveillance* means surveillance using a surveillance device.

*surveillance device* means—

(a) a data surveillance device, an optical surveillance device or a tracking device; or

(b) a device that is ...

(c) a device of a kind prescribed by regulation.

*tracking device* means an electronic device capable of being used to work out or monitor the location of a person or an object or the status of an object.

Examples—tracking device

GPS, biometrics, radio frequency identification

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) In this section:

*device* includes an instrument, apparatus or equipment.
9.1.10 When to use a stand-alone definition provision

Insert a definition in a stand-alone provision for the following reasons:

- to highlight the importance of the concept (as a ‘key concept’) for legislation as a whole, or for a chapter, part or division
  - it is often possible to give a conceptual guide to the scheme of legislation by inserting a series of stand-alone definitions as ‘key concepts’ at the beginning. See the Unit Titles Act 2001, part 2 (Key concepts)
- if the definition is too long for inclusion in a general definitions provision
- if the definition is complex, requiring a number of sentences or secondary definitions (but see division 9.1.8 (Spaghetti definitions))
- if there is only 1 definition applying to the legislation, or a particular chapter, part or division.

See division 9.3.4 for formatting.

9.1.11 Where to insert definitions

In considering where to insert definitions, apply the following principles in the order of priority given:

- key concepts—if the definition sets out a strategic concept used throughout the legislation (rather than in a relatively self-contained chapter, part or division), insert the definition in a chapter, part or division of ‘Key concepts’ towards the beginning of the law (see div 9.1.10)
- the proximity principle (1)—insert the definition in the context of the provision(s) of the legislation where the defined term is primarily used (see div 9.1.3)
- the proximity principle (2)—if the defined term is significantly used in several places (chapters/parts/divisions), define the term in one of those places and insert notes pointing to the definition when the term is used elsewhere—though the practice of inserting notes should not be overdone
- dictionary—if a term is used throughout the legislation, but is not of strategic importance, insert it in the dictionary. For example:
  - a technical term
  - a referential definition (i.e. a signpost to a law outside the legislation)
  - a minor concept that merely clarifies the common usage of the defined term.

Consider inserting a definition note at the foot of provisions using a defined term, if it is particularly important to alert the reader to the existence of the definition (see div 9.1.3, example), though this practice should not be overdone.
Further reading


Driedger, Elmer (1976), The Composition of Legislation: Legislative Forms and Precedents, 2nd edn, Department of Justice, Ottawa: pp 45–51.

9.2 Definitions—forms

9.2.1 Standard definitions

The standard definition is the default form, and the only acceptable form for general definition provisions (including dictionaries).

Standard definitions may also be used for definitions in stand-alone definition provisions if the definition concerned is of a relatively objective or technical nature. However, in other circumstances (eg definitions of key concepts), the narrative form may be used (see div 9.2.2).

If in doubt about whether to use a standard or a narrative form definition, use a standard definition. These are more readily identifiable as definitions.

Examples
[see div 9.3.2 for more examples]

1. protected mammal means Y.
2. protected mammal includes Y.
3. protected mammal means Y, and includes Z.
4. protected mammal means Y, but does not include Z.
9.2.2 Narrative definitions

Narrative definitions may only be used in stand-alone definition provisions (see div 9.1.10). They must not be used in general definitions provisions (including dictionaries).

Examples 1–3, 5, 7 and 8 set out narrative definitions of various sorts. Examples 4 and 6 show how relational definitions in the narrative form may be translated into the standard definition format.

The choice of narrative or standard definitions (except in the cases mentioned) is one of individual drafting style. It is not ultimately a choice dictated by formal considerations: it is technically possible to render any definition in either narrative or standard form (see examples 3-6 for alternative forms). However, as noted below, relational definitions may be less awkward in narrative form.

The standard form may still be used in almost all cases, except that of the split definition (see example 2) and definitions which, in practice, have an extended operation beyond the legislation (see examples 7 and 8).

The drafter should be guided by the following rules of thumb:

- **generally** a narrative definition may be used if the concept defined is of a particularly general or conceptual nature, or is particularly significant to the legislative scheme (see example 1)
- a narrative definition should be used if the definition is split between subsections in a stand-alone provision (see example 2)
- a standard definition should be used (in a stand-alone provision) if the definition is of an instrumental or technical nature. This will depend on the importance of the definition in context; in examples 3–6 the choice between narrative and standard forms depends on the relative importance of the terms defined in the legislative scheme.

The narrative form is well suited for relational definitions. But first consider the standard form alternatives given below (see examples 3–6 and div 9.2.4).

Generally, an indication of the scope of a narrative form definition should be used, unless this is awkward or misleading. If an indication of its scope is required, use ‘for’ not ‘in’—‘For this Act,…’; ‘For this part,…’; ‘For this division,…’.

No indication of the scope of a definition should be used if the definition has a potential direct or indirect application beyond the Act in which it appears, for example:

- in the LA, many of the key terms are defined for both the LA itself and have an extended general application by inclusion in the dictionary, part 1. This makes it awkward (and misleading) to indicate the scope in a standard form definition (‘In this Act' doesn't tell the whole story) (see example 7)
- the Criminal Code also applies generally to any offence in the statute book although general definitions such as in example 8 implicitly apply only to the use of the defined terms in the Code (see LA, s 156 (1)). In these circumstances, expressly limited application to the Code would be misleading.

A signpost to a narrative definition must be inserted in the dictionary unless the definition applies only to the section in which it appears.
Example 1
Narrative definition (key concept): Charitable Collections Act 2003

11 Meaning of benefit

For this Act, benefit includes—

(a) property (other than money); and
(b) any gain or reward.

Example 2
Narrative definition (split into subsections)

### When is an advance for a commercial purpose?—ch ###

(1) For this chapter, an advance is for a purpose that includes a commercial purpose if the advance has as a purpose—

(a) gaining or producing income; or
(b) carrying on a business to gain or produce income.

(2) Without limiting subsection (1), an advance is taken to be for a purpose that includes a commercial purpose if interest on all or any part of the advance is deductible as a business expense under the Income Tax Assessment Act 1997 (Cwlth), section 8–1 (General deductions).

Example 3
Narrative relational definitions: Territory Records Act 2002

17 Meaning of control and entitled to control of a record

(1) For this Act, an agency has control of a record if the agency has possession of the record.

(2) For this Act, an agency is entitled to control a record if it is entitled to possession of the record.

Example 4
Standard relational definitions (alternatives)

### Meaning of control and entitled to control of a record

In this Act:

control—an agency has control of a record if the agency has possession of the record.

entitled to control—an agency is entitled to control a record if it is entitled to possession of the record.
Example 5
Narrative definition: Planning and Land Act 2002

44 Meaning of business plan—pt 4.2

For this part, a business plan is a document that complies with section 45.

Example 6
Standard definition (alternative)

## Meaning of business plan—pt ##

In this part:

business plan means a document that complies with section 45.

Example 7
Narrative definition, general application: LA, s 16

16 Meaning of provision

A provision of an Act or instrument is any words or anything else that forms part of the Act or instrument.

Example 8
Narrative definition, general application: Criminal Code, s 19

A person has knowledge of a result or circumstance if the person is aware that it exists or will exist in the ordinary course of events.

9.2.3 Referential definitions

Referential definitions (eg ‘A reference to X includes a reference to Y’) should be avoided. In most cases, they may be recast naturally in standard or narrative form.

However, a referential definition is required if the term defined (formatted in bold italics—see div 9.3.1) is sometimes referred to differently in context.

Thus the following example is justified because it is intended to catch ‘references' to Acts by title as well as generic references simply to ‘an Act'.

Example
LA, s 7

(3) A reference to an Act includes a reference to a provision of an Act.
9.2.4 Relational definitions

To indicate application

If the concept defined is applied only in relation to another person, action or thing, the forms in the following examples may be used (‘X, of Y, means…’ etc).

Prefer a more direct preposition (‘of’, ‘for’, ‘with’ etc) to the catch-all prepositional phrase ‘in relation to’.

If a prepositional phrase is required, always use ‘in relation to’ instead of ‘in respect of’ or any other phrase (see LA, dict, pt 1, def in relation to).

As well as the following examples, see the examples in division 9.3.2.

Example 1
LA, dict, pt 1

making, of a statutory instrument, means the signing, sealing, approval or other endorsement of the instrument by the entity authorised or required to make it.

Example 2

residence, for a platypus, means a riverbank.

Example 3
LA, dict, pt 1

clerk, in relation to the Legislative Assembly, means the Clerk of the Legislative Assembly.

Example 4
Run-on definition, simple

enter an intersection means enter the intersection with any part of a vehicle.

Example 5
Run-on definition, combined with ‘for’ relational phrase

enter an intersection, for the driver of a vehicle, means enter the intersection with any part of the vehicle.
To indicate context

The concept is defined in relation to a person or action rather than a thing, indicating the natural grammatical context in which the term is used.

These relational definitions are particularly applicable for the definition of adjectives, adverbs, participles and verbs—i.e. 'relational' parts of speech.

No particular form is required. They may be in standard, narrative or referential forms:

- Use the standard form (see example 1 or 2) as a default (see div 9.2.1)
- Use the narrative form (see example 3) if appropriate (see div 9.2.2)
- Use the standard or narrative form instead of the referential form (see example 4; but see div 9.2.3).

Example 1

Standard form: LA, s 130, example 8

excluded—a claim is excluded if the claim is not brought within 1 year after the day the claimant becomes aware of the failure to account to which the claim relates.

Example 2

Standard form: Tree Protection (Interim Scheme) Act 2001, s 25

connected—a thing is connected with an offence if—

(a) an offence has been committed in relation to it; or

(b) it will provide evidence of the commission of the offence; or

(c) it was used, is being used, or is intended to be used, to commit the offence.

Example 3

Narrative form: Criminal Code, s 19

A person has knowledge of a result or circumstance if the person is aware that it exists or will exist in the ordinary course of events.

Example 4

Referential form: unacceptable (recast as in example 1)

(1) A reference in this Act to an excluded claim is a reference to a claim that is not brought within 1 year after the day the claimant becomes aware of the failure to account to which the claim relates.
9.2.5 Signpost definitions

Signpost definitions apply a definition by reference from somewhere else:

- elsewhere in the Act or subordinate law (see example 2)
- in another law (see examples 3 and 4)
- in a non-legislative document (see example 7).

See LA, section 131 (Signpost definitions) and section 156 (Application of definitions in dictionaries and sections) for interpretation rules.

Try to avoid incorporating a definition from outside the ACT statute book (see div 9.1.7).

A dictionary signpost must be used if a definition is inserted in the body or in a schedule (or schedule part) of legislation to be close to the context of its use, or because it is an important or complex concept. However, a dictionary signpost is not used for definitions that are confined to a particular section or subsection.

If a definition is defined to have a limited application, for example, ‘For this part...’, ‘In this chapter...’ the heading to the chapter/part/division should be included (see example 2).

In definitions where there is a general definition for the Act and a particular definition for a subset (chapter, part, division etc), the signpost definition in the dictionary should have the general definition first then the subset definition (see example 8). Note: The words ‘for this Act generally’, indicate that there is a different definition so the conjunction ‘and’ should be used.

Sometimes, a concept is too vague or complex to be expressed in a term convenient for a bold italics format. In these cases, a signpost definition should be included in the dictionary for any key term if the provision addressing the concept gives meaning to the term, or limits or extends its meaning.

If there are qualifying words in the definition these should also be used in the signpost definition (see example 1). However, if the qualifying words are unconnected or not relevant to the legislation the definition is being applied in, a signpost definition is not used. Instead, the definition should be rewritten as a new definition not including the qualifying words.22

Signpost definitions in the dictionary or elsewhere in the legislation can be to standard definitions (ie XYZ means...) or to tagged term definitions.

Signpost definitions in the dictionary or elsewhere should refer the reader directly to the provision in which the term is defined. Likewise, a signpost to a definition in another piece of legislation should refer the reader directly to the provision.23

Example 1

1 interest, in relation to land or property—see the Legislation Act, dictionary.
2 left, for a person—see section 351 (References to left and right).

22 Sentences added in version 2014-2—see Standards Committee decision on 1/07/14.
23 Sentence amended in version 2017-1 to clarify that all signpost definitions should refer directly to the provision.
Example 2
Internal signposts

1. **bus lane**—see section 50.

2. **provide** a service, for part 6.3 (Making of certain statutory instruments about fees)—see section 55.

3. **terminating road**—
   (a) for part 2 (Making turns)—see section 5; and
   (b) for part 3 (Giving way)—see section 45.

4. **trailer**—
   (a) for part 10 (Parking)—see section 100; and
   (b) for any other part—see section 10.

Example 3
Other ACT law signpost

**fish**—see the *Fisheries Act 2000*, dictionary.

Example 4
Definition in other law, signpost

[The definition gives the term **OH&S Council** the same meaning as **council** as defined in the dictionary of the *XYZ Act 2000* (see LA, s 131 (1), examples)]

**OH&S Council**—see the *XYZ Act 2000*, dictionary, definition of **council**.

Example 5
Definition in other law, signpost (can also be used as relational): *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995*

**subject to a conditional cultural exemption**—for when a publication, film or computer game is **subject to a conditional cultural exemption**—see the Commonwealth Act, section 6C and section 6E.

Example 6
Other jurisdiction signpost

**protected mammal**—see the *A New Tax System (Wildlife) Act 2001* (Cwlth), section Y.

Example 7
Non-legislative document signpost

**newfangled gadget**—see Australian Standard X, clause Y.
Example 8
General definition and subset definition—dictionary

boxing contest—

(a) for this Act generally—means a contest, display or exhibition of boxing; and

(b) for part 2 (Control of boxing contests)—see section 4.

9.2.6 Tagged-term definitions

Tagged-term definitions define a concept in the provision where it is first used, or where it is most significantly used.

These are exceptions to the rule that definitions should not include substantive requirements (see div 9.1.5).

The ‘tag’ is included in bold italics within brackets, as close as possible to the concept defined (see examples 1 and 2). However, sometimes the concept defined is long and the tagged term is too far removed from the integral part of the definition. In these cases thought needs to be given to recasting the provision to make the proximity better.

Care needs to be taken to ensure that there is no ambiguity about exactly what is referred to by the tagged term (see examples 3 and 4).

If the tagged term is used in more than 1 provision, a signpost to the tagging provision must be inserted in the dictionary to the legislation.

Example 1
LA, s 18

(1) The parliamentary counsel must establish and maintain a register of Acts and statutory instruments (the ACT legislation register).

Example 2
Concept needs to be fully defined before tag term

1

(a) a conference for an appeal (an appeal conference);

NOT

(a) a conference (an appeal conference) for an appeal;
2 (1) This section applies if a magistrate orders the carrying out of a forensic procedure on a suspect mentioned in section 32 (a forensic procedure order).

NOT

(1) This section applies if a magistrate orders (a forensic procedure order) the carrying out of a forensic procedure on a suspect mentioned in section 32.

Example 3
Ambiguous

(1) An ACT resident who buys a platypus from someone who acquired the platypus outside the ACT (a purchaser) must give the registrar of monotremes details of the joint purchase within 15 days after the day the sale is completed.

Example 4
Ambiguity resolved

(1) An ACT resident (a purchaser) who buys a platypus from someone who acquired the platypus outside the ACT must give the registrar of monotremes details of the purchase within 15 days after the day the sale is completed.
9.2.7 No multiple definitions

Do not define more than 1 term in the same definition (see examples 1 and 2).

However, if the defined term is also used in an abbreviated form, the abbreviated form may be included in the same definition. But a signpost definition should be included for the abbreviated form of the definition (see example 3).

Example 1
Unacceptable

*cat* and *dog*—see the *Cat and Dog Act 2000*, dictionary.

Example 2
Acceptable

*cat*—see the *Cat and Dog Act 2000*, dictionary.

*dog*—see the *Cat and Dog Act 2000*, dictionary.

Example 3
LA, dict, pt 1

*ADI*—see *authorised deposit-taking institution*.

*authorised deposit-taking institution* (or *ADI*) means an authorised deposit-taking institution under the *Banking Act 1959* (Cwlth).

9.2.8 Single sentence only

A definition must not have more than 1 sentence.

If more than 1 sentence is needed, use a stand-alone definition provision with 2 or more subsections (see div 9.1.10).
9.2.9 Combination of standard and referential forms

Do not combine these forms in the same provision.
In a dictionary or general definitions provision, only include standard definitions.

Example 1

Unacceptable—Crimes Act 1900, s 556 (10)

(10) In this section—

(a) authorised person means the Attorney-General or a person appointed under the Supreme Court Act 1933, section 68 (1) to prosecute indictable offences triable before the Supreme Court; and

(b) references to a variation of the way in which the instalments of a penalty are to be paid by a person includes a reference to a variation of the amount of any instalments of the penalty.

Example 2

Acceptable

(10) In this section:

authorised person means the Attorney-General or a person appointed under the Supreme Court Act 1933, section 68 (1) to prosecute indictable offences triable before the Supreme Court.

(11) For this section, a reference to a variation of the way in which the instalments of penalty are to be paid includes a reference to a variation of the amount of any instalments of the penalty.

Further reading

LA, s 130 (What is a definition?)
LA, s 131 (Signpost definitions)
LA, pt 15.2 (Definitions):

- s 155 (Definitions apply subject to contrary intention)
- s 156 (Application of definitions in dictionaries and sections)
- s 157 (Defined terms—other parts of speech and grammatical forms)
9.3 Definitions—formatting

9.3.1 Defined terms

The defined term in a definition should be in bold italics (not quotation marks).
Every definition should end in a full stop (not a semicolon).
This applies to standard, narrative, referential (usually) and tagged-term definitions (see div 9.2.1, div 9.2.2 and div 9.2.3).
However, it does not apply to a referential definition if the defined term is too complex or vague to be in bold italics.
If a definition provision contains a single standard definition, format the definition in the same way as if there were more than 1 definition.

9.3.2 Punctuation

A relational phrase in a definition (eg a phrase beginning with ‘of’, ‘for’ or ‘in relation to’) or a phrase limiting the application of a definition (eg a clause beginning with ‘in’) should be separated from the rest of the definition by commas.
An ‘and includes’ or ‘but does not include’ clause in a definition should begin with a comma.
In appropriate cases (eg before paragraphs), the relevant comma may be replaced by another punctuation mark, eg a semicolon or dash (see examples 12 and 13).

Example 1
Standard ‘means’ definition

*median strip parking area* means a parking area in or on a median strip.

Example 2
Standard ‘includes’ definition

*land* includes premises or part of premises.

Example 3
Standard ‘does not include’ definition

*road marking* does not include a painted island.
Example 4
Standard ‘means and includes’ definition

*driver* means anyone driving a vehicle, and includes anyone riding a bicycle.

Example 5
Standard ‘means but does not include’ definition

*dividing line* means an area or structure that divides a road lengthways, but does not include a nature strip.

Example 6
Relational phrase, ‘for’

*adjacent land*, for a road, means land next to the road.

Example 7
Relational phrase, ‘of’

*length*, of road, includes a marked lane.

Example 8
Relational phrase, ‘in relation to’

*registered*, in relation to a vehicle, means registered under this Act.

Example 9
Run-on definition

*exercise* a function includes perform a duty.

Example 10
Run-on definition, with ‘for’

*enter* an intersection, for the driver of a vehicle, means enter the intersection with any part of the vehicle.

Example 11
Words limiting application

*stop*, in part 12 (Restrictions on stopping and parking), includes park.
Example 12
Relational ‘for’ paragraphs

*trailer*—
(a) for part 10 (Parking)—does not include any vehicle that is being towed; and
(b) for any other part—including a vehicle (other than a motor vehicle) that is being towed.

Example 13
Relational ‘of’ with ‘for’ paragraphs

*driver*, of a road—
(a) for part 10 (Parking)—includes a marked lane or part of a marked lane; and
(b) for any other part—does not include any part of a road that is a marked foot crossing.

9.3.3 General definitions provisions

A dictionary at the end of legislation should be used instead of a general definitions provision at the beginning of the legislation, unless approved by the parliamentary counsel (see pt 5.1). If a dictionary is not used, use the relevant heading and introductory words for the main definition provision in example 1 or 2.

The heading to a general definitions provision indicates its scope: ‘Definitions—Act’; or ‘Definitions—ch 3’ etc (see examples 1, 2 and 3).

In addition, a general definitions provision must be introduced by words indicating its scope: ‘In this Act:…’, ‘In this chapter:…’. This also applies to general definitions subsections/subrules, ‘In this section:…’ (see examples 3 and 5).

The words ‘, the following definitions apply’, and ‘, unless the contrary intention appears’, are not used.

Lists of definitions in a general definitions provision should be introduced with a colon after the introductory words, for example ‘In this chapter:’ etc (see examples 1, 2, 3 and 5).

A general definitions provision should not be subdivided, whether to include substantive provisions or further definitions (eg referential definitions).

LA, section 156 (2) provides that a definition in a section of an Act or statutory instrument applies only to the section unless the Act or instrument provides for the definition to have a broader application. The words ‘In this Act’, ‘In this chapter’ etc provide the contrary intention to ensure that the definitions in the general definitions provision apply as indicated (see LA, s 156 (2), example 3).

Of course, this ‘contrary intention’ may be qualified by an express limitation in a signpost such as ‘driver, for part 3, means…’ appearing in the dictionary or general definitions provision.
If a general definitions provision contains only a small number of definitions, consider including a distinctive heading that indicates the defined terms (see example 4).

In some cases there is a need to locate a definition that applies to the entire Act at the start of a chapter/part/division because that is where the term is primarily used (ie the ‘proximity principle’—see div 9.1.3 and div 9.1.11), if there are other defined terms that only apply to the chapter/part/division it is sometimes necessary to include ‘—Act’ in the heading to make it clearer to the reader that the term applies to the entire Act not just the chapter/part/division (see example 6). Note, this is only necessary when there is a chapter/part/division heading that indicates that the material applies only to the chapter/part/division. The provision in example 6 is not a common format.

Example 1
Main definitions provision in Act

```
## Definitions—^24^Act

In this Act:

*apple* means...

*pear* means...
```

Example 2
Main definitions provision in regulation or rules

```
## Definitions—regulation (rules)

In this regulation (rules):

*cat* means...

*dog* means...
```

Example 3
General definitions provisions, other cases

```
## Definitions—ch # (pt #.#) (div #.##) (divs #.# and #.#)^25

In this chapter (part) (division):

*echidna* means...

*platypus* means...
```

Example 4
General definitions provision headings: few defined terms

```
## Meaning of *abuse* and *neglect*—pt 7
```

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24 Examples 1 and 2 updated in version 2014-2 to reflect current legislative drafting practice.
Definitions

Example 5
Definitions subsection

(#{}) In this section/subsection (#)/subsection (#) (a):

*great crested grebe* means...

*spotted pardalote* means...

Example 6
Definition for the Act in a ch/pt/div definitions provision

*Workers Compensation Act 1951*

Chapter 5 Injury management process

Part 5.1 Object and definitions—ch 5

85 Object—ch 5
85A Meaning of *injured worker* and *personal injury plan*—Act
86 Definitions—ch 5
86A Meaning of *insurer*—ch 5
87 Meaning of *employer* and *insurer* if more than 1
9.3.4 Stand-alone definition provisions—format

A stand-alone definition provision should have the defined term in its heading, but the heading may take a variety of forms (see examples).

A definition in standard form should be introduced by ‘In this Act (chapter) (part) (division):’ (see example 1).

A definition in narrative form should be introduced by ‘For this Act (chapter) (part) (division),…’ (see examples 2 and 3).

However, if by the operation of the Act, the definition has a general application across the statute book, it may be inappropriate to introduce a narrative definition in this way (see div 9.2.2 and examples 4 and 5).

Example 1
Confiscation of Criminal Assets Act 2003

12 Meaning of derived

(1) In this Act:

derived—property or a benefit is derived if it is derived or realised, whether completely or partly and whether directly or indirectly.

...

(2) Property or a benefit is derived by a person if it is derived by someone else at the request or direction of the person.

Example 2
Confiscation of Criminal Assets Act 2003

17 When is someone cleared of an offence?

For this Act, a person is cleared of an offence if—

(a) …(etc)

Example 3
Children and Young People Act 1999

7 Who is a child?

For this Act, a child is a person who is under 12 years old.

Example 4
LA, s 16

16 Meaning of provision

A provision of an Act or instrument is any words or anything else that forms part of the Act or instrument.
Example 5
Criminal Code

18 Intention

A person has *intention* in relation to conduct if the person means to engage in the conduct.
10 Administrative and machinery provisions

10.1 Appointments

Appointments should be ‘as’ the commissioner/chief surveyor/an inspector, rather than ‘to be’.

Example

(1) The Executive may appoint a person as the president of the tribunal.

10.2 Acting provisions

Acting provisions should generally not be included in legislation. Among other things, LA, part 19.3 deals with the following in relation to appointments to act:

- that the appointment be in writing (s 216)
- that the appointment may name the person appointed or the occupant of a position (s 217)
- when the appointment takes effect and on what terms (s 218 and s 219)
- the exercising of functions by the appointee (s 220)
- the effect of the appointment (s 223) and the effect of defects in the appointment (s 225).

Instead, the following notes should be inserted after the appropriate appointment provision.

Example

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

Note 3 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).
In note 2, the words ‘a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and’ should be omitted if only a single person is to be appointed to the relevant position (eg the director of public prosecutions, the discrimination commissioner, the electoral commissioner or the public trustee). The words should not be omitted if multiple appointments are to be made to the relevant position (eg appointments as inspector or authorised person, and the possibility of appointees having different powers is to be left open (or proposed)).

Note 3 is used only if a non-public servant may be appointed, the appointment is made by a Minister and the functions of the position are not limited to advising the Minister (see LA, s 227 (2) (c)). The instructor should be consulted about whether the appointment is more appropriately one to be made by the Executive, the Minister or relevant chief executive. LA, division 19.3.3 does not apply to Ministerial or chief executive appointments.

### 10.3 References to acting appointments

References to people acting in a position should not generally be included in legislation (eg a definition of a position-holder that defines the position-holder to include a person acting in the position). While a person is acting in a position, the appointee has, subject to the terms of the appointment, all the functions of the occupant of the position and all territory laws apply to the appointee as if the appointee were the occupant of the position.

**Further reading**

LA, s 220 (Appointee may exercise functions under acting appointment etc)
10.4 Public Sector Management Act—employment of staff provisions

10.4.1 Application

This part applies to the employment of staff by statutory office-holders and territory instrumentalities (a public sector entity).

A statutory office holder is a person occupying a position under an Act or statutory instrument (other than a position in the public service) (see LA, dictionary). It includes office holders such as the auditor-general, government solicitor and the DPP as well as chief executive officers of statutory corporations such as the cultural facilities corporation, the teacher quality institute and CIT. It includes board members of boards appointed under legislation establishing the board.

A territory instrumentality is defined as follows (see LA, dictionary and Public Sector Management Act 1994 (the PSMA), dictionary):

(a) means a corporation established under an Act or statutory instrument, or under the Corporations Act, that is—

(i) comprised of people, or has a governing body comprised of people, a majority of whom are appointed by—

(A) a Minister; or

(B) the head of service; or

(C) a director-general; or

(D) a statutory office-holder; or

(ii) subject to control or direction by a Minister; but

(b) does not include—

(i) an administrative unit or a part of an administrative unit; or

(ii) a body that is prescribed.

A territory owned corporation would be a territory instrumentality but historically in the ACT there haven’t been many other corporations that fall within this class of entity.
10.4.2 General

Under the PSMA, the head of service has the power to employ and manage people, i.e., public servants. The head of service usually delegates that function to directors-general and others in relation to staff employed in directorates.

While the head of service can delegate the head of service’s power to employ public servants to a public sector entity, the power is often given directly to an entity in legislation. Statutory provisions dealing with the employment of staff were varied, however, and in some cases it was not clear whether an entity had been given head of service employment powers under the PSMA.

Amendments were made to the PSMA in the Public Sector Management Amendment Act 2016 to provide a clear mechanism for head of service management powers to be given to public sector entities (section 152) and to harmonise relevant provisions in other legislation.

Section 152 of the PSMA gives a public sector entity stated management powers in relation to public servants if a territory law (usually the law under which the entity is established) states that:

- the entity may employ staff; and
- the staff must be employed under the PSMA.

10.4.3 Drafting employment of staff provisions

When drafting a provision dealing with the employment of staff by a public sector entity, the drafter should seek instructions about whether—

- the entity is to be given the direct power to employ public servants, i.e., section 152 management powers;
- if no direct employment power—the Territory may be required to make public servants (and other territory resources) available to the entity;
- the entity needs a power to engage consultants.

The following examples should be followed to make it clear whether or not a public sector entity has been given head of service management powers under the PSMA.
Examples—power to employ public servants

Example 1  
**Auditor-General Act 1996**

9C  
**Auditor-general’s staff**

(1) The auditor-general may employ staff on behalf of the Territory.

(2) The auditor-general’s staff must be employed under the *Public Sector Management Act 1994*.

*Note*  
The *Public Sector Management Act 1994*, div 8.2 applies to the auditor-general in relation to the employment of staff (see *Public Sector Management Act 1994*, s 152).

Example 2  
**Cultural Facilities Corporation Act 1997**

12  
**Corporation’s staff**

(1) The chief executive officer may employ staff for the corporation on behalf of the Territory.

(2) The corporation’s staff must be employed under the *Public Sector Management Act 1994*.

*Note*  
The *Public Sector Management Act 1994*, div 8.2 applies to the chief executive officer in relation to the employment of staff (see *Public Sector Management Act 1994*, s 152).

Examples—no employment power but public servants etc to be made available

Example 1  
**Cemeteries and Crematoria Act 2003**

44  
**Arrangements for staff**

The cemeteries authority may arrange with the head of service to use the services of a public servant.

*Note*  
The head of service may delegate powers in relation to the management of public servants to a public servant or another person (see *Public Sector Management Act 1994*, s 18).
Example 2
Director of Public Prosecutions Act 1990

32 Other arrangements for staff and facilities
The director may arrange with the head of service to use the services of a public servant or Territory facilities.

Note The head of service may delegate powers in relation to the management of public servants to a public servant or another person (see Public Sector Management Act 1994, s 18).

Example 3
Children and Young People Act 2008

727I Arrangements for staff
The head of service must, on request of the CYP death review committee, arrange with the committee for the committee to use the services of a public servant.

Note The head of service may delegate powers in relation to the management of public servants to a public servant or another person (see Public Sector Management Act 1994, s 18).

Examples—engagement of consultants and contractors
Examples 1 and 2 give a public sector entity the power to engage a consultant or contractor. All examples make it clear that a consultant or contractor is not an employee (employed under the PSMA or otherwise).

Example 1
ACT Teacher Quality Institute Act 2010

24 Institute consultants
(1) The institute may engage consultants.
(2) However, the institute must not enter into a contract of employment under this section.

Example 2
Gambling and Racing Control Act 1999

15 Consultants and contractors
(1) The commission may engage consultants and contractors.
(2) However, the commission must not enter into a contract of employment under this section.
Example 3

Board of Senior Secondary Studies Act 1997

19 Consultants

(1) The board may, for the Territory, engage consultants to, or to perform services for, the board.

(2) Consultants are to be engaged on written terms decided by the board that are approved by the Minister.

(3) However, this section does not give the board a power to enter into a contract of employment.

10.5 Reappointment

The words ‘and is eligible for reappointment’ or words to that effect should not be used in an appointment provision. A note referring to LA is used instead.

Under LA, section 208 (1) (b), an appointer can reappoint a person who still satisfies the criteria for appointment. A person may no longer satisfy the criteria if these have changed since the initial (or previous) appointment, or if required qualifications have expired or been revoked during the expiring term of appointment. If an appointment may only be made on the recommendation of a body, a further recommendation would need to be made before reappointing the person because the appointer could not rely on the recommendation made for the previous appointment.

The reappointment note is located after the appointment provision or, if the legislation contains a term of appointment provision, after that.

Example

Planning and Land Act 2002 [with changes]

19 Appointment of chief planning executive

(1) The Executive must, after consulting with the council, appoint a person as the Chief Planning Executive (the chief planning executive).

Note 1 For the making of appointments generally, see the Legislation Act, div 19.3.

Note 2 A power to appoint a person to a position includes power to appoint a person to act in the position (see Legislation Act, s 209).

(2) However, the Executive must not appoint a person under subsection (1) unless satisfied that the person has the management and planning experience or expertise to exercise the functions of the chief planning executive.
(3) An appointment must be for a term of not longer than 5 years.

*Note* A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 (1) (c)).

(4) An appointment is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

Further reading

LA, s 208 (1) (b) and (c) (Power of appointment includes power to suspend etc)

LA, dict, pt 1, def *appoint*

### 10.6 Resignation

Resignation provisions should generally not be included in legislation. If there is a termination provision, a note referring to LA is included.

**Example 1**

*Note* The person’s appointment also ends if the person resigns (see Legislation Act, s 210).

A resignation provision is included in legislation if the policy officer instructs that the position-holder is not to be able to resign in accordance with LA.

**Example**

*Building Act 2004, s 19 (3) and (4)*

(3) The certifier may resign the appointment only—

(a) with the written approval of the construction occupations registrar; and

(b) by written notice given to the owner of the land.

(4) The construction occupations registrar may approve the resignation of the certifier only if satisfied that—

(a) the certifier cannot exercise his or her functions in relation to the building work because of mental or physical incapacity; or

(b) the certifier has arranged for another certifier to take over the certifier’s functions in relation to the building work; or

(c) it is otherwise appropriate to approve the resignation.

Further reading

LA, s 210 (Resignation of appointment)
10.7 Delegation provisions

Delegations are dealt with by LA, part 19.4. Among other things, the part deals with the following in relation to delegations:

- when the part applies (ie when a law authorises or requires an entity to delegate or subdelegate a function) (s 230 and s 231)
- that the delegation be in writing (s 232)
- that the delegation be made by naming the person to whom the function is delegated or the occupant of a position (s 233)
- when the instrument takes effect and in what circumstances (s 234)
- that the power to delegate cannot be delegated (s 236)
- the responsibilities of the appointer (s 238)
- that the delegation is not affected by appointer changes (s 241).

NOTE: Delegations by directors-general to public servants are covered by the Public Sector Management Act 1994, section 36C.

Example

## Delegation by chief executive

The chief executive may delegate the chief executive’s functions under this Act/part/division/or another territory law to an inspector/public servant.

Note For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

It is not necessary to require that the delegation be made in writing (see LA, s 232).

The provision should be expressed to delegate the function to ‘anyone’ (or ‘any person’) only if specific instructions have been given to do so. A provision of this kind would usually attract unfavourable comment from the Standing Committee on Legal Affairs (performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee).

Further reading

LA, pt 19.4 (Delegations)
10.8 References to delegates

References to delegates should not generally be included in legislation (eg a definition of a position-holder that defines the position-holder to include a delegate). Anything done by the delegate is taken to have been done by the appointer (LA, s 239 (4)).

10.9 Fee determination provisions

10.9.1 General

LA, part 6.3 contains a standard set of provisions applying to the determination of fees. The part allows provisions about fees to be simplified. In particular, it makes it unnecessary to mention determined fees in every provision for which fees are determined.

LA, section 56, among other things, sets out how fees may be determined and gives examples. It also lists the matters that must and may be provided in a fee determination. As a result of the section, the determination can contain most fee details.

LA, section 57 provides that fees are payable in accordance with the relevant fee determination, that the fees are usually payable before a service is given, and that there is no obligation to provide the service if the required fee has not been paid.

LA, section 58 authorises regulations to prescribe, among other things, provisions about payment, collection and recovery of determined fees, the waiver, postponement or refund of fees, and payment of fees by cheque and credit card.

The determination of fees section should normally be placed before the approved forms section near the end of the Act or, if there is no approved forms section, before the regulation-making power section.

Example

## Determination of fees

(1) The Minister may determine fees for this Act/part/etc.

Note The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

(2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

The following points should be noted about the provision:

- if required, the power to determine fees can be limited, for example, to services provided, or something done, under a particular chapter/part/division
- the notes to the subsections direct the reader to LA provisions about the making of determinations and regulations about fees and to the requirements for notification of a fees determination as a disallowable instrument.
10.9.2 Not mentioning ‘determined fee’

As far as practicable, the provisions for which a fee is to be determined should not mention ‘a determined fee’. Instead, a note to the effect can be inserted at the end of the provision.

Example

(1) A person may apply in writing to the chief executive for a licence.

Note 1 If a form is approved under s ## for this provision, the form must be used.

Note 2 A fee may be determined under s ## for this provision.

Exceptions

There are some exceptions to the general rule that it is unnecessary to mention determined fees in a provision for which fees are to be determined. For example, under the Road Transport (Vehicle Registration) Regulation 2000, section 45A (Streamlined registration procedures), a registration certificate is not to be treated as having been issued until the appropriate fee determined for the registration mentioned in the certificate has been paid.

10.9.3 Fees before forms, except in notes

LA deals with provisions about fees before it deals with approved forms. An Act providing for those matters should reflect that sequence. However, the sequence in which the matters are dealt with in the notes is reversed because it is usually the case that unless application is first made for the provision of a service there is no fee payable in relation to the application.

For note 2, if the note appears in a regulation or rule, the Act reference should be changed, for example, to ‘the Act, s ##’.

Further reading

LA, pt 6.3 (Making of certain statutory instruments about fees)
10.10 Disallowable and notifiable instruments

Although not legally necessary, a standard note is included under a provision authorising the making of a disallowable or notifiable instrument.

Examples

1 (2) A direction is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

2 (2) A direction is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

Further reading

LA, s 9 (Meaning of disallowable instrument)
LA, s 10 (Meaning of notifiable instrument)
LA, dict, pt 1, def disallowable instrument
LA, dict, pt 1, def notifiable instrument

10.11 Service of documents

LA, pt 19.5 applies to a document that is authorised or required under a law to be served (whether the word ‘serve’, ‘give’, ‘notify’, ‘send’ or ‘tell’ or any other word is used).

If the provision uses the word ‘give’ change the wording of the standard note from ‘served’ to ‘given’.

Examples

Standard note

Note For how documents may be served, see the Legislation Act, pt 19.5.

Changed note

Note For how documents may be given, see the Legislation Act, pt 19.5.
10.12  Annual reports

The following wording should be used in a provision prescribing information to be included in an agency’s annual report. There is no need to say ‘director-general of an administrative unit’.

Example

Public Interest Disclosure Bill 2012

45 Information to be included in annual report

(1) The director-general must, in an annual report under the Annual Reports (Government Agencies) Act 2004 for a financial year, include details of the following for the year:

   (a) the total number of public interest disclosures made;
   (b) the total number of investigations carried out;
   (c) the total number of investigations completed;
   (d) the average time taken for completed investigations;
   (e) anything else prescribed by regulation.

(2) However, the annual report must not include protected information.
10.13 Approved forms

Forms should not be included in legislation without the parliamentary counsel's approval. Instead include an approved forms section.

Example 1

## Approved forms

(1) The Minister may approve forms for this Act.

(2) If the Minister approves a form for a particular purpose, the approved form must be used for the purpose.

Note For other provisions about forms, see the Legislation Act, s 255.

(3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

The approved forms power in an Act also applies for subordinate laws under the Act.

The approved forms section usually goes after the determination of fees section and before the general regulation-making power section.

If a provision elsewhere in the legislation refers to a purpose or action (eg applying, notifying or nominating etc) that may be achieved or done using a form, and the policy intention is that a form is to be used, the approved form note should be included.

Example 2

Approved form note—Act

Note If a form is approved under s ## for this provision, the form must be used.

Example 3

Approved form note—regulation

Note If a form is approved under the Act, s ## for this provision, the form must be used.

Further reading

LA, s 255 (Forms)
10.14 Regulation-making powers

The general regulation-making power section is usually located at the end of the Act but before any review provisions, transitional provisions, schedules, or the dictionary. It can be a general provision (see example 1), deal with specific regulation-making powers (see example 2), adopt other laws (see example 3) or prescribe offences (see example 4).

On instruction, the power to create offences with penalties of more than 3026 penalty units may be given, but only after consultation with the Criminal Law Group.

It is not necessary to state that a particular regulation-making power does not limit the general regulation-making power (see LA, s 44 (3)).

If an Act includes specific regulation-making power as well as a general regulation-making power, care should be taken to avoid creating more than 1 general regulation-making power.

A power to prescribe by regulation in a general provision need not mention the unit for which the power is given (see example 5) unless there may be confusion otherwise.

The term ‘prescribe’ or ‘provide’ are usually used in a general provision but ‘fix’, ‘state’, ‘declare’ or other plain English options (eg ‘may require’, ‘set out’) may also be used (see example 6).27

Example 1
General provision

## Regulation-making power

The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Example 2
Specific provision

Liquor Act 2010

(2) A regulation may make provision in relation to the following:

(a) licensed times and permitted times;

(b) the calculation of fees based on 1 or more of the following:

(i) ...;

...

26 Penalty unit updated to keep consistent with amendments of part 11.13.
Example 3
Adopt another law

(3) A regulation may apply, adopt or incorporate a law of another jurisdiction or an instrument, or a provision of a law of another jurisdiction or instrument, as in force from time to time.

(4) In this section:

law of another jurisdiction—see the Legislation Act, section 47 (10).

Example 428
Adopt an instrument

(2) A regulation may apply, adopt or incorporate an instrument as in force from time to time.

Note 1 The text of an applied, adopted or incorporated instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

Note 2 A notifiable instrument must be notified under the Legislation Act.

Example 5
Prescribe offences

(2) A regulation may create offences and fix maximum penalties of not more than 10 penalty units for the offences.

Example 6
prescribe in general provision

(3) The identity card must show—

(a) a recent photograph of the person; and

(b) anything else prescribed by regulation.

Further reading

LA, s 44 (Power to make statutory instruments for Act etc)

LA, s 47 (Statutory instrument may make provision by applying law or instrument)

28 Example added in version 2012-5.
10.15 Review of Act

A provision to provide for the review of the operation of an Act may be included in legislation. The 'Review of Act' provision follows the regulation-making power section.

Example 1

standard provision

## Review of Act

(1) The Minister must review the operation of this Act as soon as practicable after the end of its ## year of operation.

(2) The Minister must present a report of the review to the Legislative Assembly within ## months after the day the review is started.

(3) This section expires ## years after the day it commences.

Example 2

continuing review

*Climate Change and Greenhouse Gas Reduction Act*

26 Review of Act

The Minister must review the operation of this Act and present a report of the review to the Legislative Assembly—

(a) as soon as practicable after the end of its 5th and 10th years of operation; and

(b) as soon as practicable after each subsequent 10 years of its operation.

Example 3

*Emergencies Act*

203 Review of Act

(1) The Minister must review the operation of this Act as soon as practicable after the end of every 5th year of its operation.

(2) The Minister must present a report of the review to the Legislative Assembly within 3 months after the day the review is started.
Example 4  
*Health Practitioner Regulation National Law*  

11 Review of Act  

(1) The Minister must as soon as practicable after 1 July 2011—  
(a) review the operation of this Act in relation to the relationship of  
the National Boards and the health complaints entity; and  
(b) present a report of the review to the Legislative Assembly.  

(2) This section expires on 1 July 2012.

Example 5  
*Road Transport (Third-Party Insurance) Act*  

275 Review of Act  

(1) The Minister must review the operation of this Act as soon as  
practicable after the end of its 3rd year of operation.  

(2) The Minister must present a report on the review to the Legislative  
Assembly within 3 months after the day the review is started.  

(3) In reviewing the Act, the Minister must take into account—  
(a) how effectively the scheme under the Act provides reduced  
premiums for compulsory third-party insurance policies for  
motor vehicles; and  
(b) any reform to any scheme providing for compulsory third-party  
insurance for motor vehicles implemented in other jurisdictions  
in Australia; and  
(c) the impact of the changes on the recovery to health, well-being  
and work of the claimant.  

(4) In reviewing the Act, the Minister may take into account anything  
else that the Minister considers relevant.  

(5) This section expires 5 years after the day it commences.
Example 629
review after amendment
Gaming Machine Act

179 Review of amendments made by Gaming Machine (Reform) Amendment Act 2015

(1) The Minister must, before the commencement of the Gaming Machine (Reform) Amendment Act 2015, schedule 1 (Other amendments—compulsory surrender)—

(a) review the operation of section 127F (Trading authorisations—forfeiture requirement) and subdivision 6.11.3 (Quarantine permits); and

(b) present a report of the review to the Legislative Assembly.

(2) This section expires 5 years after the day it commences.

Example 730
review after amendment
Workplace Privacy Act

34A Review of provisions about covert surveillance outside workplace

(1) The Minister must review the operation of this Act, as amended by the Workplace Privacy Amendment Act 2016 (the amending Act), in relation to the operation of provisions about covert surveillance outside a workplace.

(2) The review must be started as soon as practicable 2 years after the commencement of the amending Act.

(3) The Minister must present a report of the review to the Legislative Assembly within 6 months after the day the review is started.

(4) This section expires 4 years after the day it commences.

29 Example added in 2017-1
30 Example added in 2017-1
10.16 Amended legislation sections

See Amending Guide, chapter 1 (Structure).

10.17 Repealing sections

See Amending Guide, chapter 12 (Repeals).

LA, section 89 deals with the automatic repeal of certain laws and provisions. The purpose of section 89 is to keep the statute book (and the legislation register) uncluttered by removing laws and provisions once they have served their purpose.

LA, section 89 (1) automatically repeals an amending law the day after all its provisions have commenced.

LA, section 89 (3) automatically repeals an amending provision of a law once all the amendments or repeals it makes, or to which it relates, have commenced.

LA, section 89 also deals with the automatic repeal of appropriation Acts, commencement provisions, commencement notices and instruments making or evidencing appointments.
10.18 Making a new regulation by Act

Where a new regulation is made by Act (mainly with whole new schemes) the notification and disallowance regime is displaced and a provision with a similar effect to LA, section 83 is included.

If a new regulation is made by an amending Act, it should be made in the amending Act itself, not inserted into the principal Act – see example 2. Subsection (3) in example 2 is required to state that the law is an amending law for LA, section 89 so the law can be automatically repealed. An expiry provision is not required because section 4 is part of the amending Bill.

A new regulation should only be done by Act with the parliamentary counsel's approval.

Example 1

New principal Act

### XYZ Regulation 2018

(1) The provisions set out in schedule ## are taken, on the commencement of this section, to be a regulation made under section ##.

(2) The regulation—
(a) is taken to be notified under the Legislation Act on the day this Act is notified; and
(b) commences on the commencement of this Act; and
(c) is not required to be presented to the Legislative Assembly under the Legislation Act, section 64 (1); and
(d) may be amended or repealed as if it had been made under section ##.

(3) This section and schedule 1 expire on the day they commence.

…

Schedule 1 New XYZ Regulation

(see s ##)

…[text of regulation including crest etc]…

See the following legislation as precedents (except do not put in a ‘Transitional’ part, put it in a ‘Miscellaneous’ part):

- Building Act 2004
- Construction Occupations (Licensing) Act 2004
- Unit Titles (Management) Act 2011

31 Updated in 2018-1—see Standards Decisions 27/6/18.
Example 2

Amending Act

1 Name of Act

This Act is the ABC Amendment Act 2017.

2 Commencement

...

3 Legislation amended

This Act amends the legislation mentioned in schedule 1.

4 ABC Regulation 2018—sch 2

(1) The provisions set out in schedule 2 are taken, on the commencement of this section, to be a regulation made under the ABC Act 2018, section ##.

(2) The regulation—

(a) is taken to be notified under the Legislation Act on the day this Act is notified; and

(b) commences on the commencement of this section; and

(c) is not required to be presented to the Legislative Assembly under the Legislation Act, section 64 (1); and

(d) may be amended or repealed as if it had been made under the ABC Act 2018, section ##.

(3) This Act is taken to be an amending law for the Legislation Act, section 89 (Automatic repeal of certain laws and provisions) despite this section not being a provision mentioned in section 89 (12), definition of amending law.

Schedule 2 New ABC Regulation

(see s 4)

...[text of regulation including crest etc]...

See the following legislation as precedents:

- Red Tape Reduction Legislation Amendment Bill 2018
10.19 Amendments to the Environment Protection Act 1997 by regulation

Section 166 (8) of the Environment Protection Act 1997 allows the Act, schedule 1 to be amended by regulation.

166 Regulation-making power

…

(8) A regulation may amend schedule 1—

(a) by—

(i) amending activities mentioned in the schedule, or
(ii) adding activities to, or deleting activities from, the schedule; and

(b) by making any other amendments of that schedule arising from, connected with or consequential on an amendment under paragraph (a).

The following note should be included in the Legislation amended section in the amending regulation.

3 Legislation amended

This regulation amends the Environment Protection Act 1997.

Note The Environment Protection Act 1997, s 166 (8) allows the Act, sch 1 to be amended by regulation.

32 Part added in version 2014-2 to include the note in the amending regulation.
10.20 **Expiry of notifiable instruments**

An expiry provision for certain notifiable instruments may be included in legislation if the instruments are only of a declaratory or transitory nature, i.e. stating that something has happened or that action may be taken by a certain time. These types of instruments do not have any long term currency.

For example:

- Environment Protection (Environmental Authorisation Grant) Notice
- Environment Protection (Environmental Authorisation Review) Notice
- Environment Protection (Environmental Protection Agreement) Notice
- Utilities (Grant of Licence) Notice
- Utilities (Transfer of Licence) Notice

If unsure, see the Notifications Manager.

The expiry provision should be placed in the section the instrument is made for.

**Example**

**EIS not required if development application exempted**

(1) The Minister may exempt a development application for development approval for a development proposal from a requirement to include an EIS if satisfied that the expected environmental impact of the development proposal has already been sufficiently addressed by another study, whether or not the study relates to the particular development proposal.

(2) An exemption is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

(3) A regulation may prescribe criteria that the Minister must take into account in deciding whether the environmental impact of the development proposal has been sufficiently addressed by the other study.

(4) The planning and land authority must put an electronic link to the exemption on the authority website.

(5) An exemption expires 18 months after the day it is notified.
10.21 Commencement of subordinate laws and disallowable instruments after disallowance period

If a subordinate law or disallowable instrument is controversial, significant or to have a large impact the drafting instructor may request a provision to commence the instrument after any disallowance period.

Example

_Gaming Machine Act 2004, s 35_

…

(3) A declaration is a disallowable instrument.

_Note_ A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(4) Subject to any disallowance or amendment under the Legislation Act, chapter 7, the declaration commences—

(a) if there is a motion to disallow the declaration and the motion is negatived by the Legislative Assembly—on the day after the day the motion is negatived; or

(b) on the day after the 6th sitting day after the day it is presented to the Legislative Assembly under that chapter; or

(c) if the declaration provides for a later date or time of commencement—on that date or at that time.
10.22 Apply other instruments note

LA, section 47 deals with incorporation by statutory instrument. Such incorporation must be authorised by law (an Act or a higher-level instrument). Include the 'Apply other instruments' standard note after the provision giving power to apply, adopt or incorporate other instruments (see examples 1 and 2).

Example 1\(^{34}\)

(2) A regulation may apply, adopt or incorporate an instrument as in force from time to time.

Note 1 The text of an applied, adopted or incorporated instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

Note 2 A notifiable instrument must be notified under the Legislation Act.

Example 2\(^{35}\)

(2) An approval may apply, adopt or incorporate an instrument as in force from time to time.

Note 1 The text of an applied, adopted or incorporated instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

Note 2 A notifiable instrument must be notified under the Legislation Act.

Further reading
See also pt 12.4 (in particular 12.4.2, 12.4.4 and 12.4.5) for more information about incorporation by statutory instrument.

---

\(^{34}\) Example updated in version 2012-5 to only show the specific provision and notes. Pt 10.13 already provides examples for regulation-making power provisions.

\(^{35}\) Example updated in version 2012-5 to only show the specific provision and notes. New pt 10.24 added to provide examples for codes of practice provisions.
10.23 Disapply LA, s 47 note

If an applied, adopted or incorporated document is not required to be notified on the legislation register LA, section 47 needs to be disapplied (a s 47 disapplication).

Often the s 47 disapplication follows directly after the provision applying, adopting or incorporating the document (the incorporating provision). In this case include the ‘Disapply LA, s 47’ standard note.

For guidance on incorporation of instruments, in particular the disapplication of LA, s 47—see chapter 10.

For how to refer to standards—see part 13.8.

Example 1

Plastic Shopping Bags Ban Regulation 2011

5 Biodegradable bag—Act, dict, def biodegradable bag

(1) The requirement that a plastic bag is made from plastic compostable in accordance with AS 4736 (Biodegradable plastics-Biodegradable plastics suitable for composting and other microbial treatment) as in force from time to time is prescribed.

(2) The Legislation Act, section 47 (6) does not apply to AS 4736.

Note AS 4736 does not need to be notified under the Legislation Act because s 47 (6) does not apply (see Legislation Act, s 47 (7)). The standard may be purchased at www.standards.org.au.

Sometimes the s 47 disapplication is in a separate provision either towards the beginning of the legislation or in a miscellaneous part towards the end of the legislation. In this case, because the s 47 disapplication may be located some sections away from the incorporating provision, include the ‘Disapply LA, s 47’ standard note after the s 47 disapplication and after the incorporating provision. In this case the bracketed reference is changed to the s 47 disapplication provision reference.
Example 2

Road Transport (Vehicle Registration) Regulation 2000 [with changes]

Disapplication provision

5A Disapplication of Legislation Act, s 47 (5) and s 47 (6)

(1) The Legislation Act, section 47 (5) does not apply in relation to an instrument applied, adopted or incorporated as in force at a particular time under this regulation unless the instrument is expressed to be a notifiable instrument.

Examples—instruments to which s 47 (5) does not apply

1 an adopted standard
2 the UN ECE Agreement
3 Vehicle Standards Bulletin No 6 - National Code of Practice for Heavy Vehicle Modifications

(2) The Legislation Act, section 47 (6) does not apply in relation to an instrument applied, adopted or incorporated as in force from time to time under this regulation unless the instrument is expressed to be a notifiable instrument.

Examples—instruments to which s 47 (6) does not apply

1 a national standard
2 Vehicle Standards Bulletin No 6 - National Code of Practice for Heavy Vehicle Modifications

Note An instrument applied, adopted or incorporated under this regulation does not need to be notified under the Legislation Act because s 47 (5) and (6) does not apply (see Legislation Act s 47 (7)).

Incorporation provision

1.60B Fire extinguisher must be in proper working order

A fire extinguisher carried in a public passenger vehicle must be maintained to a standard that meets a performance test, mentioned in AS/NZS 1850:2009 (Portable fire extinguishers—Classification rating and performance testing), for the class of extinguisher.

Note AS/NZS 1850:2009 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 5A). The standard may be purchased at www.standards.org.au.
Example 3

*Civil Law (Sale of Residential Property) Regulation 2004* [with changes]

Disapplication provision

6 **Disapplication of Legislation Act, s 47 (6)**

The Legislation Act, section 47 (6) does not apply to AS 4349.1 and AS 4349.3 under this regulation.

*Note* AS 4349.1 and AS 4349.3 do not need to be notified under the Legislation Act because s 47 (6) does not apply (see Legislation Act, s 47 (7)). The standards may be purchased at www.standards.org.au.

Incorporation provision

10 **Pest inspection report—Act, s 7, def pest inspection report**

(1) A pest inspection report must be completed in accordance with AS 4349.3.

...

(6) In this section:

*AS 4349.3* means AS 4349.3 (Inspection of buildings – Timber pest inspections) as in force from time to time.

*Note* AS 4349.3 does not need to be notified under the Legislation Act because s 47 (6) does not apply (see s 6). The standard may be purchased at www.standards.org.au.

Further reading

See also pt 12.4 (in particular 12.4.3, 12.4.6, 12.4.7 and 12.4.8) for more information about the disapplication of LA, s 47.
10.24 Specification of notification and publication requirements

The specification of notification and publication requirements should be provided for in separate subsections.

Example

Environment Protection Act 1997

41 Notification of environmental protection agreements

(1) If the authority enters into an environmental protection agreement under section 38 (Entering agreements), the authority must prepare a notice...

(2) The notice is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

(3) The authority must also publish the notice in a daily newspaper [as soon as practicable].

(4) The notice must be notified under the Legislation Act within 10 working days after the day the environmental protection agreement is entered into.

See also the following legislation as precedents:

- Planning and Development Act 2007
- Electricity Safety Act 1971
- Independent Competition and Regulatory Commission Act 1997

36 Part added in version 2012-5—see Standards Committee decision on 22/8/12.
10.25 Establishing authorities, boards, commissions etc\textsuperscript{37}

The following wording should be used in a provision establishing an authority, board or commission etc. There is no need to use a tagged term for the entity. A definition shortening the entity’s title may be included in the dictionary.

Example

*Climate Change and Greenhouse Gas Reduction Act*

16 Establishment of council

The Climate Change Council is established.

Dict, def

`council` means the Climate Change Council established under section 16.

10.26 Codes of practice\textsuperscript{38}

The wording in example 1 should be used in a provision providing for the Minister to approve codes of practice and the wording in example 2 should be used in a provision providing for the Minister or other entity to make codes of practice. Subsection (2) is optional and should only be included if power to apply, adopt or incorporate other instruments is needed.

Example 1

*Approve codes of practice*

## Codes of practice

(1) The Minister may approve a code of practice for this Act.

[(2) An approved code of practice\textsuperscript{39} may apply, adopt or incorporate an instrument as in force from time to time.]

*Note 1* The text of an applied, adopted or incorporated instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disappplied (see s 47 (7)).

*Note 2* A notifiable instrument must be notified under the Legislation Act.]

(2) An approved code of practice is a disallowable instrument.

*Note 1* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

\textsuperscript{37} Part added in version 2012-5—see Standards Committee decision on 22/8/12.

\textsuperscript{38} Part added in version 2012-6.

\textsuperscript{39} Wording revised in 2017-1 to make it clear that the approval and the code need to be notified
Example 2

Make codes of practice

### Codes of practice

(1) The Minister may approve a code of practice for this Act.

10.27 Standards

The following wording should be used in a provision providing for the Minister to approve standards. Subsection (2) is optional and should only be included if power to apply, adopt or incorporate other instruments is needed.

For how to refer to standards—see part 13.8.

For guidance on incorporation of instruments, in particular the disapplication of LA, s 47—see chapter 10.

Example

Disability Services Act 1991 [with changes]

### Disability service standards

(1) The Minister may approve standards about the provision of services for people with disabilities.

[(2) An approved standard may apply, adopt or incorporate an instrument as in force from time to time.

*Note 1* The text of an applied, adopted or incorporated instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapproved (see s 47 (7)).

*Note 2* A notifiable instrument must be notified under the Legislation Act.]

(2) An approved standard is a disallowable instrument.

*Note 1* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

40 Part added in version 2012-6.
10.28 Guidelines

The provision can be a general guideline making provision, deal with specific guideline making requirements or adopt other laws.

The wording in examples 1 and 2 should be used in a provision providing for the Minister (or other entity) to make guidelines. Subsection (2) in example 1 is optional and should only be included if power to apply, adopt or incorporate other instruments is needed.

The wording in example 3 should be used in a provision providing for the Minister (or other entity) to approve guidelines.

Guidelines can either be notifiable or disallowable instruments.

Example 1
Districts Act 2002 [with changes]

14 Guidelines about allocation of street addresses

(1) The Minister may make guidelines about the allocation of street addresses to blocks and units.

[2) A guideline may make provision about a matter by applying, adopting or incorporating an Australian Standard as in force from time to time.

Note 1 The text of an applied, adopted or incorporated instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

Note 2 A notifiable instrument must be notified under the Legislation Act.]

(3) A guideline is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.
Example 2
Liquor Act 2010

223 Liquor guidelines

(1) The commissioner may make guidelines (the liquor guidelines) for this Act consistent with the objects of this Act and the harm minimization and community safety principles.

(2) Without limiting subsection (1), a liquor guideline may make provision in relation to the following:

   (a) advertising liquor;
   
   (b) intoxication;
   
   (c) crowd management at and near licensed premises;
   
   (d) RSA training.

(3) A guideline is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

Example 3
Road Transport (Public Passenger Services) Act 2001 [with changes]

83 Demand responsive services—guidelines for giving authorisations

(1) The Minister may approve guidelines for the giving of authorisations to operate demand responsive services.

(2) The guidelines may make provision in relation to—

   (a) the kinds of public passenger services that may...
   
   (b) the kinds of vehicles that may...

(3) The guidelines must provide that...

(4) A guideline is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.
10.29 Validation

A validation can be made either by a stand-alone bill or by inserting a validating provision into an existing law. The validation bill or validation provision must include an expiry.

**Part # Validation**

### Validation of [subject matter]

(1) ...

(2) ...

### Expiry—pt ##

This part expires on the day it commences.

*Note* If a law validates something, the validating effect of the law does not end only because of the repeal of the law (see Legislation Act, s 88 (1)).

Example 1

**Stand-alone bill**

See the following legislation as precedents:

- Water Resources (Validation of Fees) Act 2008
- Domestic Animals (Validation of Fees) Act 2006
- Canberra Institute of Technology (Validation of Fees) Act 2006

Example 2

**Inserted provision**

See the following legislation as precedents:

- Race and Sports Bookmaking (Validation of Licences) Amendment Act 2011
- ACT Civil and Administrative Tribunal Amendment Act 2016

42 Part added in version 2016-1.
43 Example simplified in 2017-1 – see listed precedents for example wording.
10.30 Notification and review of decisions

If certain decisions are to be reviewable, include the following provisions in a separate chapter/part/division and a list of the decisions (referenced by section) and the entity or relevant person who may apply for review of the decision.

Example

Part # Notification and review of decisions

## Meaning of reviewable decision—pt #
In this part:

*reviewable decision* means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

## Reviewable decision notices
If the [insert relevant decision-maker] makes a reviewable decision, the registrar must give a reviewable decision notice to each entity mentioned in schedule 1, column 4 in relation to the decision.

Note 1 The [insert relevant decision-maker] must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

## Applications for review
The following may apply to the ACAT for review of a reviewable decision:

(a) an entity mentioned in schedule 1, column 4 in relation to the decision;

(b) any other person whose interests are affected by the decision.

*Note* If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

... Schedule 1 Reviewable decisions

(see pt #)

<table>
<thead>
<tr>
<th>column 1 item</th>
<th>column 2 section</th>
<th>column 3 decision</th>
<th>column 4 entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
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</tbody>
</table>

44 Part added in version 2017-1.
11 Offences

11.1 Relevant LA provisions

The following provisions of LA are particularly relevant for offence provisions:

- Section 84A—provides that a law creating an offence or increasing a penalty only applies to an offence committed after the law commences. A law reducing a penalty also applies to an offence committed before the law commences (but does not affect a penalty already imposed).

- Section 133—sets out the value of a penalty unit ($150 for an individual, $750 for a corporation).\(^{45}\)

- Section 134—sets out the effect of a penalty stated at the end of a section or subsection.

- Section 135—sets out the effect of a penalty stated in a provision.

- Section 152—provides for the continuing effect of obligations.

- Section 161—provides that offence provisions apply to corporations as well as to individuals and sets out the penalty (in penalty units) for corporations convicted of an offence punishable only by imprisonment.

Chapter 18 (Offences) contains the following sections:

- section 189 (Reference to offence includes reference to related ancillary offences)—this provision means that it is not necessary to deal expressly with ancillary offences (attempts, aiding and abetting etc)

- section 190 (Indictable and summary offences)

- section 191 (Offences against 2 or more laws)

- section 192 (When must prosecutions begin?)

- section 193 (Continuing offences).

---

\(^{45}\) Penalty units updated in version 2014-2.
11.2 Criminal Code 2002

11.2.1 Criminal Code—overview

The Criminal Code, chapter 2 contains a codification of the general principles of criminal responsibility. The Code will become fully operational in the ACT on its default application date (see div 11.2.2). At that point, the principles set out in it will apply to all offences against territory laws, and the only offences against territory laws will be those created under the Code or any other Act (see Code, s 5 (1)).

The chapter contains provisions about—

- the elements of an offence (part 2.2)
- circumstances where there is no criminal responsibility (part 2.3)
- extensions of criminal responsibility (part 2.4)
- corporate criminal responsibility (part 2.5)
- proof of criminal responsibility (part 2.6)
- geographical application (part 2.7).

The later chapters of the Code contain substantive offences. So far, the following chapters have been made:

- chapter 3 (Theft, fraud, bribery and related offences)
- chapter 4 (Property damage and computer offences)
- chapter 6 (Serious drug offences)
- chapter 7 (Administration of justice offences).

Eventually all offences will be removed from the Crimes Act 1900. In the process of developing the Code, some offences in other legislation have been repealed because the Code will cover them. For example, offences in relation to false or misleading statements and obstruction of officials were repealed when chapter 3 was enacted.
11.2.2 Criminal Code—application

Although the Code commenced on 1 January 2003, it does not apply to all offences until its default application date. The default application date is currently set as 1 July 2017 but there is power for another date to be prescribed by regulation (see Code, s 10 (1)).

So at present we are in a transition period with the Code’s application being as follows:

- it applies to all offences created by provisions that commenced on or after 1 January 2003 (see Code, s 7 and s 8 (1))
- it applies to a pre-2003 offence if—
  - the Code is expressly applied to the offence (eg Workers Compensation Amendment Act 2003 (No 2)); or
  - the offence is omitted and remade (see Code, s 8 (2)).

From its default application date, the Code will apply to all offences against ACT laws.

However, there are some provisions (the immediately applied provisions) that apply to all offences from 1 January 2003 (or for part 2.5 (Corporate criminal responsibility), from 9 April 2004). These are set out in section 10. They include the ancillary offence provisions and the provisions about proof of criminal responsibility.

Note It is convenient to speak of the Code applying or not applying to offences but it is really chapter 2 of the Code that is being referred to. This is the chapter that sets out the general principles of criminal responsibility. The later chapters of the Code contain specific offences and do not have general application to other legislation.

11.2.3 Criminal Code—harmonisation

Harmonisation is the process of reviewing and revising offence provisions to ensure they are in a form that is consistent with the Code. All pre-2003 offences need to be harmonised before the Code's default application date when the whole of chapter 2 will apply to all offences against territory laws.

The harmonisation project started in September 2004. A dedicated harmonisation Act was passed in 2005 and a number of individual amending Acts have included a schedule of amendments to harmonise all the offences in the principal Act (eg Tobacco Amendment Act 2008). However, there is still a significant number of un-harmonised offences on the statute book. With competing priorities and resource constraints in policy areas, it is not clear at present when the task will be completed.

46 Default application date updated in version 2014-2.
11.3 Elements of offences

The Code, part 2.2 deals with the elements of offences. There are 2 types of offence elements—physical elements and fault elements.

All offences have physical elements and for each physical element there is a fault element (unless strict or absolute liability applies to the physical element). There can also be more than 1 fault element for a physical element. Fault elements attach to physical elements, they do not exist independently of physical elements.

11.3.1 Physical elements

The Code sets out 3 possible physical elements. These are the only possible physical elements. They are:

1. conduct. This is defined to be—
   - an act (eg assaulting a person, making a statement); or
   - an omission to act (eg failing to comply with a registration requirement); or
   - a state of affairs (eg being in possession of a weapon)

2. a result of conduct
   - eg grievous bodily harm; obstruction of an official

3. a circumstance in which conduct, or a result of conduct, happens
   - eg that the person assaulted is a police officer

In many cases it will not be difficult to analyse an offence in these terms and be certain about the physical elements. But there will be cases where it is not so simple and there may be more than one way of viewing the elements. This can arise in particular when distinguishing between acts and circumstances. Discussion with other drafters and with the Criminal Law Group is recommended to help decide what approach to take in these cases.

Note Characterisation of the physical elements is of particular importance if a default fault element is to apply (see Code, s 22). This is because there are different defaults—for conduct the default element is intention but for a circumstance or result the default element is recklessness.

Omissions

An omission to do an act can only be a physical element of an offence if the law creating the offence expressly or impliedly makes it an element of the offence (see Code, s 16).

Example 1

Law expressly making omission a physical element

(1) An association must not fail to give an annual return to the registrar.

Maximum penalty: 10 penalty units.
Example 2
Law impliedly making omission a physical element

(1) An association must give an annual return to the registrar.

   Maximum penalty: 10 penalty units.

These examples illustrate ways in which an omission to act is commonly made an element of an offence. In each case the physical element of the offence is failing to give an annual return to the registrar.

Note: If intention (or any other fault element) is to be expressly stated, the form shown in example 2 cannot be used. This is because the relevant physical element (ie omitting to give an annual return) is provided by implication rather than expressly. Instead the form shown in example 3 would need to be used, with the fault element expressly stated.

Example 3
Fault element expressly stated

(1) An association must not intentionally fail to give an annual return to the registrar.

   Maximum penalty: 10 penalty units.

Further reading
Commonwealth Criminal Code – Guide for Practitioners: p 45
Criminal Code, s 16
MCCOC report, chapter 5: p 35
11.3.2 Fault elements

**Code-supplied fault elements**

The Code provides for, and defines, the following 4 fault elements:

1. intention (s 18)
2. knowledge (s 19)
3. recklessness (s 20)
4. negligence (s 21)

Importantly, the Code also provides for default fault elements (s 22). This means that if the law creating an offence does not provide a fault element for a physical element of the offence, the default fault element will apply to the physical element.

**Other fault elements**

The Code also provides that laws creating offences can provide for fault elements other than intention, knowledge, recklessness and negligence.

Generally the Code fault elements should be used and other fault elements should be avoided unless they import something different from the above 4 elements.

In harmonising, you may find that some fault elements used in existing offences can be replaced with a Code fault element without any change of meaning. For example, ‘wilfully’ could be replaced by ‘intentionally’.

However, there will be other cases where a different fault element is needed to achieve the intended policy result. Some additional fault elements may require definition.

**Examples**

**Other fault elements**

1. belief (for example, it is used in conjunction with knowledge in the offence of ‘receiving’ that is committed if a person receives stolen property knowing or believing it to be stolen)

2. dishonesty. The standard definition used is—

   *dishonest*—a person’s conduct is dishonest if—

   (a) the person’s conduct is dishonest according to the standards of ordinary people; and

   (b) the person knows that the conduct is dishonest according to those standards.

3. ulterior intention (see below)
Ulterior intention

Numerous offences on the statute book include an element of so-called ulterior intention. This is an intention to achieve an objective that is not itself a physical element of the offence.

Intention of this kind should be viewed as intention in relation to the conduct element of the offence. It means that there are really 2 intents associated with the one physical (conduct) element. However, the ulterior intention does not go to any circumstance or result that is an element of the offence. It follows that the extended definitions of ‘intention’ in the Code, s 18 (2) or (3) have no application for the interpretation of the ulterior intention.

Examples

Offences requiring proof of an ulterior intention

1 unauthorised access to data with intent to commit a serious offence (Code, s 415)
2 contaminating goods with the intention of causing public alarm (Crimes Act 1900, s 137)
3 theft (ie appropriating property belonging to someone else with the intention of permanently depriving)
4 bribery (ie giving a benefit with the intention of influencing a public official)

Further reading

Paper given by Jon White, DPP (December 2008)
Knowledge of law

The issue here is whether the Code requires a fault element to attach to a physical element of an offence that is simply a matter of law. If it does, absolute liability would need to be applied to that element to ensure the prosecution is not required to prove that the defendant knew or was reckless about the physical element. Amendments made by the Criminal Code (Administration of Justice Offences) Amendment Act 2005 are intended to minimise the need for this. The following extract from the amending bill’s explanatory statement explains the issue and background well:

The amendments are technical in nature and are aimed at clarifying the intended effect of what is currently subsection 37(1) of the Criminal Code. Essentially the clauses will remove section 37 in its entirety and relocate a modified version to new subsection 12(2). The Commonwealth has recently made similar amendments to section 9.3 of its Criminal Code (which corresponds to section 37), however, it has not relocated its equivalent of subsection 37(1). See item 5 of schedule 4 of the Commonwealth Crimes Legislation Amendment (Telecommunications Offences and other Measures) Act (No. 2) 2004. It is considered, however, that the Commonwealth’s new section 9.3 and new subsection 12(2) of the Criminal Code are to the same effect and will operate in the same way.

The purpose of these amendments is to deal with an issue commonly referred to as the “knowledge of law” issue. Subsection 37(1) of the Criminal Code provides that a person can be criminally responsible for an offence even though the person is mistaken about or ignorant of the existence or content of a law that creates the offence. However, subsection 37(2) qualifies this by positively asserting that a person is not criminally responsible if the offence is either (i) expressly or “impliedly” to the contrary effect or (ii) the person’s ignorance or mistake negates a fault element for a physical element of the offence. This is problematic because subsection 37(2) (and section 22 of the Criminal Code) could operate to mean that a simple cross-reference in an offence to another provision impliedly displaces the general rule in subsection 37(1) and requires the prosecution to prove that the person knew or was aware of the existence (or content) of the provision referred to. For example, it may be an offence for a person to contravene a direction given under “section 5 of the Act”. Generally the prosecution is not required to establish that the person knew or was aware that the direction was given under a particular section of an Act – only that the person was given a direction. If the offence were read to imply that the person needed to have knowledge that the direction was made pursuant to “section 5 of the Act”, the prosecution would be required to prove that element. In most cases this would be difficult or impossible.

Cross-referencing in legislation is a common drafting device and, in most cases, such an interpretation would be contrary to the intended effect of the particular offence provision. To date, this problem has been overcome by applying “absolute liability” to the cross referencing element but this makes drafting more complex and involves over-use of a term that should be used sparingly. A longer-term solution is required. Accordingly, these amendments will clarify the operation of the general principle (currently in subsection 37(1)) and ensure that the court is not compelled to require proof of knowledge of the law or the content of a law unless the relevant offence provision expressly requires it. “Expressly” will be evidenced where a fault element (such as “knowledge”, “recklessness” or “intention” etc) is stated with respect to the relevant physical element of the offence to require awareness about the law. For example, the relevant provision could state that a person commits an offence “if the person intentionally contravenes a direction made under section 5 and the person knows that the direction was made under section 5”. Unless subsection 12(2) is expressly excluded the general principle in that provision will operate and the court will not be compelled to require proof of an awareness of the law or the content of a law.

Further reading

Paper given by Jon White, DPP (December 2008)
### 11.3.3 Relationship between physical elements and fault elements

The following table shows how the physical and fault elements can relate to each other.

<table>
<thead>
<tr>
<th>Physical elements</th>
<th>fault elements</th>
<th>default (s 22)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>available (s 17–21)</td>
<td></td>
</tr>
<tr>
<td>conduct</td>
<td>intention</td>
<td>intention</td>
</tr>
<tr>
<td></td>
<td>negligence</td>
<td></td>
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<tr>
<td>result</td>
<td>intention</td>
<td>recklessness</td>
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<td></td>
<td>knowledge</td>
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<td>recklessness</td>
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<td></td>
<td>negligence</td>
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<tr>
<td>circumstance</td>
<td>intention</td>
<td>recklessness</td>
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<td></td>
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<td></td>
<td>recklessness</td>
<td></td>
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<tr>
<td></td>
<td>negligence</td>
<td></td>
</tr>
</tbody>
</table>

### Further reading

- Criminal Code, ch 2
- OPC notes
11.4 Strict liability

11.4.1 Meaning of strict liability

Strict liability can be applied to an offence as a whole or to a stated element or stated elements of an offence (see Code, s 23).

If strict liability applies to an offence as a whole, there is no fault element for any of the physical elements of the offence.

If strict liability applies to a physical element of an offence, there is no fault element for that physical element. But fault elements would apply to the other physical elements of the offence.

In addition to the general defences set out in the Code, part 2.3, a special defence of reasonable mistake of fact is provided for strict liability elements of an offence (see Code, s 36). This defence only applies if the defendant considered the relevant matter and made a mistake about it.

Example

Operation of mistake of fact defence

A defendant is found to have exceeded the speed limit (a strict liability offence) but claims to have checked the car’s speed dial at the time and a speed within the limit was showing. The defendant produces evidence that the dial was faulty. If the court considers the defendant’s belief was reasonable, the defendant would not be criminally responsible for the offence. The defence would not operate if the defendant simply produced evidence of the faulty speed dial.

11.4.2 When strict liability is appropriate

It is a fundamental principle that a person should not be held criminally responsible for conduct engaged in without a criminal intent. Also, the imposition of strict liability gives rise to human rights compatibility issues and needs to be justified on that basis too. However, there are very many strict liability offences on the statute book. These are mostly minor or so-called regulatory offences. They include, for example, most traffic and motor vehicle offences.

The following are indicators for when strict liability may be appropriate:

- offences of a regulatory nature
- offences directed at protecting the health and safety of the public, or at protecting the environment
- offences that do not involve dishonesty or other serious imputation affecting the defendant’s reputation.

Also, strict liability may be appropriate for a particular element of an offence if that element is something peculiarly within the knowledge of the defendant.

It can sometimes be difficult to work out whether strict liability or a fault element should be applied to an offence.
The indicators above provide some guidance. The penalty level for the offence also provides some guidance. The Criminal Law Group takes the view that, generally, strict liability should be limited to summary offences and that the maximum penalty should be a monetary penalty (of no more than 50 penalty units) only (although in some cases a maximum of 6 months imprisonment may apply). The scrutiny committee has also commented adversely about strict liability being imposed for an offence for which imprisonment is a possible penalty (see eg Scrutiny Reports No 38 and 43).

The committee's position in relation to strict liability is summarised in the following extract from Scrutiny Report No 38:

…[T]he significance of the rights issue in respect of….an offence of absolute liability, or of strict liability, and in particular one in respect of which…the defendant may be imprisoned, is such that…..the Explanatory Statement should address…. 
- why it is….that no fault element should be required; and
- …if no fault element is required, why a defendant should not be able to rely on some defence – and in particular, one of having taken reasonable steps to avoid liability – in addition…, in relation to an offence of strict liability, to the defence of reasonable mistake of fact allowed by [the Code] s 36.

Instructors should be advised to address those points in the explanatory statement to avoid adverse comment from the committee. (See Scrutiny Report No 43 on the Building Bill 2003 for an example of favourable committee comment on an explanatory statement that explains and justifies the use of strict liability).

If an existing offence appears to be appropriate as a strict liability offence, but has a penalty of imprisonment for more than 1 year (or even imprisonment for any period), it may be better when harmonising the offence to provide for strict liability and reduce the penalty rather than include a fault element.

Another solution may be to create 2 offences—a strict liability offence with a lower penalty and a fault offence with a higher penalty.

Example

2 offences with same conduct but different fault elements

Workers Compensation Amendment Bill 2003 (No 2)

147 Compulsory insurance—employers

(1) An employer commits an offence if the employer fails to maintain a compulsory insurance policy with an approved insurer.

Maximum penalty:  250 penalty units, imprisonment for 2 years or both.

(2) An employer commits an offence if the employer fails to maintain a compulsory insurance policy with an approved insurer.

Maximum penalty:  50 penalty units.

(3) An offence against subsection (2) is a strict liability offence.
Ultimately the appropriate fault element for an offence is a matter for the Criminal Law Group and the instructor (or, failing that, Cabinet) to resolve. Further guidance will be included here as issues become more settled.

In February 2008, the Assembly’s Standing Committee on Legal Affairs presented the report of an inquiry it conducted into strict liability offences. The report can be found on the Assembly website. A government response to the report was given in 201047.

11.4.3 Form of strict liability provision

If strict liability is to apply, it must be expressly stated (otherwise the relevant default fault element will apply).

The strict liability statement should be placed immediately after the offence is stated and before any provisions setting out exceptions or other defences (unless these provisions use a narrative style that draw on the case stated in the offence provision).

If 2 or more offences are created in the section and they are all strict liability offences, the strict liability statement need only be included once in the section. It should generally be included after the provisions relating to the last offence.

Example 1
Strict liability applies to whole offence

(1) A person commits an offence if the person possesses a prohibited substance.

   Maximum penalty: 50 penalty units.

(2) An offence against this section is a strict liability offence.

Example 2
Strict liability applies only to an element or elements of the offence

(1) A person commits an offence if—

   (a) the person sells a spray paint can; and

   (b) the person to whom the spray paint can is sold is a child.

   Maximum penalty: 50 penalty units.

(2) Strict liability applies to subsection (1) (b).

11.5 Absolute liability

The Code, s 24 provides for absolute liability. The only difference between it and strict liability is that the defence of mistake of fact is not available for an offence, or element of an offence, to which absolute liability applies. However, as with strict liability, the other defences in the Code are available.

A number of the comments above about strict liability apply equally to absolute liability provisions.

Criminal law policy and human rights compatibility dictates that absolute liability, applied to an offence as a whole, would be appropriate only in exceptional cases. However, absolute liability would more commonly be applied to a particular physical element in what is otherwise a fault offence.

Example

## General dishonesty

(1) A person commits an offence if—

(a) the person does something with the intention of dishonestly causing a loss to someone else; and

(b) the other person is the Territory.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

(2) Absolute liability applies to subsection (1) (b).

The explanatory statement for this provision justifies the use of absolute liability here as follows:

Absolute liability for paragraph (1) (b) is reasonable because otherwise the defendant could escape liability by arguing that he or she thought that someone else, other than the Territory, would suffer the loss. Also the fact that the defendant thought that he or she was causing someone else a loss instead of the Territory or that he or she was seeking to [cause a loss to] the Commonwealth instead of the Territory has no real bearing on the defendant’s moral culpability.

The rules in division 11.4.3 about the form of strict liability provisions also apply to absolute liability provisions.
11.6 Form of offence provisions

11.6.1 Headings for offence provisions

It is not necessary to include ‘Offence—’ in the section heading for an offence. Use ‘Offence—’ in the heading sparingly and for clarity. Do not use ‘Offence—’ in the heading if the provision also deals with matters other than the offence. Do not include ‘Offence—’ in a section heading if the whole part/division/subdivision only contains offence provisions. The part/division/subdivision heading should indicate the subject matter.

11.6.2 Statement of the offence

An offence can be created by express mention (see example 1) or by including a penalty at the end of a provision that can be contravened (see example 2).

Example 1

(1) A person commits an offence if the person smokes in a public place.

Maximum penalty: 50 penalty units.

This form can be used in any case and should be used if the offence has more than 1 fault element or a number of different physical elements that are clearer if paragraphed.

If doing this, use the active form ‘A person commits an offence if...’ rather than 'It is an offence against this section if...'

Example 2

(1) A person must not smoke in a public place.

Maximum penalty: 50 penalty units.

Under LA, section 134 (2) contravention of this provision is an offence.

This form should only be used if the offence is not complex and the elements can be clearly worked out. The expressions 'must' or 'must not' should be used for this form of offence. Do not use 'may' or 'may only' in provisions creating offences.

Do not use the form ‘A person is guilty of an offence if...’. Courts decide guilt and provisions should not purport to provide that guilt arises directly from contravention of a provision.

For each offence drafted, it should be clear what the physical elements of the offence are and what the fault element is for each physical element.

To achieve this, offence provisions may need to be broken up to a greater degree than previously.

If the fault element for a physical element is the same as the applicable default fault element, the fault element may still be stated expressly. This is a matter for judgement in individual cases, bearing in mind the need for clarity and readability.

As far as reasonable, the offence provision itself should contain everything that needs to be proved to establish guilt. Inevitably this is often not possible. For example, there may be relevant definitions or application provisions, or the offence may be expressed simply as a contravention of another provision (the other provision containing the detailed elements of the offence). The key thing is to check that all the fault elements are correctly provided for and that there are no unintended consequences (eg burden of proof on a matter falling inappropriately or unnecessary elements of proof included).

### 11.6.3 Statement of the penalty

The penalty for contravention of a section or subsection should be provided in a penalty provision at the end of the section or subsection and not in the section or subsection itself.

When the penalty is set out in the last subsection of the provision, it should be limited to that subsection.

If a section has 2 or more subsections and a proposed penalty is to apply to more than 1 of the subsections, a penalty provision should be inserted at the end of each subsection to which the penalty is to apply and not just at the end of the section.

This drafting practice is supported by LA, section 134 which sets out the effect of a penalty stated at the end of a section or subsection.

If a penalty is to apply to the last subsection of a section, consideration should be given to whether the penalty provision needs to be limited to that subsection (to avoid an argument that it applies to earlier subsections as a penalty at the end of the section).

**Example**

**Limited penalty**

(3) A person must not contravene an inspector’s direction.

Maximum penalty (subsection (3)): 10 penalty units.

If an earlier subsection contains a penalty provision, it is not necessary to limit the penalty provision in the last subsection (see LA, s 135 (5)).

Separate offence penalties for individuals and corporations should not be provided (unless there are exceptional circumstances and the Criminal Law Group has been consulted). The different penalty levels for individuals and corporations is reflected in the value of a penalty unit (see LA, s 133).

Penalties (but not infringement penalties) should be expressed in penalty units. Penalties not in penalty units should be converted.
11.7 Exceptions

11.7.1 General

When creating offences, there is often a need to provide for exceptions. It is important to draft the offence and exceptions in a way that makes the elements of the offence and the exceptions to the offence clear. The distinction is important because of the way the provisions about proof operate.

Provisions about burdens and standards of proof are set out in the Code, part 2.6. The prosecution has the legal burden of proof in relation to all the elements of an offence. However, a defendant who wishes to rely on an exception, exemption, excuse, qualification or justification provided by the law creating an offence has an evidential burden in relation to the matter (see Code, s 58 (3)).

Note, it is convenient just to use the term ‘exception’ here, but the points apply in the same way to the other things mentioned in s 58 (3) ie exemptions, excuses, qualifications and justifications.

Whether something is intended to be an offence element or an exception is a policy issue that needs to be worked out with the instructor when the offence is being drafted. Anything intended to be an exception for which the defendant is to have the evidential burden must be stated in a way that ensures it will not be construed as an element of the offence itself. If an exception is taken as an element of the offence, not only will the prosecution have the burden of proof in relation to it but the relevant fault element will also apply to it.

The High Court decision in DPP v United Telecasters reinforces this. That case concerned an offence of televising an advertisement for cigarettes. The expression ‘televising an advertisement’ was defined to not include an accidental or incidental accompaniment of the televising. The High Court held this exception to be part of the total statement of the obligation so the prosecution had the evidential and legal burden of proving that the exception did not apply.

Example

Unclear whether matter is offence element or exception

(1) A person must not be in a public place with a dangerous dog unless the dog is wearing a muzzle.

Matter clearly an offence element

(1) A person commits an offence if—

(a) the person is in a public place with a dangerous dog; and

(b) the dog is not wearing a muzzle.

Matter clearly an exception

(1) A person commits an offence if the person is in a public place with a dangerous dog.

(2) This section does not apply if the dog is wearing a muzzle.
11.7.2 Form of provision creating exception

Drafting practice should be to state exceptions in a separate subsection to the subsection that states the elements of the offence.

‘The general rule of statutory interpretation is that if the qualification appears in a separate provision to the offence provision, the presumption (subject to any express or implied contrary intention) is that the legislature intended to impose an evidential burden on the defendant (Dowling v Bowie [1952] 86 CLR 136, per Dixon CJ at p 137)—from Scrutiny Report No 27, reply to earlier comments on Charitable Collections Bill.

The preferred form for stating exceptions is ‘This section/subsection x does not apply if…’.as used in the Code, section 58 (3), examples. This will make it clear that the provision is one to which section 58 (3) applies.

The following standard note must be used for a provision creating an exception.49

Note  The defendant has an evidential burden in relation to the matters mentioned in s (#) (see Criminal Code, s 58).

Example

Firearms (Prohibited Pistols) Amendment Act 2003, s 18 [with changes]

84A Unauthorised manufacture of firearms

(1) A person commits an offence if the person manufactures a firearm.

Maximum penalty: 1 000 penalty units, imprisonment for 10 years or both.

(2) Subsection (1) does not apply to a person if the person is authorised by a licence or permit to manufacture the firearm.

(3) A person commits an offence if the person manufactures a prohibited firearm or a prohibited pistol.

Maximum penalty: 1 500 penalty units, imprisonment for 20 years or both.

(4) Subsection (3) does not apply to a person if the person is authorised by a licence or permit to manufacture the prohibited firearm or the prohibited pistol.

(5) An offence against this section is a strict liability offence.

Further reading


Criminal Code, pt 2.6


49 Information about use of the standard note added in version 2015-5.
11.8 Defences

11.8.1 General

The Code, part 2.3 sets out general defences that apply automatically to offences that are subject to the Code. These cover—

- lack of capacity (div 2.3.1 and div 2.3.2)
- intoxication (div 2.3.3)
- mistake and ignorance (div 2.3.4)
- external factors—intervening conduct or event, duress, sudden or extraordinary emergency, self defence and lawful authority (div 2.3.5).

11.8.2 Reasonable excuse defence

A number of existing offences include a reasonable excuse defence. Because of the range of defences provided for in the Code, it will generally not be necessary to provide for an express reasonable excuse defence when harmonising the offence.

However, the scrutiny committee has taken issue with this a number of times. A response from the Attorney-General published with Scrutiny Committee Report No 38, sets out the policy that is to be followed. This is that the reasonable excuse defence will not be included in an offence if the excuses that the instructing agency intends it to cover—

- are already covered by a generic defence in the Code; or
- can be articulated as a specific defence to the proposed offence (for example, discharging a firearm in a public place unless the registrar gives prior approval).

However, an exception to this rule can be made if—

- it is difficult to anticipate the justifiable excuses that may arise and impractical to attempt to specify them; or
- there are other circumstances that justify using the defence.

The Criminal Law Group should be consulted if it is proposed to include this defence in an offence.

The Scrutiny Committee has commented a number of times on the removal of the reasonable excuse defence from offences that have been harmonised. It has also often queried whether consideration was given to including a due diligence defence.

If reasonable excuse is being removed from an offence and no additional specific defence is being included, instructors should be advised to justify this in the explanatory statement to avoid adverse comment from the committee.

If a reasonable excuse or other specific defence is to be included, it should be stated in a separate subsection.
11.8.3 Form of provision creating defence

The appropriate form for stating defences depends on whether the defendant is to have an evidential or legal burden of proof in relation to the defence. A burden of proof that a law imposes on a defendant is generally an evidential burden (see Code, s 58). The defences provided in the Code, part 2.3 all require the defendant to discharge only an evidential burden of proof (see Code, s 58 (2)).

Under the Code, section 59, a law can impose a legal burden only if the law expressly—

(a) provides that the burden of proof in relation to the matter in question is a legal burden; or
(b) requires the defendant to prove the matter; or
(c) creates a presumption that the matter exists unless the contrary is proved.

Because of this, forms that are not clearly within section 59 will provide for an evidential burden.

The following form (illustrated in the Code, section 59, examples) should be used to impose a legal burden on the defendant in relation to a defence:

'\texttt{It is a defence to a prosecution for an offence against this section/subsection x if the defendant proves that...}.\texttt{'}

Be aware that imposing a legal burden of proof on a defendant raises human rights issues (eg the presumption of innocence in HRA, s 22 (1)) and would need to be justifiable in the circumstances to be human rights compatible.

The following standard note must be used for a provision creating a defence.\textsuperscript{50}

\texttt{Note The defendant has a legal burden in relation to the matters mentioned in s (#) (see Criminal Code, s 59).}

\textsuperscript{50} Information about use of the standard note added in version 2015-5.
11.9 Ancillary offences

Ancillary offences are offences related to a ‘primary’ offence. Most are provided for in the Code, part 2.4 (Extensions of criminal responsibility). They cover the following:

- attempt (s 44)
- complicity and common purpose (s 45) [ie aiding, abetting, counselling or procuring the commission of an offence]
- joint commission (s 45A)
- commission by proxy (s 46)
- incitement (s 47)
- conspiracy (s 48)
- accessory after the fact (s 717).

Note that under LA, section 189, a reference to an offence against a territory law includes a reference to a related ancillary offence.

Given this, offence provisions should not deal expressly with ancillary offences. The following standard note can be inserted in appropriate cases:

\[
\text{Note} \quad \text{A reference to an offence against a territory law includes a reference to a related ancillary offence, eg attempt (see Legislation Act, s 189).}
\]

It is important to avoid creating offences that are already covered by the general ancillary offences in the Code.

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51 Part updated in version 2015-5.
11.10 Directors’ liability provisions

Directors’ liability provisions are provisions imposing individual criminal liability on directors or other corporate officers as a consequence of the corporation having committed some offence (the underlying offence), beyond the normal liability that applies to a person who directly commits, or who is an ordinary accessory to, the underlying offence.

COAG Principles on directors’ liability provisions were adopted in December 2009, amid concerns that there appeared to be an increasing tendency for such provisions to be introduced as a matter of course and without proper justification, and because of a concern that inconsistencies in the standards of personal responsibility both within and across jurisdictions were resulting in undue complexity and a lack of clarity about responsibilities and requirements for compliance.

The COAG Principles are:

1. Where a corporation contravenes a statutory requirement, the corporation should be held liable in the first instance.
2. Directors should not be liable for corporate fault as a matter of course or by blanket imposition of liability across an entire Act.
3. A “designated officer” approach to liability is not suitable for general application.
4. The imposition of personal criminal liability on a director for the misconduct of a corporation should be confined to situations where:
   (a) there are compelling public policy reasons for doing so (for example, in terms of the potential for significant public harm that might be caused by the particular corporate offending);
   (b) liability of the corporation is not likely on its own to sufficiently promote compliance;
   (c) it is reasonable in all the circumstances for the director to be liable having regard to factors including:
      i. the obligation on the corporation, and in turn the director, is clear;
      ii. the director has the capacity to influence the conduct of the corporation in relation to the offending; and
      iii. there are steps that a reasonable director might take to ensure a corporation's compliance with the legislative obligation.
5. Where principle 4 is satisfied and directors’ liability is appropriate, directors could be liable where they:
   (a) have encouraged or assisted in the commission of the offence; or
   (b) have been negligent or reckless in relation to the corporation's offending.
6. In addition, in some instances, it may be appropriate to put directors to proof that they have taken reasonable steps to prevent the corporation’s offending if they are not to be personally liable.
The following checklist can assist in identifying whether a directors’ liability provision is justifiable:

1. Would commission of the underlying offence create a real risk of—
   - death or disabling injury to individuals (e.g. offences involving serious breaches of OHS obligations); or
   - catastrophic damage to the environment and/or serious risk to public health and safety (e.g. offences concerned with preventing toxic and irremediable contamination); or
   - undermining of confidence in financial markets (e.g. trading when insolvent); or
   - otherwise highly morally reprehensible conduct (e.g. serious offences under child protection or animal welfare legislation); or
   - public harm of a similar level of seriousness?

2. Do the size and nature of the penalties indicate a very serious offence?

3. Is the offence a core element of the relevant regulatory regime?

4. Is liability of the corporation unlikely on its own to sufficiently promote compliance?

5. Can directors be expected to directly control the conduct of the corporation in respect of the offence?

6. Are there reasonable steps the directors should take to ensure compliance by the corporation?

7. Are similar offences in the jurisdiction subject to a Directors’ Liability Provision and/or are corresponding offences in other jurisdictions subject to a Directors’ Liability Provision?

Instructors needing further assistance ought to be encouraged to discuss the matter with the Civil and Criminal Law Groups within JACS Legislation Policy Branch.

Example

Radiation Protection Act 2006

64 Criminal liability of corporation officers

(1) This section applies to the following provisions:

   (a) section 42 (Prohibition on disposing widgets into waterway);

   (b) section 43 (Prohibition on selling widgets to children);

   (c) section 44 (Prohibition on manufacturing widgets without safety constraints).

(2) An officer of a corporation commits an offence if—

   (a) the corporation contravenes a provision to which this section applies; and

   (b) the contravention is an offence against this Act (the relevant offence); and
(c) the officer was reckless about whether the contravention would happen; and

(d) the officer was in a position to influence the conduct of the corporation in relation to the contravention; and

(e) the officer failed to take all reasonable steps to prevent the contravention.

Maximum penalty: The maximum penalty that may be imposed for the commission of the relevant offence by an individual.

(3) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.

(4) In deciding whether the officer took (or failed to take) reasonable steps to prevent the contravention, a court must have regard to the following:

(a) any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):

(i) that the corporation arranged regular professional assessments of the corporation’s compliance with the contravened provision;

(ii) that the corporation implemented any appropriate recommendation arising from such an assessment;

(iii) that the corporation’s employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the contravened provision;

(b) any action the officer took when the officer became aware that the contravention was, or might be, about to happen.

(5) Subsection (4) does not limit the matters to which the court may have regard.

(6) This section does not apply if the corporation would have a defence to a prosecution for the relevant offence.

(7) In this section:

officer, of a corporation, means—

(a) a director or secretary of the corporation; or

(b) a person—

(i) who makes, or takes part in making, decisions that affect all, or a substantial part, of the business of the corporation; or
(ii) in accordance with whose instructions or wishes the directors of the corporation are accustomed to act (excluding advice given by the person in the proper exercise of functions attaching to the person’s professional capacity or business relationship with the directors or the corporation); or

(iii) a receiver, or receiver and manager, of the corporation’s property; or

(c) an administrator of the corporation; or

(d) an administrator of a deed of company arrangement executed by the corporation; or

(e) a liquidator of the corporation; or

(f) a trustee or other person administering a compromise or arrangement made between the corporation and someone else.
11.11 Alternative verdict provisions

An alternative verdict provision is appropriate in cases where similar offences are provided but one may require a higher fault element or where there are different, but related, offence elements (eg theft and receiving).

An alternative verdict offence must not have a higher maximum penalty than the maximum penalty for the offence charged.

84B Alternative verdict for offences against s 84A (3)

(1) This section applies if, in a prosecution for an offence for a failure to comply with a safety duty, the trier of fact—

(a) is not satisfied beyond reasonable doubt that the defendant is guilty of the offence; but

(b) is satisfied beyond reasonable doubt that the defendant is guilty of an alternative offence.

(2) The trier of fact may find the defendant guilty of the alternative offence, but only if the defendant has been given procedural fairness in relation to the finding of guilt.

If there is more than 1 alternative offence, a table form can be used. For an example of this see the Nature Conservation Act 2014, section 240.52

Note: From a criminal law / human rights perspective, this type of provision is appropriate because the possibility of an alternative verdict can arise at any point in a trial, see JACS advice in the Minister for Health’s response to the Committee in Scrutiny Report No 30 (21 August 2006).

52 Part updated in version 2015-5.
11.12 General offences

The creation of general offence provisions should be avoided (ie provisions creating offences for contravention of any provision of the legislation or of a group of provisions such as a division). General offence provisions do not distinguish between contraventions that give rise to criminal consequences and other kinds of contraventions. Nor do they distinguish between offences according to their seriousness.

11.13 Offences in subordinate legislation\(^{53}\)

When drafting legislation under which regulations are likely to be made, consider whether the regulations may need to create offences. If so, ensure an appropriate power is included.

See example 5 in 10.14 for the standard form of this power.

Generally the power should allow for a maximum penalty of no more than 30 penalty units (see JACS Guide for Framing Offences, version 2, page 32). But higher limits have been allowed in some cases, for example—

- *Unit Titles Act 2001*, section 181 (60 penalty units)
- *Planning and Development Act 2007*, section 426 (60 penalty units).

Note also that the Scrutiny Committee has expressed a preference for offences in subordinate legislation to involve not more than 60 penalty units (see Subordinate Legislation—Technical and Stylistic Standards).

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\(^{53}\) Part amended in version 2012-6—updated to keep consistent with the 2 reference materials cited in the part.
## 12 Incorporation of external material by reference

### 12.1 Incorporation by reference—at a glance

Use the following table as a guide when incorporating external material by reference into ACT legislation.

<table>
<thead>
<tr>
<th>Incorporated material</th>
<th>ACT law (including definitions incorporated by signpost)</th>
<th>Other Australian or NZ law (including definitions incorporated by signpost)</th>
<th>Other document (eg Australian Standard, industry code) (including definitions incorporated by signpost)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Incorporating law</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Act</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>point-in-time</td>
<td>1 Express statement required</td>
<td>1 Express statement required</td>
<td>1 Express statement required [see div 12.3.3]</td>
</tr>
<tr>
<td></td>
<td>[see div 12.3.2]</td>
<td>[see div 12.3.2]</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2 No notification required</td>
<td>2 No notification required</td>
<td>2 Notification required [full/qualified] [see div 12.3.4]</td>
</tr>
<tr>
<td>rolling</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1 Default [see div 12.3.2]</td>
<td>1 Default [see div 12.3.2]</td>
<td>1 Express statement required [see div 12.3.3]</td>
</tr>
<tr>
<td></td>
<td>2 No notification required</td>
<td>2 No notification required</td>
<td>2 Notification required [full/qualified] [see div 12.3.4; appendix 12.B, example 1]</td>
</tr>
<tr>
<td>statutory instrument</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>point-in-time</td>
<td>1 Express statement required</td>
<td>1 Default (from date of making of instrument) [see div 12.4.2]</td>
<td>1 Default (from date of making of instrument) [see div 12.4.2]</td>
</tr>
<tr>
<td></td>
<td>[see div 12.4.4]</td>
<td>2 Notification optional (qualified) [see div 12.4.5–12.4.8]</td>
<td>2 Notification required [full/qualified] [see div 12.4.5–12.4.7; appendix 12.B, example 3]</td>
</tr>
<tr>
<td>rolling</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1 Default [see div 12.4.4]</td>
<td>1 Express statement required</td>
<td>1 Express statement required [see div 12.4.3]</td>
</tr>
<tr>
<td></td>
<td>2 No notification required</td>
<td>2 Notification optional (qualified) [see div 12.4.5–12.4.8; appendix 12.B]</td>
<td>2 Notification required [full/qualified] [see div 12.4.5–12.4.7; appendix 12.B, example 3]</td>
</tr>
</tbody>
</table>
• any \textit{requirement} mentioned may be as a matter of law or drafting policy (see chapter for details).

• \textit{default} point-in-time incorporation as at the date of notification of an incorporating instrument must be expressly displaced to provide for point-in-time incorporation as at an earlier date.

• \textit{full notification} means notification of the full text of the incorporated document, replacements and amendments.

• \textit{notification} means notification in the legislation register; but see ‘qualified notification’.

• \textit{point-in-time} means incorporated as in force on a particular date on or before the commencement of the incorporating Act or statutory instrument.

• \textit{rolling} means incorporated as in force from time to time on and after the commencement of the incorporating Act or statutory instrument.

• \textit{statutory instrument} means any instrument made under an Act—subordinate law, disallowable instrument etc.

• \textit{qualified notification} means notification of details of incorporated documents, replacements and amendments (rather than full text), with provision for inspection on request.

\section*{12.2 General}

Exercise caution in drafting laws that have the effect of incorporating material external to the incorporating law. External incorporated material covers a very wide range. It may include legislation (ACT, interstate, Cwlth, even foreign legislation), codes, standards, and internal manuals or guidelines developed by government agencies.

Incorporation can happen when you least expect it: a signpost definition in an Act or subordinate law pointing to a definition in another law \textit{incorporates by reference} the definition in the other law.

\subsection*{12.2.1 Terminology used in this chapter}

For convenience, the term \textit{incorporation by reference} is used in this chapter, though elsewhere (eg LA, s 47) the terms \textit{application} and \textit{adoption} are sometimes used instead in similar contexts.

\textbf{Point-in-time and rolling incorporation}

External material can be incorporated by reference in 2 ways:

• \textit{point-in-time incorporation}—the material is incorporated as at a particular time (see example 1)

• \textit{rolling incorporation}—the material is incorporated as in force from time to time (ie after the incorporating law is made) (see example 2).
Example 1

*Cooperatives Act 2002, s 294* [with changes]

(8) A term used in this section has the same meaning as in the Corporations Act, section 746 as in force on 12 March 2003.

Example 2

(2) An inspector may only analyse a wombat-handler’s breath by using a breath analysis instrument that complies with Australian Standard 3547 (Breath Alcohol Testing Devices for Personal Use) as in force from time to time.

12.2.2 Principles

Two questions of principle are raised by incorporation by reference:

- **accessibility**

Incorporation by reference raises the spectre of secret law behind the publicly accessible Act or statutory instrument. It can be impractical, or impossible, for the user of the law to find the material that is incorporated. This threatens the democratic principle that citizens should be able to find the law by which they are ruled. In any case, incorporation by reference generally makes access to the full legislative scheme more difficult by requiring the reader to look outside the Act or statutory instrument to find the content of the law.

- **delegation of law-making authority (rolling incorporation only)**

In the case of material incorporated by rolling incorporation in a statutory instrument, the body responsible for making the law effectively delegates authority for amending the material, and thus that aspect of the law, to the author of the incorporated material. The author’s decisions about amendments to the material are not subject to approval or review by the Legislative Assembly. This threatens the democratic principle that elected law-makers or their governmental delegates (eg the Executive in the case of regulations) should be fully responsible for the law that governs those who elect the representatives.

The Legislative Assembly Standing Committee on Legal Affairs (performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee) (the *Scrutiny Committee*) considers these principles in its review of ACT law. Clients should be made aware that it is important that potential conflicts with these principles in draft legislation be drawn to the attention of the committee in explanatory statements.

See appendix 12.A to this chapter for relevant extracts from the committee’s report 43, 10 February 2004.
12.2.3 What material is suitable for incorporation?

Some limits should be placed on the circumstances in which incorporation is appropriate. The following is an indicative list of situations in which incorporation may be acceptable:

- **references to industry standards, codes etc**—To participate in nationally (and internationally) agreed regulatory schemes, it may be necessary to incorporate into ACT law codes of practice, Australian Standards, and similar industry guides. ACT government policy may not be so much that the **content** of the standard should be incorporated into ACT law; government policy in these circumstances is often just that ACT law should incorporate the relevant scheme **whatever its content**. In other words, it may simply be a policy of compliance with the scheme.

- **genuinely technical material** of little policy or political significance that is too extensive for inclusion in the relevant law itself (eg in a schedule), or that is subject to frequent change (in the case of rolling incorporation).

- **signposts to other laws** (for more detail, see pt 12.5) In the interests of greater access to the law it is preferable to incorporate the whole text of definitions and other material from laws made elsewhere. However, incorporation of these laws by cross-reference may be necessary or desirable in the circumstances set out in division 12.5.1.

12.2.4 What material is unsuitable for incorporation?

As a general rule, instructions to authorise the incorporation of material of the following kind by Act or subordinate law should be resisted:

- **references to internal departmental guidelines**—The incorporation of this material is usually unacceptable, since it hides significant parts of the law in documents that may be difficult to access. It is particularly unacceptable in the case of rolling incorporation, since this would allow the executive to change the law without adequate review by the legislature (eg disallowance).

- **other material of a non-technical nature** unless justified under division 12.2.3.

If it is necessary for such external material to be given status as law (but it is impractical or not desired to include the material in the actual law), it should be recommended that the material be made in the form of a disallowable instrument. In the case of a request for point-in-time incorporation of an internal document such as departmental guidelines, it may be acceptable for the document to be declared to be a notifiable instrument. In either case, the instrument will be required to be notified on the register, which deals with the issue of access; and if made disallowable, the issue of legislative review is also covered.
12.2.5 Potential inconsistency between incorporating law and incorporated material

Consider whether there are any inconsistencies between the incorporating law and incorporated material. This is particularly important for a rolling incorporation, since it is impossible to predict what the content of any changes to the incorporated material will be. If you think inconsistencies may arise, use the approach in the example. This will ensure that the Act (or statutory instrument) will take precedence over any inconsistent incorporated material (assuming this is intended).

An ‘inconsistency’ provision may be required because, on the face of it, the incorporated document is a ‘part’ of the Act (or statutory instrument) with the same status as the incorporating Act or instrument. It cannot be assumed that the Act or instrument as made will have higher legal status than the incorporated document. Though it might be possible to make a good argument that this is so (based, for example, on parliamentary intention or purpose), it is not free from doubt. Consequently, it may be desirable to clarify how any conflict between the two is to be interpreted.

Example

See appendix 12.B to this chapter, examples 1, 2 and 3, s 125
12.3 Incorporation by Act

12.3.1 LA, s 47 doesn’t apply

LA, section 47 deals with incorporation by statutory instrument (not by Act). Such incorporation must be authorised by law (an Act or a higher-level instrument). However, the higher-level law doesn’t do the incorporating itself.

By contrast, if an Act incorporates external material directly by its own terms, LA, section 47 does not apply. See part 12.4 (Incorporation by statutory instrument) for the effects of LA, section 47 and related matters.

12.3.2 Incorporation by Act—other laws—default rolling incorporation

An ACT Act that mentions another ACT Act or a subordinate law, or a law of the Commonwealth, a State or another Territory (or an instrument made under such a law), is taken to refer to that law as originally made and as in force from time to time (see LA, s 102). This amounts to a default rolling incorporation of the external law.

If this is the intended application of the other law, there is no need to provide expressly for its rolling incorporation.

To overcome the presumption in LA, section 102, if the other law is only intended to be applied as in force at a particular time (point-in-time incorporation), this needs to be expressly stated in the incorporating law.

Example 1
Default rolling incorporation (Corporations Law reference)
ACTEW/AGL Partnership Facilitation Act 2000, s 31

(2) Subsection (1) (a) does not apply to a disposal to a corporation that is, for AGL, a related body corporate within the meaning of the Corporations Act.

Example 2
Point-in-time incorporation—overturning presumption in LA, s 102

(#) A term used in this section has the same meaning as in the Corporations Act, section 746 as in force on 12 March 2003.

(#) An inspector may analyse a wombat-handler’s breath by using a breath analysis instrument that complies with Australian Standard 3547-1993 (Breath Alcohol Testing Devices for Personal Use) as in force on the date of commencement of the Wombat Amendment Act 2003 [which inserted this subsection into the Act].
12.3.3 Incorporation by Act—non-legislative material

An Act may incorporate material that is not a law of the ACT, the Commonwealth, a State or another Territory (see LA, s 102 (3), def law) by rolling or point-in-time incorporation.

The incorporation provision should be drafted to state expressly the nature of the incorporation (whether rolling or point-in-time), as there is no applicable default incorporation provision in LA.

Example

(1) An inspector may analyse a wombat-handler’s breath by using a breath analysis instrument that complies with Australian Standard 3547 (Breath Alcohol Testing Devices for Personal Use) as in force from time to time.

12.3.4 Incorporation by Act—accessibility of incorporated material

The requirements about notification and publication of incorporated material on the legislation register that apply to material incorporated by statutory instruments under LA, section 47 (5) and (6) (see pt 12.4 (Incorporation by statutory instrument)) do not apply to the incorporation of material directly by an Act.

However, for the reasons outlined in division 12.2.2, incorporated material (whether point-in-time or rolling incorporation applies) should be accessible to those affected by the Act. This is an issue of concern to the Scrutiny Committee. Instructors should be made aware of the need to consider—

- making the material accessible (eg by publication on the legislation register);
- giving the material legislative status by including it in a disallowable or notifiable instrument (see div 12.2.4); or
- providing for the material to be inspected on request by members of the public at the offices of the agency, and for the notification of details of publication etc on the legislation register (qualified notification).

A precedent for qualified notification is outlined in appendix 12.B to this chapter. Qualified notification would also provide that incorporated material has no effect unless details of making are notified on the legislation register. Inconsistency and inspection on request provisions are included in the precedent. A version of this scheme has been noted by the Scrutiny Committee in report 43, 10/2/04, p 11, and not objected to (see appendix 12.A to this chapter).

Further reading

Appendix 12.B to this chapter, examples 1 and 2, s 128; example 3, s 127
12.4 Incorporation by statutory instrument

12.4.1 General

LA, section 47 (Statutory instrument may make provision by applying law or instrument) makes detailed requirements about incorporation by reference by statutory instruments. A statutory instrument is any instrument made under an Act—eg subordinate laws, disallowable instruments, notifiable instruments, commencement notices—see LA, section 13.

However, LA, section 47 does not deal with incorporation by reference by Acts.

12.4.2 Incorporation of non-ACT laws & other documents—default point-in-time incorporation

A statutory instrument (the incorporating instrument) may generally only incorporate a law of another jurisdiction or an external document by point-in-time incorporation (see LA, s 47 (3)). This applies to laws of the Commonwealth, a State or another Territory, or a law of New Zealand (see LA, s 47 (10)).

Note: This is despite the operation of LA, section 102 which provides a presumption that references to laws of the Commonwealth, States or other Territories are to those laws as in force from time to time. LA, section 102 is expressed to be subject to LA, section 47. See also div 12.4.3.

If neither the incorporating instrument nor the authorising law provides expressly for the time of incorporation, the law of the other jurisdiction or external instrument is taken to have been applied as in force when the incorporating instrument was made (see LA, s 47 (4) (b)).

Although not necessary, it may be appropriate to indicate in the authorising law that only point-in-time incorporation is authorised. And even if it is intended that the default point-in-time incorporation under LA, section 47 (4) (b) is to apply (ie incorporation as at the time when the incorporating instrument was made), it may be appropriate to state this time in the incorporating provision (or in the citation of the incorporated document or law).

If the incorporated material is to be incorporated as in force before the date the incorporating instrument is made, this needs to be expressly stated in the incorporating instrument to displace the default time under LA, section 47 (4) (b).

Most informed readers of legislation will assume that a reference to a law of another Australian jurisdiction is a reference to that law as amended from time to time. If point-in-time incorporation applies it may therefore be advisable to indicate the time of incorporation expressly in the reference to the law in the incorporating instrument (eg ‘as in force at the date of commencement of this section’, if the section inserts the mention of the incorporated law).

ACT laws are incorporated by rolling incorporation (see div 12.4.4).

Example 2 indicates a form of words that the drafter should request the instructor to incorporate into the explanatory statement for a draft regulation of this type.
Example 1
Point-in-time incorporation—authorising law [s 123 (2) and (3) optional]
_Wombat Act 2004_

123 Standards and guidelines

(1) A regulation may prescribe minimum standards or guidelines for this Act.

(2) A regulation made for subsection (1) may apply, adopt or incorporate a law or instrument as in force at a particular time.

_Note 1_ The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disappplied (see s 47 (7)).

_Note 2_ A notifiable instrument must be notified under the Legislation Act.

Example 2
Point-in-time incorporation—incorporating instrument
_Wombat Regulation 2004_

456 Snouty Marsupial Guidelines

The registrar of native animals must ensure that the wombat pound is maintained in accordance with the Snouty Marsupial Guidelines published by the Commonwealth [, as in force on 1 July 2003 or the date this section commenced].

_Note 1_ The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disappplied (see s 47 (7)).

_Note 2_ A notifiable instrument must be notified under the Legislation Act.

Advice for instructors:
Advise instructors to include the following text, or similar words, in the explanatory statement for the draft regulation to ensure that the notification requirement is made clear to the Legislative Assembly and users of the regulation:

This incorporates [eg the guidelines] into the regulation. The Legislation Act, s 47 (5) provides that such an incorporated document is taken to be a notifiable instrument. A notifiable instrument must be notified on the legislation register under the Legislation Act.
12.4.3 Displacement of LA, s 47 (3)—rolling incorporation

LA, section 47 (3) is a *determinative provision* (see LA, s 47 (9)). It applies unless it is displaced expressly, or by manifest contrary intention (see LA, s 6). Under LA, section 47 (4) (a), s (3) may be displaced by, or under authority given by, an Act or the authorising law.

*Note:* Even if the authorising law is itself a subordinate law or disallowable instrument, the authorising law may displace LA, section 47 (3). So it is not necessary for the displacing provision to be in an Act (for example, in the Act under which the authorising law is made).

Displacement would usually be by the authorising law (see examples 1 and 2) but the incorporating instrument may itself displace the operation of LA, section 47 (3) if authority to do so is given by the authorising law. Also, an Act other than the authorising law could provide for displacement of LA, section 47 (3).

If a law of the Commonwealth, a State or another Territory is incorporated, under LA, section 102 there would (if LA, s 47 had not been made) be a presumption that a reference to that law is a rolling incorporation of that law. However, LA, section 102 is expressed to be subject to LA, section 47. The presumption is overridden by LA, section 47 (3) for references to these laws in statutory instruments.

Example 2 indicates a form of words that the drafter should request the instructor to incorporate into the explanatory statement for a draft regulation of this kind.

**Example 1**

**Rolling incorporation—authorising law**

*Wombat Act 2004*

123 Standards and guidelines

(1) A regulation may prescribe minimum standards or guidelines for this Act.

(2) A regulation made for subsection (1) may apply, adopt or incorporate a law or instrument as in force from time to time.

*Note 1* The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapproved (see s 47 (7)).

*Note 2* A notifiable instrument must be notified under the Legislation Act.
Example 2
Rolling incorporation—incorporating instrument
Wombat Regulation 2004

Snouty Marsupial Guidelines

The registrar of native animals must ensure that the wombat pound is maintained in accordance with the Snouty Marsupial Guidelines published by the Commonwealth in January 2004 as in force from time to time.

Advice for instructors:
Advise instructors to include the following text, or similar words, in the explanatory statement for the draft regulation to ensure that the notification requirement is made clear to the Legislative Assembly and users of the regulation:

This incorporates [eg the guidelines] into the regulation. The Legislation Act, s 47 (6) provides that such an incorporated document, and any later changes to the document, are taken to be notifiable instruments. A notifiable instrument must be notified on the legislation register under the Legislation Act.

12.4.4 Incorporation of ACT laws—default rolling incorporation

A statutory instrument may incorporate an ACT law by point-in-time or rolling incorporation (see LA, section 47 (2)). An ACT law is an Act, subordinate law or disallowable instrument—see LA, section 47 (10).

The instrument may incorporate an ACT law by rolling incorporation whether or not the Act, subordinate law or disallowable instrument that authorises the making of the instrument (the authorising law—see LA, section 47 (1)) authorises rolling incorporation.

By simply citing the ACT law that is incorporated, the statutory instrument is taken to refer to that law as originally made and as in force from time to time (see LA, s 102). The combination of LA, section 47 (2) and section 102 provides for the default rolling incorporation of the ACT law.

However, if it is only intended to incorporate an ACT law as in force at a particular time this needs to be expressly provided for to override the presumption in LA, section 102.
12.4.5 Notification of text of incorporated law or instrument

If a law of another jurisdiction, or an instrument, is incorporated as in force at a particular time by the operation of LA, section 47, the text of the law or instrument must be notified on the register (see LA, s 47 (5)).

If the law of the other jurisdiction or the external instrument is incorporated as in force from time to time (ie LA, s 47 (3) is displaced expressly or by necessary implication—see div 12.4.3), then LA, section 47 (6) provides:

• the law or instrument as in force when the statutory instrument is made must be notified;
• each subsequent amendment of the law or instrument must be notified;
• if the law or external instrument is repealed or remade, in whole or in part, the relevant remade provision, law or instrument must be notified together with all subsequent amendments etc.

Advise instructors of the need to include an appropriate explanation of the notification requirement in the explanatory statement for the draft incorporating instrument. This is to alert the Assembly and future users of the instrument and the incorporated material. For examples of these notes, see division 12.4.2, example 2 and division 12.4.3, example 2.

12.4.6 Displacement of notification requirements—general

LA, section 47 (7) provides that the requirements under LA, section 47 (5) or (6) for notification do not apply, or apply with modifications, if so provided by:

• the authorising law; or
• the instrument itself, if the instrument is a subordinate law or disallowable instrument.

Displacement of LA, section 47 (5) or (6) may be necessary or desirable in the following cases:

• references to laws of the Commonwealth, the States or other Territories, and perhaps laws of New Zealand (justification for displacement being that up-to-date versions of such laws are readily accessible either on the internet or through libraries)—see division 12.4.8

Note However, displacement of LA, section 47 (5) may be less justified, since it would require only the notification of a single instrument (the law as in force at a particular time) on the register, with no ongoing notification requirement.

• the instrument is subject to copyright, as is the case with Australian Standards publications
• other cases in which it would be administratively unworkable (for example, if the relevant document is not accessible electronically in its original format).
The Scrutiny Committee has noted, but not objected to, the displacement of LA, section 47 (6) for an Australian Standard for reasons of copyright, as stated in the relevant explanatory statement. It has also criticised another explanatory statement for failing to state a reason for displacement. See the extracts from report 43 at appendix 12.A to this chapter.

LA, section 47 (5) or (6) should not be displaced except with the parliamentary counsel’s approval.

Advise instructors of the need to include an appropriate justification for displacing the notification requirement in the explanatory statement for the draft incorporating instrument. Examples 1 and 2 suggest forms of words to recommend to instructors.

Example 1

Incorporating a regulation—point-in-time incorporation (LA, s 47 (5) displacement)

Wombat Regulation 2004

The following definition of the incorporated material in the dictionary to the regulation indicates that it is incorporated by point-in-time incorporation.


\[\text{Note}\] AS 123 may be purchased at www.standards.org.au.\(^{54}\)

99 Disapplication of Legislation Act, s 47 (5)

The Legislation Act, section 47 (5) does not apply to AS 123 under this regulation.

Advice for instructors:

Advise instructors to include the following text, or similar words, in the explanatory statement for the draft regulation to ensure that the displacement of the notification requirement is justified to the Legislative Assembly, as recommended by the Scrutiny Committee:

[eg AS 123] is incorporated into the regulation [(see dict, def of AS 123)]. The Legislation Act, s 47 (5) provides that an incorporated document is taken to be a notifiable instrument. A notifiable instrument must be notified on the legislation register under the Legislation Act. However, the Legislation Act, s 47 (5) may be displaced by the authorising law (the Act) or the incorporating instrument (this regulation) (see s 47 (7)). The Legislation Act, s 47 (5) is displaced here because the incorporated standards are subject to copyright and may be purchased over the Internet.

Or describe an applicable alternative justification. See the justifications listed above in this section. For a justification of the displacement of LA, s 47 (6) in the case of provisions of non-ACT laws incorporated by rolling incorporation, see div 12.5.2, example 2 and div 12.5.3, example.

\(^{54}\) Note updated in version 2015-3.
Example 2

Incorporating a regulation—rolling incorporation (LA, s 47 (6) displacement)

Wombat Regulation 2004

The following definition of the incorporated material in the dictionary to the regulation indicates that it is incorporated by rolling incorporation.

\[ \text{AS 123} \] means AS123 (National Marsupial Code) as in force from time to time.

Note  AS 123 may be purchased at www.standards.org.au.55

99  **Disapplication of Legislation Act, s 47 (6)**

The Legislation Act, section 47 (6) does not apply to AS 123 under this regulation.

Advice for instructors:

Advise instructors to include the following text, or similar words, in the explanatory statement for the draft regulation to ensure that the displacement of the notification requirement is justified to the Legislative Assembly, as recommended by the Scrutiny Committee:

[eg AS 123] is incorporated into the regulation [(see dict, def of AS 123)]. The Legislation Act, s 47 (6) provides that an incorporated document, and any amendment or replacement of such a document, are taken to be notifiable instruments. A notifiable instrument must be notified on the legislation register under the Legislation Act. However, the Legislation Act, s 47 (6) may be displaced by the authorising law (the Act) or the incorporating instrument (this regulation) (see s 47 (7)). The Legislation Act, s 47 (6) is displaced here because the incorporated standards are subject to copyright and may be purchased over the Internet.

Or describe an applicable alternative justification. See the justifications listed above in this section. For a justification of the displacement of LA, s 47 (6) in the case of provisions of non-ACT laws incorporated by rolling incorporation, see div 12.5.2, example 2 and div 12.5.3, example.

55 Note updated in version 2015-3.
Example 3

Road Transport (Vehicle Registration) Regulation 2000 [with changes]

Disapplication provision

5A Disapplication of Legislation Act, s 47 (5) and s 47 (6)

(1) The Legislation Act, section 47 (5) does not apply in relation to an instrument applied, adopted or incorporated as in force at a particular time under this regulation unless the instrument is expressed to be a notifiable instrument.

Examples—instruments to which s 47 (5) does not apply
1 an adopted standard
2 the UN ECE Agreement
3 Vehicle Standards Bulletin No 6 - National Code of Practice for Heavy Vehicle Modifications

(2) The Legislation Act, section 47 (6) does not apply in relation to an instrument applied, adopted or incorporated as in force from time to time under this regulation unless the instrument is expressed to be a notifiable instrument.

Examples—instruments to which s 47 (6) does not apply
1 a national standard
2 Vehicle Standards Bulletin No 6 - National Code of Practice for Heavy Vehicle Modifications

Note An instrument applied, adopted or incorporated under this regulation does not need to be notified under the Legislation Act because s 47 (5) and (6) does not apply (see Legislation Act s 47 (7)).

12.4.7 Qualified displacement of notification requirements—rolling incorporation

If full-text notification of incorporated material is impracticable or impossible, the drafter should recommend to the instructor that the authorising law or the incorporating instrument include provisions enhancing access to the law, as follows:

- a provision requiring the relevant agency to allow a member of the public to inspect the incorporated material at stated times and places
- a provision allowing notification on the register of details of the incorporated material (ie not the full text)
- displacement of the full-text notification requirements of LA, section 47 (5) or (6) if the details are so notified.

Examples

See appendix 12.B to this chapter, example 3
12.4.8 Displacement of notification requirements—other Australian & NZ laws

Australian and NZ laws are generally accessible in the ACT on the internet or in libraries. For this reason, there is little difficulty in justifying the displacement of the notification requirements in LA, section 47 (5) and (6) if these laws are incorporated by a statutory instrument.

If provisions of these laws are incorporated by definition or other means into ACT subordinate laws or instruments consider whether LA, section 47 (5) or (6) should be displaced by the law authorising incorporation or the incorporating instrument. An alternative to simple displacement would be to provide for the qualified displacement scheme outlined in appendix 12.B, example 3 (see div 12.4.7). Full notification would not generally be necessary for an incorporated Australian or NZ law.

Consult the parliamentary counsel about the approach to take in each case.
12.5 Incorporation of definitions by reference

12.5.1 General

Defining terms by reference to other laws is common practice in ACT laws. Terms are also sometimes defined by reference to non-legislative material, eg codes, standards etc. Both of these are forms of incorporation by reference, and the principles discussed in this chapter apply to incorporated definitions in the same way that they apply to other incorporated material.

Exercise caution in deciding whether to draft provisions that incorporate definitions by reference. However, incorporation of definitions by reference to other legislation or instruments may be appropriate in the following circumstances:

- A uniform meaning of the defined term across the statute book (eg *motor vehicle*).
- A set of ACT laws may form a package, in which the meaning of terms in one law are applied by reference in other laws. For example:
  - the *Taxation Administration Act 1999* scheme providing for the administration of taxes imposed by other territory laws;
- The incorporating law may form part of a uniform national scheme, requiring that amendments to other laws or non-legislative instruments be automatically reflected in the ACT scheme as they are made elsewhere.
- There are other policy reasons for tying the definition in the incorporating law to the other legislation rather than reproducing the definition in that law (even if the 2 laws involved do not technically form part of a uniform scheme, they may be linked less formally in a policy framework).
- The definition may simply be too extensive, or may itself incorporate terms defined elsewhere in the law from which it is taken, making it impractical to reproduce the definition in the incorporating law.
12.5.2 General incorporation of definitions

Use the following forms for general incorporation of terms as defined in other laws or instruments. (For discussion about terms as used, see div 12.5.3).

In examples 2 and 3 (incorporating a regulation), the advice noted below each example should be given to the instructor. These are not exhaustive. The same general standards and precedents apply in other cases of general application of definitions (eg for a regulation that applies another Australian law by rolling incorporation, see div 12.4.3 and divs 12.4.5–12.4.8).

Example 1
In an Act (rolling incorporation—see LA, s 102)

## Terms defined in XYZ Act 2003 (Cwlth)

A term defined in the *XYZ Act 2003* (Cwlth) has the same meaning in this Act.

Example 2
In a regulation (rolling incorporation, but only if LA, s 47 (3) is displaced—see div 12.4.3)

*Wombat Baits Regulation 2004*

123 Terms defined in Poisons and Drugs Code

A term defined in the *Poisons and Drugs Code* published by the National Poisons and Drugs Authority, as in force from time to time, has the same meaning in this regulation.

Advice for instructors:
Advise instructors to include the following text, or similar words, in the explanatory statement for the draft regulation to ensure that the notification requirement is made clear to the Legislative Assembly and users of the regulation:

This incorporates into the regulation the definitions in [eg the Code] of terms used in the regulation. The Legislation Act, s 47 (6) provides that such incorporated provisions, and any later changes to them, are taken to be notifiable instruments. A notifiable instrument must be notified on the register under the Legislation Act.
Example 3
In a regulation (point-in-time incorporation)
Wombat (National Recognition) Regulation 2004

123 Terms defined in Wombat Scheme Act 2003 (Cwlth)

(1) A term defined in the Wombat Scheme Act 2003 (Cwlth), as in force at 1 July 2003, has the same meaning in this regulation.

(2) For this regulation, the Legislation Act, section 47 (5) does not apply to the Wombat Scheme Act 2003 (Cwlth).

Advice for instructors:
Advise instructors to include the following text, or similar words, in the explanatory statement for the draft regulation to ensure that the notification requirement is made clear to the Legislative Assembly and users of the regulation:

The definitions in [eg the Cwlth Act] of terms used in this regulation are incorporated into this regulation [(see s (1))]. The Legislation Act, s 47 (5) provides that such incorporated provisions are taken to be notifiable instruments. A notifiable instrument must be notified on the legislation register under the Legislation Act. However, the Legislation Act, s 47 (5) may be displaced by the authorising law (the Act) or the incorporating instrument (this regulation) (see Legislation Act, s 47 (7)). The Legislation Act, s 47 (5) is displaced here because [Cwlth legislation is readily accessible, for example, at public libraries and over the internet, and there is therefore no need for provisions of the Cwlth Act to be published on the legislation register].

Or describe an applicable alternative justification. See the justifications listed in division 12.4.6. For a justification of the displacement of LA, s 47 (6) for provisions of an Australian Standard incorporated by rolling incorporation, see div 12.4.3, examples.
12.5.3 General incorporation of terms as used

Think carefully before incorporating into an ACT law terms as used in a non-ACT law or instrument. As well as the various definitions and uses from the incorporated law or material, this approach will import with it the local interpretative context of the incorporated law or material. Accordingly, it may displace LA, dictionary, part 1. For example, if a term used in a Cwlth Act is to have the same meaning in an ACT Act, the term may take its 

Acts Interpretation Act 1901 (Cwlth) meaning instead of its LA, dictionary, part 1 meaning.

Check the incorporated law or material carefully to avoid unintended consequences, and clarify any definitions etc to avoid doubt or inconsistency.

Example
Incorporating a regulation—rolling incorporation

Wombat Baits Regulation 2004

123 Terms used in Wombat Scheme Act 2003 (Cwlth)

(1) A term used in the Wombat Scheme Act 2003 (Cwlth), as in force from time to time, has the same meaning in this regulation.

(2) For this regulation, the Legislation Act, section 47 (6) does not apply to the Wombat Scheme Act 2003 (Cwlth).

Advice for instructors:
Advise instructors to include the following text, or similar words, in the explanatory statement for the draft regulation to ensure that the notification requirement is made clear to the Legislative Assembly and users of the regulation:

The definitions in [eg the Cwlth Act] of terms used in this regulation [(see s (1)]]. The Legislation Act, s 47 (6) provides that such incorporated provisions, and any later changes to them, are taken to be notifiable instruments. A notifiable instrument must be notified on the legislation register under the Legislation Act. However, the Legislation Act, s 47 (6) may be displaced by the authorising law (the Act) or the incorporating instrument (this regulation) (see Legislation Act, s 47 (7)). The Legislation Act, s 47 (6) is displaced here because [Cwlth legislation is readily accessible, for example, at public libraries and over the internet, and there is therefore no need for provisions of the Cwlth Act to be published on the legislation register].

Or describe an applicable alternative justification. See the justifications listed in div 12.4.6. For a justification of the displacement of LA, s 47 (6) for provisions of an Australian Standard incorporated by rolling incorporation, see div 12.4.3, examples.
Appendix 12.A
(see div 12.2.2)

Extracts from Legislative Assembly Scrutiny Committee Report No 43, 10 February 2004

**Building Bill 2003**

*Note*

The bill, cl 151 (4), would displace LA, s 47 (6) in relation to various Australian (or Aus/NZ) Standards, which are to be incorporated by rolling incorporation into a regulation proposed to be made under authority of the bill.

*Extract from scrutiny report*

...  

(i) an undue trespass on personal rights and liberties  
(iv) inappropriate delegation of legislative powers  
(v) an exercise of legislative power insufficiently subject to parliamentary scrutiny

These three terms of reference are relevant to clauses of the Bill that displace the operation of subsection 47 (6) of the Legislation Act 2001. This provision operates where a law incorporates into its text the text of some document as that latter document exists from time to time. The effect of subsection 47 (6) is that the text of the incorporated document, as it is from time to time, must be published in the legislation register. The policy objective here is the public can thus ascertain just what is the law of the Territory as it stands at a particular time; that is, to find the text of the incorporated document as it stands at a particular time, a member of the public need only consult the legislation register. This is an important safeguard of the basic right to ascertain the law. Displacement of subsection 47 (6) thus raises a rights issue.

At various points, the proposed new Building Regulations 2003 incorporate by reference the provisions of an Australian Standard, or of an Australian/New Zealand Standard. By [the bill,] subclause 151 (4), subsection 47 (6) of the Legislation Act 2001 is displaced in relation to these standards.

There is no justification offered in the Explanatory Statement as to why subsection 47(6) is displaced. The Committee considers that the principle underlying subsection 47(6) is important and that where it is displaced a justification should be offered so that the Assembly can assess whether displacement is warranted. The Committee notes that the Explanatory Statement in relation to subclause 127 (4) of the Construction Occupations (Licensing) Bill 2003 (see below), a justification was given in the Explanatory Statement.
Construction Occupations (Licensing) Bill 2003

Note
The bill, cl 127, would displace LA, s 47 (6) in relation to Australian Standard 3500, which is to be incorporated by rolling incorporation into a regulation proposed to be made under authority of the bill.

Extract from scrutiny report

... 

[the report repeats the subheading and first paragraph of its comments about the Building Bill quoted above]

At various points, the proposed new Construction Occupations (Licensing) Regulations 2003 incorporate by reference the provisions of AS 3500, which concern standards applicable in the plumbing and drainage trades. By clause 124, subsection 47 (6) of the Legislation Act 2001 is displaced in relation to AS 3500. The justification offered in the Explanatory Statement is that "Australian Standards are subject to copyright and readily purchased at the Standards Shop in Canberra or over the Internet".

[The Legislation Act,] Subclause 47 (6) is by [the bill,] subclause 127 (4) displaced in relation to any "Australian standard" adopted by the regulations. The Explanatory Statement states in relation thereto:

[The bill,] Clause 127 allows the Regulations to adopt Australian Standards as in force from time to time without the text of the standard being published in the legislation registrar. This provision is intended to allow the ACT to adopt national standards at the same time as other jurisdictions without raising copyright questions and displaces an assumption of the Legislation Act that is explained in notes to the clause. Australian Standards are readily purchased at the Standards Shop in Canberra or over the Internet.

The Committee draws this issue to the attention of the Assembly.
Dangerous Substances Bill 2003

Note
The bill, cl 220 (4) (b) & (5), would displace LA, s 47 (6) and (7) in relation to various codes and standards that are to be incorporated by rolling incorporation into the regulation. The bill, cl 220 provides for a qualified notification procedure in relation to documents incorporated by either the bill or the regulation, by which an incorporated document notice giving details of each incorporated document (but not the full text) is required to be notified on the legislation register. Incorporated documents are to have no effect unless notified on the register via an incorporated document notice. This is the basis for the scheme set out at appendix 12.B.

Extract from scrutiny report

... [the report repeats the subheading and first paragraph of its comments about the Building Bill quoted above]

In several key respects, the Bill permits the incorporation by reference of the provisions of a number of documents. By [the bill,] clause 220 (5), subsection 47 (6) of the Legislation Act 2001 is displaced in relation to these documents. The justification offered in the Explanatory Statement is as follows:

[The bill,] Clause 220 explains the way in which certain incorporated documents are to be notified. It makes it clear that the usual provisions under the Legislation Act 2001 dealing with the notification of incorporated documents on the Legislation Register (sections 47 (6) and 47 (7)) do not apply. Instead, the chief executive may prepare a written notice containing details about the incorporated documents, and it is this notice (termed an incorporated document notice) that must be included on the Legislation Register. This provision is necessary because some of the incorporated documents may not be able to be reproduced in a form suitable for inclusion on the Legislation Register, or they may be subject to copyright restrictions.
Appendix 12.B
(see div 12.3.4)

Qualified notification procedure—documents incorporated by Act (or by Act and statutory instrument)

The scheme in the examples below is adapted from the Dangerous Substances Bill 2003 scheme that is the subject of the scrutiny committee’s comments in report 43, 10 February 2003 (see appendix 12.A to this chapter).

If the Act is to provide for incorporation by a form of statutory instrument other than regulations (eg disallowable codes of practice, as in the actual case of the Dangerous Substances Bill 2003) the examples can be easily adapted.

The examples deal with the following variations:

- Example 1 Act—rolling incorporation (including incorporation by statutory instrument)
- Example 2 Act—point-in-time incorporation (including incorporation by statutory instrument)
- Example 3 Statutory instrument—authorising law does not itself incorporate documents

Example 1
Act—rolling incorporation (including incorporation by statutory instrument)
Wombat Nurturing Act 2004

Division #.# Incorporated documents

123 Definitions—div #.#

(1) In this division:

*amendment*, of an incorporated document, includes an amendment of a replacement of the incorporated document.

*incorporated document* means any of the following:

(a) the Wombat Diseases Manual;

(b) AS ####;

[etc];

[(#) a document incorporated by the regulations.]

Drafting notes:

1 Because reference would be made to the incorporated documents where they are used in the Act (ie outside this div), full citation of incorporated documents (title, author/publisher, sometimes year) would normally be given by definition elsewhere (eg in the dictionary).

2 However, their full citation should be given without reference to their continuing effect. This is provided for by s 124 below.

3 Par (#) only applies if the regulation (or other statutory instruments) is to apply incorporated documents.
incorporated includes applied and adopted.

incorporated document notice—see section 126.

replacement, of an incorporated document, means—

(a) a document that replaces the incorporated document; or

(b) a document (an initial replacement) that replaces a document mentioned in paragraph (a); or

(c) a document (a further replacement) that replaces an initial replacement or any further replacement.

Example—replacement

a new edition of an incorporated document

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

124 References to incorporated documents

(1) In this Act, a reference to an incorporated document is a reference to—

(a) the document as in force at the commencement of this section; or

(b) if there is a replacement for the document—the replacement; or

(c) if the document or a replacement is amended—the document or replacement as amended.

[Note A reference to an Act includes a reference to statutory instruments made or in force under the Act, including any regulation and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).]

(2) If an incorporated document notice is notified for an incorporated document, replacement or amendment, the document, replacement or amendment has effect for this Act on the day after notification, or on a later date stated in the notice.

(3) If an incorporated document notice is not notified for an incorporated document, replacement or amendment, the document, replacement or amendment has no effect for this Act[, subject to section 127].

Drafting note:

If there are to be no references to incorporated documents in the regulation or other statutory instruments under the Act, the bracketed words in s (3) are unnecessary.
125  **Relationship of Act to incorporated documents**

(1) An incorporated document has no effect to the extent that it is inconsistent with this Act.

(2) However, an incorporated document must not be taken to be inconsistent with this Act to the extent that the document and this Act can operate concurrently.

*Note A reference to an Act includes a reference to statutory instruments made or in force under the Act, including any regulation and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).*

126  **Notification of incorporated documents**

(1) The chief executive may prepare a written notice (an *incorporated document notice*) for an incorporated document, replacement or amendment that contains—

(a) for an incorporated document or replacement—details of the document or replacement, including the following:

(i) title, author and date of publication;

(ii) a date of effect (no earlier than the day after the day of notification of the notice); and

(b) for an amendment—details of the amendment, including the following:

(i) date of publication (or of the document or replacement as amended);

(ii) a brief summary of the effect of the amendment;

(iii) a date of effect (no earlier than the day after the day of notification of the notice); and

(c) for an incorporated document, replacement or amendment—details of the following:

(i) how access to inspect the document, amendment or replacement may be obtained under section 128 (Inspection of incorporated documents);

(ii) how copies may be obtained.

(2) An incorporated document notice is a notifiable instrument.

*Note A notifiable instrument must be notified under the Legislation Act.*
127 Documents incorporated by the regulation—application of Legislation Act, s 47 (6)

(1) This section applies to an incorporated document that is incorporated by the regulation, and to any replacement or amendment of the document.

(2) If an incorporated document notice is notified for the document, replacement or amendment, the Legislation Act, section 47 (6) does not apply to the document, replacement or amendment.

(3) However, if an incorporated document notice is not notified for the document, replacement or amendment—

(a) the Legislation Act, section 47 (6) applies to the document, replacement or amendment; and

(b) that application may not be displaced by the regulation, despite the Legislation Act, section 47 (7) (a).

Note The Legislation Act, s 47 (6) requires notification of the full text of the document, replacement or amendment unless its application is displaced (see that Act, s 47 (7) (a)).]

Drafting note: If the regulation (or other statutory instruments) does not incorporate any material, this section is not required.

128 Inspection of incorporated documents

The chief executive must ensure that an incorporated document, replacement or amendment is made available for inspection free of charge to the public on business days at reasonable times at the office of an administrative unit administered by the chief executive.
Example 2
Act—point-in-time incorporation (including incorporation by statutory instrument)
Wombat Nurturing Act 2004

Division #.#  Incorporated documents

123  Definitions—div #.#

(1) In this division:

*incorporated document* means any of the following:

(a) the Wombat Diseases Manual;
(b) AS ####;
[etc];
((#) a document incorporated by the regulations.]

*Drafting notes:*
1 Because reference would be made to the incorporated documents where they are used in the Act or regulation (ie outside this division), full citation of incorporated documents (title, author/publisher, sometimes year) would normally be given by definition elsewhere (eg in the dictionary).
2 Because the documents are to be applied as at a fixed point of time, their full citation elsewhere (as opposed to their abbreviated citation here) SHOULD indicate which version of the document is incorporated into the Act (regulation) (eg 'AS ####-1998-3, Construction of Wombat Cages' or 'Wombat Diseases Manual, 2nd edition, published by the Commonwealth on 1 January 2003').
3 Par (#) only applies if the regulation (or other statutory instruments) is to apply incorporated documents.

*incorporated* includes applied and adopted.

*incorporated document notice*—see section 125.

124  References to incorporated documents

(1) In this Act, a reference to an incorporated document is a reference to the document as made.

(2) If an incorporated document notice is notified for an incorporated document, the document has effect for this Act on the day after notification.

(3) If an incorporated document notice is not notified for an incorporated document, the document has no effect for this Act[,, subject to section 127].

*Drafting note:*
If there are to be no references to incorporated documents in the regulation or other statutory instruments under the Act the bracketed words in s (3) are unnecessary.
125 Relationship of Act to incorporated documents

(1) An incorporated document has no effect to the extent that it is inconsistent with this Act.

(2) However, an incorporated document must not be taken to be inconsistent with this Act to the extent that the document and this Act can operate concurrently.

[Note A reference to an Act includes a reference to statutory instruments made or in force under the Act, including any regulation and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).]

126 Notification of incorporated documents

(1) The chief executive may prepare a written notice (an incorporated document notice) for an incorporated document that contains details of the following:

(a) title, author and date of publication;

(b) how access to inspect the document may be obtained under section 128 (Inspection of incorporated documents);

(c) how copies may be obtained.

(2) An incorporated document notice is a notifiable instrument.

[Note A notifiable instrument must be notified under the Legislation Act.]

127 Documents incorporated by the regulation—application of Legislation Act, s 47 (5)

(1) This section applies to an incorporated document that is incorporated by regulation.

(2) If an incorporated document notice is notified for the document, the Legislation Act, section 47 (5) does not apply to the document.

(3) However, if an incorporated document notice is not notified for the document—

(a) the Legislation Act, section 47 (5) applies to the document; and

(b) that application may not be displaced by regulation, despite the Legislation Act, section 47 (7) (a).

[Note The Legislation Act, s 47 (6) requires notification of the full text of the document, replacement or amendment unless its application is displaced (see that Act, s 47 (7) (a)).]

Drafting note:

If the regulation (or other statutory instruments) does not incorporate any documents, s 127 is not required.
128 Inspection of incorporated documents

The chief executive must ensure that an incorporated document is made available for inspection free of charge to the public on business days at reasonable times at the office of an administrative unit administered by the chief executive.

Example 3
Act—rolling incorporation (by statutory instrument alone)

_Drafting note:_
This example presumes that rolling incorporation by the regulation is authorised by the parent Act.

_Wombat Nurturing Regulation 2004_

_Division #.#  Incorporated documents_

123 Definitions—div #.#

(1) In this division:

_amendment_, of an incorporated document, includes an amendment of a replacement of the incorporated document.

_incorporated document_ means any of the following:

(a) the Wombat Diseases Manual;

(b) AS ####;

[etc];

[(#) a document incorporated by the regulations.]

_Drafting notes:_

1 Because reference would be made to the incorporated documents where they are used in the regulation (ie outside this div), full citation of incorporated documents (title, author/publisher, sometimes year) would normally be given by definition elsewhere (eg in the dictionary).

2 However, give their full citation without referring to their continuing effect. This is provided for by s 124 below.

3 Par (#) only applies if the regulation (or other statutory instruments) is to apply incorporated documents.

_incorporated_ includes applied and adopted.

_incorporated document notice_—see section 125.

_replacement_, of an incorporated document, means—

(a) a document that replaces the incorporated document; or

(b) a document (an _initial replacement_) that replaces a document mentioned in paragraph (a); or
(c) a document (a *further replacement*) that replaces an initial replacement or any further replacement.

**Example—replacement**
a new edition of an incorporated document

*Note*  An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

### 124 References to incorporated documents

(1) In this regulation, a reference to an incorporated document is a reference to—

   (a) the document as in force at the commencement of this section; or

   (b) if there is a replacement for the document—the replacement; or

   (c) if the document or a replacement is amended—the document or replacement as amended.

(2) If an incorporated document notice is notified for an incorporated document, replacement or amendment, the document, replacement or amendment has effect for this regulation on the day after notification, or on a later date stated in the notice.

(3) If an incorporated document notice is notified for an incorporated document, replacement or amendment, the Legislation Act, section 47 (6) does not apply to the document, replacement or amendment.

(4) If an incorporated document notice is not notified for an incorporated document, replacement or amendment the Legislation Act, section 47 (6) applies to the document, replacement or amendment.

*Note*  The Legislation Act, s 47 (6) requires the full text of such a document, replacement or amendment to be notified. Otherwise, the document, replacement or amendment is unenforceable (see that Act, s 62).

### 125 Relationship of regulation to incorporated documents

(1) An incorporated document has no effect to the extent that it is inconsistent with this regulation.

(2) However, an incorporated document must not be taken to be inconsistent with this regulation to the extent that the document and this regulation can operate concurrently.
126 Notification of incorporated documents

(1) The chief executive may prepare a written notice (an incorporated document notice) for an incorporated document, replacement or amendment that contains—

(a) for an incorporated document or replacement—details of the document or replacement, including the following:

(i) title, author and date of publication;
(ii) a date of effect (no earlier than the day after the day of notification of the notice); and

(b) for an amendment—details of the amendment, including the following:

(i) date of publication (or of the document or replacement as amended);
(ii) a brief summary of the effect of the amendment;
(iii) a date of effect (no earlier than the day after the day of notification of the notice); and

(c) for an incorporated document, replacement or amendment—details of the following:

(i) how access to inspect the document, amendment or replacement may be obtained under section 127 (Inspection of incorporated documents);
(ii) how copies may be obtained.

(2) An incorporated document notice is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

127 Inspection of incorporated documents

The chief executive must ensure that an incorporated document, replacement or amendment is made available for inspection free of charge to the public on business days at reasonable times at the office of an administrative unit administered by the chief executive.
13 References to laws and provisions

13.1 Referencing ACT bills

When referencing ACT bills that will not pass until the following year, always use the title of the bill as it appears in the ‘Name of Act’ section in the bill.

However, when referencing ACT bills in regulations, use the year number it will become when passed. We are not able to change the title in the regulation once it has been made.

13.2 Use of italics in ACT legislation references

13.2.1 General rule for ACT legislation

A reference to ACT legislation (including bills) should be in italics.

Examples

1. Children and Young People Act 2008
2. Children and Young People Amendment Bill 2009
3. Unlawful Gambling Regulation 2010
4. Court Procedures Rules 2006

13.2.2 Exceptions

There are 3 exceptions to the use of italics.

References in headings (including section headings) are not italicised (see example 1). (By contrast, references in the title of a bill or Act should be italicised.)

Incomplete references are not italicised. For this purpose, a reference is incomplete if the reference is a defined term that omits the year of making (see example 2).

If a law is defined in LA, dictionary, part 1, the defined term can be used whenever the full name of the law can be used (see example 3). However, the full name of LA should be used if the use of the shortened name would confuse readers; for example, in the heading to a part that amends a uniform law, if other Acts are amended in other parts and are named in full.

56 Part added in version 2015-4.
Example 1
Heading

## References to Road Transport (General) Act 1999

Example 2
Defined term references

a search warrant issued under the Crimes Act (if the Act has the following definition):

**Crimes Act** means the **Crimes Act 1900**

Examples 3
Defined in LA, dict, pt 1

1 Legislation Act
2 Corporations Act
3 Criminal Code

### 13.3 Use full citation of legislation

It is preferable to use the full citation of legislation.

PCO’s publishing practice is to hyperlink citations and this is done (for the most part) automatically through a macro process. It is important to note that the macro works on legislation cited in full (ie, full name including the year).

If the name of legislation is particularly long and is referenced many times it may be shortened (by including a definition) eg, **Working with Vulnerable People (Background Checking) Act 2011** is often defined as **WWVP Act**.

While these shorten references are helpful in making the legislation easier to read it does mean that the publications team need to manually apply the hyperlink to these references as the macro will not pick them up automatically.
13.4 ACT legislation—former NSW and UK laws

Every NSW and Imperial law (other than a law that cannot be repealed or amended under the Self-Government Act) that applied in the ACT immediately before the commencement of the Law Reform (Miscellaneous Provisions) Act 1999 (the Law Reform Act) has been brought fully into ACT law and is taken to be a law made by the Legislative Assembly. This was done by amendments to the Interpretation Act 1967 by the Law Reform Act. For more information, see the Statute Law Amendment Act 2001 (No 2).

Former NSW and UK laws that apply in the ACT (other than laws that the Territory cannot repeal or amend) should be referred to using the name of the law shown in the latest republication of the law on the legislation register.

Further reading

LA, pt 1.3 (Sources of law in the ACT)
LA, ch 10 (Referring to laws)
LA, sch 1 (Acts included in sources of law of the Territory)
LA, dict, pt 1, def Act, def former NSW Act, def former UK Act, def NSW Act, def UK Act

57 Part updated in version 2015-5.
13.5 **Laws of jurisdictions other than ACT**

A reference to legislation (including bills) from other jurisdictions should be in italics and the appropriate abbreviation for the jurisdiction added in brackets in plain type after the name. The exceptions to the use of italics applying to ACT legislation also apply to laws of other jurisdictions (see div 13.2.2).

Provisions of laws of other jurisdictions should be referred to using ACT provision reference styles.

The spelling in citations of laws of other jurisdictions (or other material) should be retained, for example do not change 'organization' to 'organisation'.

**NOTE:** The 'Law Reference' note on the drafting template should be included after referencing a Commonwealth Act.

_A note_ A reference to a law/Act (including a Cwlth Act) includes a reference to the law/Act as originally made and as amended (see Legislation Act, s 102).

**Examples**

1. *Imperial Exchequer and Audit Departments Act 1866* (UK)
2. *Road Transport (General) Act 1999* (NSW)
4. *Trade Practices Act 1974* (Cwlth), part 2 **not** part II

Abbreviations:

(Cwlth)—Commonwealth
(NSW)—New South Wales
(NT)—Northern Territory
(Vic)—Victoria
(Qld)—Queensland
(SA)—South Australia
(Tas)—Tasmania
(UK)—United Kingdom (including Imperial legislation)
(WA)—Western Australia
(NZ)—New Zealand

**Further reading**

LA, ch 10 (Referring to laws)
LA, s 101 (1) (which is about referring to laws of other jurisdictions)
LA, s 101 (2) (which is about referring to a provision of a law of another jurisdiction)
LA, s 104 (References to laws include references to instruments under laws)
LA, s 105 (Referring to provisions of laws)

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58 Updated in version 2014-2.
13.6 References to definitions

A reference to a defined term should be in bold and italics (see example 1). A reference to a defined term mentioned in a heading will already be bold and need only be italicised (see example 2). If the heading is mentioned elsewhere, for example in brackets after a cross-reference to the provision, the provision heading is not bold and the reference to the defined term is also not bold, only italicised (see example 3). However, a cross-reference to a provision heading that includes a definition is often not helpful to the reader and would be left out (see example 4).

If a regulation prescribes something for a definition in the authorising Act, and the provision of the Act is cited as power in the section heading, ‘definition’ is abbreviated to ‘def’ and the term defined. Also, ‘of’ is left out of the abbreviation. This reduces the length of the section heading without sacrificing usefulness (see example 5).

Examples 1

General

1 …..section 54, definition of child care centre

2 …..the signpost definition ‘driver licence’—see the Road Transport (Driver Licensing) Act 1999, dictionary.’...

3 (see Legislation Act, dict, pt 1, def appoint)

Example 2

Heading

### Meaning of wombat

Example 3

Cross-reference

If the Minister makes a declaration for section 30 (Meaning of wombat)…

Example 4

Cross-reference in dictionary

wombat—see section 30.

Example 5

Section heading in regulation

### Qualified valuer—Act, s 15, def qualified valuer
13.7 Referring to provisions by number

13.7.1 Different provision unit levels

When referring to a provision using different provision unit levels, set the provision unit levels out in decreasing order (see example 1) (ie refer to the highest provision unit first). The same approach is taken for abbreviations.

For this purpose, an Act (or regulation/rules) is treated as the highest provision unit.

The same rule applies to a reference in legislation to the legislation itself (see example 2). References of this kind are rare and generally only needed if there is doubt about the legislation referred to eg several Acts are mentioned in the same provision.

Examples 1
1 the *Crimes Act 1900*, section 10
2 the Act, section 5 [in eg a regulation made under an Act]
3 the Corporations Act, chapter 2 [ch 2]
4 (part 2 in chapter 1) part 1.2 [pt 1.2]
5 (division 1 in part 2) division 2.1 [div 2.1]
6 (subdivision 3 in division 1 of part 2) subdivision 2.1.3 [sdiv 2.1.3]
7 rule 1 [r 1]
8 table 10, column 1, item 6 [table 10, col 1, item 6]
9 section 8, example 1 [s 8, eg 1]
10 section 5, penalty, paragraph (a) [s 5, penalty, par (a)]
11 subsection (3), note 1 [s (3), n 1]
12 schedule 2, item 6 [sch 2, item 6]
13 schedule 3, form 5 [sch 3, form 5]
14 schedule 6, section 1 [sch 6, s 6.1]
15 dictionary, definition of *fish*, paragraph (a) [dict, def *fish*, par (a)]

Examples 2
1 this Act, section 10
2 this regulation, section 6
3 these rules, rule 10
13.7.2 Headings in brackets following references to provisions

Provisions generally

When referring to a provision, the heading of the referenced provision may be placed in brackets after the reference if the bracketed text does not clutter the provision. This may provide the reader with useful context about what is being referred to without the reader having to look-up the reference. It is not meant to alter the interpretation of the provision.

A heading in brackets after a cross-reference is written in the same format as the heading of the provision being referred to including capitalising the first letter.

Example 1

Criminal Code

58 Evidential burden of proof—defence

(1) Subject to section 59 (Legal burden of proof—defence), a burden of proof that a law imposes on a defendant is an evidential burden only.

(2) A defendant who wishes to deny criminal responsibility by relying on a provision of part 2.3 (Circumstances where there is no criminal responsibility) has an evidential burden in relation to the matter.

Sections and subsections etc

Take care when using section headings in brackets following section, subsection or paragraph references as the heading may cause ambiguity or disrupt the narrative of the text. When inserting a section heading in brackets following a cross-reference, consider the following questions:

- does it add useful context?—the bracketed heading may be redundant because the text already provides enough context or the reference is only a few sections away;
- does it affect readability?—the bracketed heading may clutter or over-complicate a provision or interrupt its flow;
- does it create ambiguity?—the bracketed heading may confuse the reader in relation to a cross-reference, particularly if a section heading in brackets is used following a subsection or paragraph reference where the section heading is broader than the subsection or paragraph referred to.

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59 Section added in 2018-2 from Standards decision on 8/8/18.
13.7.3 Compressed references

When referring to a provision using the compressed reference style, the provision is called by the name of the highest provision unit in the reference (and not the lowest). The same approach is taken for abbreviations.

Examples 1
Act / regulation

<table>
<thead>
<tr>
<th>Example</th>
<th>Act/Regulation</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>section 10 (1)</td>
<td>[s 10 (1)]</td>
</tr>
<tr>
<td>2</td>
<td>section 10 (1) (a)</td>
<td>[s 10 (1) (a)]</td>
</tr>
<tr>
<td>3</td>
<td>section 10 (1) (a) (i)</td>
<td>[s 10 (1) (a) (i)]</td>
</tr>
<tr>
<td>4</td>
<td>section 10 (1) (a) (i) (A)</td>
<td>[s 10 (1) (a) (i) (A)]</td>
</tr>
<tr>
<td>5</td>
<td>subsection (1) (a)</td>
<td>[s (1) (a)]</td>
</tr>
<tr>
<td>6</td>
<td>subsection (1) (a) (i)</td>
<td>[s (1) (a) (i)]</td>
</tr>
<tr>
<td>7</td>
<td>subsection (1) (a) (i) (A)</td>
<td>[s (1) (a) (i) (A)]</td>
</tr>
<tr>
<td>8</td>
<td>paragraph (a) (i)</td>
<td>[par (a) (i)]</td>
</tr>
<tr>
<td>9</td>
<td>paragraph (a) (i) (A)</td>
<td>[par (a) (i) (A)]</td>
</tr>
<tr>
<td>10</td>
<td>subparagraph (i) (A)</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>sub-subparagraph (A)</td>
<td></td>
</tr>
</tbody>
</table>

Examples 2
Rules

<table>
<thead>
<tr>
<th>Example</th>
<th>Rule</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>rule 10 (1)</td>
<td>[r 10 (1)]</td>
</tr>
<tr>
<td>2</td>
<td>rule 10 (1) (a)</td>
<td>[r 10 (1) (a)]</td>
</tr>
<tr>
<td>3</td>
<td>rule 10 (1) (a) (i)</td>
<td>[r 10 (1) (a) (i)]</td>
</tr>
<tr>
<td>4</td>
<td>rule 10 (1) (a) (i) (A)</td>
<td>[r 10 (1) (a) (i) (A)]</td>
</tr>
<tr>
<td>5</td>
<td>subrule (1) (a)</td>
<td>[r (1) (a)]</td>
</tr>
<tr>
<td>6</td>
<td>subrule (1) (a) (i)</td>
<td>[r (1) (a) (i)]</td>
</tr>
<tr>
<td>7</td>
<td>subrule (1) (a) (i) (A)</td>
<td>[r (1) (a) (i) (A)]</td>
</tr>
<tr>
<td>8</td>
<td>paragraph (a) (i)</td>
<td>[par (a) (i)]</td>
</tr>
<tr>
<td>9</td>
<td>paragraph (a) (i) (A)</td>
<td>[par (a) (i) (A)]</td>
</tr>
<tr>
<td>10</td>
<td>subparagraph (i) (A)</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>sub-subparagraph (A)</td>
<td></td>
</tr>
</tbody>
</table>
Alternative provisions or 1 at highest provision unit level in singular

If the provisions are alternatives or there is only 1 provision unit at the highest provision unit level, the name of the highest provision unit is given in the singular, whether or not there are 2 or more provision units at a lower provision unit level.

Examples

1. section 10 (1) or (2)  [s 10 (1) or (2)]
2. section 10 (1) or (2) (a)  [s 10 (1) or (2) (a)]
3. section 10 (1) or section 11 (1)  [s 10 (1) or s 11 (1)]
4. section 10 (1) and (2)  [s 10 (1) and (2)]

Verb relevant to naming of provision

The verb used in association with a compressed reference to a provision is in the singular or plural case relevant to the naming of the provision.

Examples

1. section 10 (1) or (2) applies
2. section 10 (1) and (2) applies
3. section 10 (1) and section 11 (1) (a) apply

13.7.4 Referring to already identified provisions

When referring to a provision that has been identified, the provision is called by the name of the provision referred to (not the highest provision unit) (see example 1). ‘The’ is normally used, unless ‘that’ is needed for emphasis or to clarify what is being referred to.

The same approach is taken when referring to provisions at the same provision unit level either in the alternative or cumulatively (see example 2).

Examples 1

1. the Crimes Act 1900, section 10  [but ‘the/that section’]
2. the Corporations Act, chapter 2  [but ‘the/that chapter’]
3. part 1.2  [but ‘the/that part’]
4. rule 1  [but ‘the/that rule’]
5 schedule 2, item 6 [but ‘the/that item’]
6 dictionary, definition of *fish*, paragraph (a) [but ‘the/that paragraph’]
7 section 10 (1) [but ‘the/that subsection’]
8 section 10 (1) (a) [but ‘the/that paragraph’]

**Examples 2**

1 section 10 (1) or (2) [but ‘the/that subsection’]
2 section 10 (1) and (2) [but ‘the/those subsections’]
3 section 10 (1) (a) or (b) [but ‘the/that paragraph’]
4 section 10 (1) (a) and (b) [but ‘the/those paragraphs’]

### 13.7.5 Referring to multiple provisions

When referring to multiple provisions at chapter, part, division or section level repeat the provision level wording (see example 1). Although, if the number of provisions being referenced is more than 3 it is better not to repeat each provision level wording (see example 2). When referring to multiple provisions below section level it is not necessary to repeat the provision level wording (see example 3). This is done so that users of legislation can search for chapter, part, division and section references and have all occurrences found. It is less likely for similar searches to be done below section level.

**Example 1**

…section 57 and section 58…

**Example 2**

…chapters 2 to 5…

**Example 3**

…subsections (2) and (3)…
13.8 Referring to standards

If the standard is referred to once do not include a definition—see example 1. If the standard is referred to multiple times include a dictionary definition and then use the defined term—see example 2.

Example 1—used once

...Australian Standard AS### (title – not in italics) as in force on [date] / from time to time.

Example 2

AS###—means Australian Standard AS### (title – not in italics) as in force on [date] / from time to time.
14 Words and phrases

14.1 Aboriginal or Torres Strait Islander person

Always use the following definition.

Examples

*Aboriginal or Torres Strait Islander person* means a person who—

(a) is a descendant of an Aboriginal person or a Torres Strait Islander person; and

(b) identifies as an Aboriginal person or a Torres Strait Islander person; and

(b) is accepted as an Aboriginal person or a Torres Strait Islander person by an Aboriginal community or Torres Strait Islander community.

14.2 ACT or Territory

Use ‘ACT’ when referring to the geographical place and ‘Territory’ when referring to the legal entity as a noun. Use ‘territory’ when referring to the Territory in an adjectival sense (eg territory laws). Money is usually paid to the Territory rather than an official.

Use ‘...law in force in the ACT’ instead of ‘...law in force in the territory’.

Examples

1 For subsection (2), it does not matter whether the work is to be carried out in or outside the ACT.

2 On 1 July, the agent must pay the required amount to the Territory.

Further reading

LA, dict, pt 1, def *ACT*, def *the Territory*
14.3  Age

It is usually helpful when referring to age in the text of a provision to use the words 'years old' to make it clear that age and not some other measurement is intended.

Avoid using ‘of age’ or ‘attained the age of’.

Examples

1  is 18 years old or older (or at least 18 years old) not has attained the age of 18 years
2  under 18 years old not under 18 years of age
3  child who is 15 years old or younger not 15 years or under

Note that instead of saying ‘a person who is under 18 years old’, the provision could instead talk about ‘a child’ (see LA, dict, pt 1, def child). Equally, a person who is 18 years old or older is simply ‘an adult’ (see LA, dict, pt 1, def adult).

Further reading

LA, dict, pt 1, def child, def adult
Words and Phrases Guide, age

14.4  Another person / someone else

If 2 people need to be referred to in a provision it is optional to use ‘someone else’ or ‘another person’ to refer to another person. This is so even if you need to refer back to that someone else as ‘the other person’ (see example 1).

When 3 people are referred to the 1st reference is to ‘A person’, the 2nd reference is to ‘someone else’ and the 3rd reference is to ‘another person’ (see example 2).

Example 1

(1) A person commits an offence (theft) if the person dishonestly appropriates property belonging to someone else [or another person] with the intention of permanently depriving the other person of the property.

Example 2

(1) A person commits an offence if the person possesses a thing with the intention that the person or someone else will use it to damage property belonging to another person.
14.5 Another Territory

LA, dictionary, part 1 defines State to include the Northern Territory. Consider whether it is necessary to include a reference to ‘another Territory’ when mentioning a State. If the reference is not intended to pick up internal territories apart from the Northern Territory, the words are unnecessary.

For clarity, expressly mention external territories if they are to be included. It is unusual that an external territory would need to be mentioned in ACT legislation.

ACT legislation applies to Jervis Bay if it can apply and unless inconsistent with an applicable ordinance (see Jervis Bay Territory Acceptance Act 1915 (Cwlth), s 4A).

Further reading
LA, dict, pt 1 def external territory, def internal territory, def State

14.6 Being and not being

Do not use ‘being’ and ‘not being’ to join relative (or adjectival) clauses. A relative clause serves either to define, describe or evaluate the noun to which it is attached.

Examples
1 The authority must take into account a decision, being a decision if...
2 A person, not being other than...
14.7 ‘Commencement day’ when used as a defined term

Use ‘the commencement day’ instead of ‘commencement day’.

Example

Duties Act 1999

Chapter 17 Transitional—Duties (Landholders) Amendment Act 2008

450 Application of pt 3.2 to existing private unit trust schemes

(1) In this section:

commencement day means the day the Duties (Landholders) Amendment Act 2008, section 4 commences.

(2) This section applies to a private unit trust scheme that was a public unit trust scheme immediately before the commencement day.

(3) Despite anything in part 3.2...

(4) This section ceases to apply to the private unit trust scheme on the happening of the earliest of the following:

(a) the expiry of 12 months after the commencement day;
(b) the registration...
(c) the unit trust...

14.8 Consider / take into account / have regard to

Although the dictionary definitions indicate that all 3 words/terms do mean the same thing, there are shades of differences between them in ordinary usage, with ‘have regard to’ tending to have the least force, and ‘take into account’ tending to have the most.

‘Consider’ and ‘take into account’ may be used as drafters prefer in the context.

‘Have regard to’ should not be used.
14.9  Constitute /would be … under / against

Do not use ‘would constitute an offence under this Act’.
The preferred construction is ‘would be an offence against this Act’.

14.10 Corporation

Use ‘corporation’ instead of ‘body corporate’ when referring to an entity that has its own legal identity.
‘Body corporate’ may be necessary if referring to certain entities under the Corporations Act.

Further reading
LA, s 160 and dict, pt 1, def body, def corporation, def person
Corporations Act, s 9 (def body corporate) and s 57A (def corporation)
Words and Phrases Guide, body corporate, person

14.11 Daily newspaper

Use the phrase ‘...published in a daily newspaper...’. The LA, dictionary, part 1 defines the term daily newspaper to be a newspaper circulating generally in the ACT.

Further reading
LA, dict, pt 1, def daily newspaper

14.12 Email address

Always use ‘email address (if any)’.

14.13 End

Use ‘end’ instead of ‘terminate’ (eg end an agreement or appointment) wherever appropriate.
Do not use ‘end’ if the use seems artificial or unusual (eg conduct ‘stops’ not ‘ends’).

Further reading
Words and Phrases Guide, cease, terminate
14.14 Fail to comply with and contravene

LA, dictionary, part 1 defines *contravene* to include fail to comply with.

It is unnecessary to say that someone 'contravenes or fails to comply with' something.

If using ‘fail to comply with’ or ‘contravene’ in an offence provision, be careful to ensure that it is clear whether the physical element of the offence is conduct, a result of conduct or a circumstance in which conduct, or a result of conduct, happens. This is particularly important if the default fault element is to apply, as there are different defaults—for conduct the default element is intention but for a circumstance or result the default fault element is recklessness.60

Further reading

LA, dict, pt 1, def *contravene*

14.15 Foreign words and phrases

See Spelling, Abbreviations and Symbols Guide, section 2 (Italicising foreign words and phrases).

14.16 Functions, powers and duties and their exercise

LA, dictionary, part 1 defines *function* to include authority, duty and power. Generally use only the term *function*.

Functions are ‘exercised’ as LA, dictionary, part 1, defines *exercise* to include perform the function. Similarly, functions are ‘given’ to a position-holder or entity rather than ‘conferred’ or ‘imposed’.

Further reading

LA, dict, pt 1, def *exercise*, def *function*, def *give*, def *power*

14.17 Further information / more information

Use ‘more information’.

14.18 Grant / issue

Use ‘issue’ in relation to licences and permits.

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60 Paragraph added in version 2012-6—see Standards Committee decision on 17/10/12.
14.19 Guidelines

Always use ‘A guideline is a disallowable instrument’ NOT ‘Guidelines are a disallowable instrument’.

14.20 He or she

Consistent with the recognition of sex and gender diverse people, the use of personal pronouns in the masculine or feminine form should be avoided. If it is necessary to use a personal pronoun, both masculine and feminine forms must be used, eg ‘he or she’. Words indicating a gender include every other gender—see LA, section 145 (a).

The use of ‘he or she’ makes the text cumbersome, particularly if used repeatedly. It also gives rise to unnecessary argument, eg whether ‘she’ should be used before ‘he’ and, if so, how often.

It is often clearer to repeat the relevant noun, eg the applicant, the judge, the authorised person. ‘He or she’ should, therefore, be used only where it is idiomatically required.

If a provision applies only to the neuter form (eg to a corporation), a personal pronoun in the neuter form only (eg ‘it’) may be used wherever appropriate.

It is not usually appropriate to use ‘they’ for legal drafting. However, ‘they’ can be used to avoid personal pronouns in the masculine and feminine forms in, for example, a form, notice or example. It works well if the sentence is written in the plural. However, the use of the singular is generally preferred for plain English drafting.

In some situations, ‘you’ can be substituted. It creates a style that addresses the reader more directly. However, it should be clear to the reader who ‘you’ is. This approach is still fairly novel for legislation and needs to be used with caution.

Further reading

LA, s 145 (Gender and number)
Words and Phrases Guide, he, she

14.21 Home and business address

Always use ‘home address and business address’.

14.22 If any

Use sparingly, and if used, use brackets not commas, ie ‘(if any)’ unless the context requires the use of commas as a matter of usual English usage.

61 Updated in line with revised Words and Phrases entries for he, she and they.
14.23 Inclusive

The word ‘inclusive’ should not be used in principal or amending legislation to refer to provisions of legislation.

LA, section 106 provides that a reference to any part of a law is inclusive. The section includes the following examples:

**Examples**

1. A reference to ‘sections 5 to 9’ includes both section 5 and section 9.
2. A reference to ‘sections 260 to 264’ includes a provision such as a part heading between section 260 and section 261.
3. A reference to ‘from child to adult’ includes both the word ‘child’ and the word ‘adult’.

**Further reading**

LA, s 16 (Meaning of provision)
LA, s 106 (References to provisions of laws are inclusive)
LA, dict, pt 1, def number, def provision, def word

14.24 Individual

Use ‘individual’ to distinguish a natural person from a corporation.

However, do not use ‘individual’ as a synonym for ‘person’.

The following examples are in LA, section 160 (2):

**Examples—references to a person generally**

1. another person
2. anyone else
3. party
4. someone else
5. employer

**Examples—express references to a corporation**

1. body corporate
2. company

**Examples—express references to an individual**

1. adult
2. child
3. spouse
4. driver

**Further reading**

LA, s 160 and dict, pt 1, def individual, def person
Words and Phrases Guide, individual, natural person, person

14.25  In respect of / in relation to / with respect to etc

Use ‘in relation to’ rather than anything else. However, consider whether a connecting word (eg ‘of’ or ‘for’) can be used instead. See Words and Phrases Guide, ‘in relation to’ and ‘in respect of/to’ for alternatives and examples of appropriate use.

Further reading

Words and Phrases Guide, in relation to, in respect of/to

14.26  Might or May63

In provisions dealing with self-incrimination, might is preferred to may. If a national Law uses may, do not change it to might.

Example 1  
Utilities Act 2000, s 74

74  Self-incrimination etc

(1) A person is not excused from providing information or producing a document when required to do so under section 72 on the ground that the information or document might tend to incriminate the person.

Example 2  
Evidence Act 2011, s 187

187 No privilege against self-incrimination for bodies corporate

(1) This section applies if, under a territory law or in a proceeding, a body corporate is required to—

(a) answer a question or give information; or

(b) produce a document or anything else; or

(c) do any other act.

(2) The body corporate is not entitled to fail to comply with the requirement on the ground that answering the question, giving the information, producing the document or other thing or doing the other act might tend to incriminate the body or make the body liable to a penalty.

63 Part added in version 2015-1 – see Standards Committee decision on 9/12/14.
14.27 Legal practitioner / lawyer

In all new legislation (other than legislation amending the Legal Profession Act 2006 or associated legislation) use ‘lawyer’ instead of ‘legal practitioner’.

If lawyer is used in legislation, it should be included in note 2 of the dictionary notes (see pt 5.3).

When amending existing legislation, use lawyer instead of legal practitioner unless legal practitioner is already used in the legislation. If legal practitioner is already used, consider whether using lawyer would be appropriate. (This may involve changing existing references of legal practitioner to lawyer and omitting any existing definition of legal practitioner).

Further reading
LA, dict, pt 1, def lawyer, def legal practitioner

14.28 Medical practitioner / doctor

In all new legislation (other than legislation amending the Health Professionals Act 2004 or associated legislation) use ‘doctor’ instead of ‘medical practitioner’.

If doctor is used in legislation, it should be included in note 2 of the dictionary notes (see pt 5.3).

When amending existing legislation, use doctor instead of medical practitioner unless medical practitioner is already used in the legislation. If medical practitioner is already used, consider whether using doctor would be appropriate. (This may involve changing existing references of medical practitioner to doctor and omitting any existing definition of medical practitioner).

Further reading
LA, dict, pt 1, def doctor, def medical practitioner
14.29 Must

Use ‘must’ not ‘shall’ in legislation.

Use ‘must’ to mean ‘is required to’ and ‘must not’ to mean ‘is required not to’. There is no rule preventing ‘must’ or ‘must not’ being used in relation to the Executive, Ministers, courts or judges (see example 1).

In provisions that are not offence provisions, consider recasting using, for example, ‘may ... only if’ to avoid the use of the double negative (see example 2). However, this should not be done if a positive statement that something is not permitted to be done is needed.

In offence provisions, use the form ‘A person must’ or the form ‘A person commits an offence if...' (see ch 11 (Offences)).

Do not use ‘must’ unnecessarily in declaratory provisions (and similar provisions). In declaratory provisions generally use the present tense (see example 3).

Do not use ‘is to’ and ‘are to’ to avoid the unnecessary use of ‘must’ (or the use of ‘shall’) (see example 4).

Follow current drafting practice in amending legislation despite the use of ‘shall’ in the legislation being amended (see LA, s 147). However, if possible, avoid the use of ‘shall’ and ‘must’ in the same provision by recasting.

Example 1
‘Must / must not’

1    The Minister must notify the applicant in writing about the decision.

2    The Minister must not issue a statement under this section unless the land development agency agrees to the statement being issued.

Example 2
‘May….only if’

An applicant may bid only if ... [not An applicant must not bid unless ...]

(Note, no-one is entitled to bid unless the Act says so, so the entitlement to bid is conditional.)

Examples 3
Declaratory provisions

1    A person is eligible only if the person is a resident [not A person must be a resident to be eligible]

2    A reference to x does not include a reference to y [not A reference to x must be read as not including a reference to y...]

but

3    A further penalty must not be imposed on the person.
Examples 4
Avoiding unnecessary use

1. The chairperson presides at a meeting. [not The chairperson is to preside at a meeting.]
2. There is a Supreme Court of the Territory, which is called the Supreme Court of the Australian Capital Territory. [not There is to be a Supreme Court of the Territory, which is to be called the Supreme Court of the Australian Capital Territory.] (In this example the provision would be better broken into 2 subclauses.)
3. The Supreme Court is a superior court of record. [not The court is to be a superior court of record.]
4. The court consists of the Chief Justice and the other judges. [not The court is to consist of the Chief Justice and the other judges.]
5. The authority is a corporation. [not The authority is to be a corporation.]
6. The Wombat Board is established.

but

7. The committee’s function is to ...
8. The reference must state the functions the committee is to exercise.

14.30 No later than / not later than

‘Not later than’ is preferred because it is more commonly used, although ‘within’ may be a more appropriate alternative (see the next item).
14.31 **One or 1**

‘One’ can be used as an adjective, noun or pronoun.

When ‘1’ is used as an adjective expressing a number (eg 1 goat), it should be written as a figure and not a word, except at the beginning of a sentence or provision heading (see example 1). When ‘one’ is used as a noun or pronoun (rarely necessary in legislation), it should be written as a word and not a figure, except when it is used as a pronoun in conjunction with the words ‘or more’, ‘less than’, ‘more than’ or similar words (see example 2) and sometimes the use of one is unnecessary (see example 3).

The use of one to mean ‘any person’, ‘I’ or ‘me’ is usually an affectation and should be avoided.

There may still be occasions when judgment needs to be used in deciding whether or not to use the figure or word. In these cases, consider recasting to avoid the issue (see example 4).

**Example 1**

**Adjective expressing number**

*No change*

1 One year ago ...(as an adjective but at the beginning of a sentence)

*Change*

1 Within one 1 year after …

2 imprisonment for one 1 year

**Example 2**

**Noun or pronoun**

*No change*

1 one another

2 anyone

3 no-one

4 The one that got away

5 one of the best

6 one thing after another

7 one by one

8 one and only

9 only one of them succeeded

10 one is enough, 2 is better
Chapter 14  Words and phrases

Change

1 more than/less than one
2 one or more

Example 3
Unnecessary use
Change

The problem is not an easy one easy.

Example 4
Recasting to avoid use
Change

1 molluscs (whether or not of the one same species)
2 members must elect one of their number a member present
3 If one a party, does not appear
4 If one a single commercial advance is made that is secured by 2 or more mortgages

Further reading

Australian Oxford Dictionary: p 949
Macquarie Dictionary: p 1168
Words and Phrases Guide, one

14.32 On reasonable grounds
Do not use commas around the words 'on reasonable grounds'.
14.33 Position

Use ‘position’ instead of ‘office’ wherever appropriate.

‘Office’ is a more formal word. It is also a general word with many meanings depending on the context in which it is used. It has been traditionally used in legislation in relation to public sector employment and may need to be used in that context for consistency with the Public Sector Management Act 1994.

Further reading

LA, dict, pt 1, def office, def position

14.34 Reasonable steps

As a rule, do not use ‘all reasonable steps’ just use ‘reasonable steps’. Although, there may be rare occasions where ‘all’ is appropriate.

14.35 Refuse and fail

LA, dictionary, part 1 defines ‘fail’ to include ‘refuse’.

It is unnecessary to say that someone ‘fails or refuses’ to do something.

Further reading

LA, dict, pt 1, def breach, def contravene, def fail

14.36 Satisfied and believes

Use ‘satisfied’ unless ‘believes’ is more appropriate in the context.

‘Believes’ may be more appropriate in urgent situations or where decisive evidence is not readily available.

Examples – satisfied

Unit Titles Act 2001, section 20

(1) The planning and land authority may approve a unit title application if satisfied on reasonable grounds that—

(a) the application is in accordance with this Act; and

64 Part added in version 2014-2 – see standards decision 1/04/14.
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Gaming Machine Act 2004, section 25

(2) The commission must—
(a) amend the licence in accordance with the application if satisfied that the gaming area
as it is proposed to be changed will be suitable for the operation of gaming
machines; and

Example – believes – urgent situation

Energy Efficiency (Cost of Living) Improvement Act 2012, section 32 (d)

For this Act, an authorised person may—
(d) at any time, enter premises if the authorised person believes on reasonable grounds
that the circumstances are so serious and urgent that immediate entry to the premises
without the authority of a search warrant is necessary.

Example – believes – decisive evidence not available

Liquor Act 2010, section 124 (1)

(1) If a staff member or crowd controller working at licensed premises or permitted premises believes
on reasonable grounds that a document shown to the person is a false identification document, the
staff member or crowd controller may seize the document.

14.37 To remove any doubt65

‘To remove any doubt’ is preferred but it should not be over used. Drafters can discuss with clients whether
an example would assist so as to avoid the use of the words all together.

Do not use ‘To remove doubt’ or ‘To avoid any doubt’.

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65 Part added in version 2012-5—see Standards Committee decision on 22/8/12.
14.38 Verb / noun agreement

This drafting practice applies if a verb has to agree with more than 1 noun and the nouns are not of the same person or number.

14.38.1 Or

The verb should agree with the closest noun. With a singular and plural noun, it is usually better to put the plural last and make the verb plural.

Example
‘if the building or premises are damaged’ (‘if the premises or building is damaged’ is also correct but it is better to put the plural last)

Further reading
Howard’s Guide pp 295–6 (‘or’)
Howard’s Handbook p 264 (‘neither…nor/neither…or’) (but see p 150 on ‘either’)
Hudson p 272 (‘neither…nor’) (not very supportive)
Longman English Usage pp 483–4 (‘linking with or and nor’), 531 (‘person agreement’)
Macquarie Writer’s Friend p 17 (‘Agreement in grammar’)
Oxford Companion p 254 (‘concord’)
Right Words p 276 (‘number’)
Working Words p 359 (‘neither’), pp 379–380 (‘or’)

14.38.2 And

The verb is plural. With a singular and plural noun, it is usually better to put the plural last.

Example
‘if the building and premises are damaged’ (‘if the premises and building are damaged’ is also correct but better to put plural last)

Don’t use more than 1 verb.
‘the building and premises is or are damaged’
14.39 Website addresses 66

Use the term ‘accessible’ for information freely accessible on a website. Also, it is not necessary to use http:// before stating the website address (see example 1) or to include anything after ‘.au’. The web addresses will be hyperlinked by the QAC team when the document is published on the LR.

Australian and New Zealand standards are not freely accessible on the Internet because they are subject to copyright. Words to the effect that they may be purchased over the Internet may be necessary (see Example 2).

Example 1

Note The South Australian Act is accessible at www.legislation.sa.gov.au.

Example 2

Australian and New Zealand standards

Note AS ## does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 5A). The standard may be purchased at www.standards.org.au.

OR

Note AS ## may be purchased at www.standards.org.au.

Note AS/NZS ## may be purchased at www.standards.org.au.

14.40 Wherever occurring

‘Wherever occurring’ should no longer be used in amending legislation.

LA, section 92 provides for an amendment of an Act to be made wherever possible.

Further reading

LA, s 16 (Meaning of provision)

LA, s 92 (Amendment to be made wherever possible)

LA, dict, pt 1, def amend, def number, def omit, def provision, def repeal, def word


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66 Part updated in version 2015-6.
14.41 Within / not later than

‘Within’ and ‘not later than’ can serve different purposes, and should be used, as follows:

Not later than—use if something may or must be done, or is envisaged being done, before a point in time/event, and it doesn't matter when it is done etc before that time.

Within—use if something may or must be done, or is envisaged being done, in the interval between the beginning and end of a period.

Contrast the following:

give me the money not later than 28 days after 1 July (It is OK to give it in June)
give me a return of dealings in the financial year within 28 days after the next 1 July (It is not OK to give it in June)

Given the way time limits normally work, ‘within’ is likely to be appropriate more often. This is why Words and Phrases suggests you consider alternatives before using ‘not later than’.

14.42 Who

‘Who’ clauses should be used with care. Lengthy ‘who’ clauses can make a provision difficult to read.

Try recasting using an application provision or an ‘if’ clause unless the ‘who’ clause is short. These usually make a provision easier to read by separating the description of the person to whom the clause applies from the provision made about the person (eg the obligation imposed on the person).

Example 1
Lengthy ‘who’ clause

[‘who’ clause underlined]

A person who does sanitary plumbing or sanitary drainage work that is to be tested must supply apparatus, tools, and labour for the test, whether or not all or any part of the test is to be done by an inspector.

Example 2
‘If’ clause—a preferred approach

[‘if” clause underlined]

If a person does sanitary plumbing or sanitary drainage work that is to be tested, the person must supply apparatus, tools, and labour for the test, whether or not all or any part of the test is to be done by an inspector.
Example 3
Application provision—an alternative approach

[application provision underlined]

(1) This section applies if a person does sanitary plumbing or sanitary drainage work that is to be tested.

(2) The person must supply apparatus, tools, and labour for the test, whether or not all or any part of the test is to be done by an inspector.
15 Other style issues

15.1 Alphabetical order

Lists should be ordered alphabetically on a letter-by-letter basis, disregarding spaces, hyphens and apostrophes.

Symbols are listed first, followed by numbers (in numerical order) then the main alphabetical sequence.

If an instrument has the same title and year the order is determined by the instrument number.

Example

- Gaming Machine Act 1987 Determination of Fees (DI2000-211)

15.2 ACN / ABN

The ACN should always be included when referring to a Corporations Act corporation.

The ABN should be included for entities that have an ABN but do not have an ACN.

The number is not to be bracketed, and there is no comma between the name of the entity and the number.

The number is not to be bold or italicised.
15.3 Sandwich provisions

A sandwich provision is a legislative sentence in which text is placed after a paragraph.

In most cases, a sandwich provision is not the best option for structuring text because the most important information is at the end of the provision rather than the beginning and this may keep the reader in a state of suspense.

A sandwich provision can often be reworded by placing the text that is after the paragraphs at the beginning of the sentence or splitting out some of the information into a definition or another provision.

However, a sandwich provision may be used if it improves the readability of a provision and if other alternatives (e.g. further paragraphing) are not appropriate in the circumstances.

This might occur when a sentence has a set of pre-conditions and post-conditions and it may be undesirable to remove part of the sentence to another provision or to a definition or to shred the text into further paragraphs (see examples 1 and 2).

Example 1
Legislation Act 2001

209 Power of appointment includes power to make acting appointment

....

(2) The power to appoint a person to act is exercisable in the same way, and subject to the same conditions, as the power to make the appointment.

....

(3) Without limiting subsection (2), if the law (or another law) requires—

(a) the appointee to hold a qualification; or

(b) the appointer (or someone else) to be satisfied about the appointee’s suitability (whether in terms of knowledge, experience, character or any other personal quality) before appointing the appointee to the position;

a person may only be appointed to act in the position if the person holds the qualification or the appointer (or other person) is satisfied about the person’s suitability.

67 Added in 2018-1—see Standards Decisions 14/3/18.
Example 2
Freedom of Information Act 2016, Sch 1

1.6 Cabinet information

(1) Information—
   (a) that has been submitted, or that a Minister proposes to submit, to Cabinet for its consideration and that was brought into existence for that purpose; or
   (b) that is an official record of Cabinet; or
   (c) that is a copy of, or part of, or contains an extract from, information mentioned in paragraph (a) or (b); or
   (d) the disclosure of which would reveal any deliberation of Cabinet (other than through the official publication of a Cabinet decision).

(2) Subsection (1) does not apply to purely factual information that—
   (a) is mentioned in subsection (1) (a); or
   (b) is mentioned in subsection (1) (b) or (c) and is a copy of, or part of, or contains an extract from, a document mentioned in subsection (1) (a);

unless the disclosure of the information would involve the disclosure of a deliberation or decision of Cabinet and the fact of the deliberation or decision has not been officially published.
15.4 ‘And’ and ‘or’ at end of paragraphs

15.4.1 After following

Paragraphs, subparagraphs and sub-subparagraphs that are introduced with ‘following:’ should not end with an ‘and’ or an ‘or’.

Example 1
‘Following’ paragraphs

(2) The order may be made on the court’s initiative, or on the application of any of the following:
   (a) the DPP;
   (b) the offender;
   (c) the public trustee;
   (d) anyone with an interest in property to which the order relates;
   (e) anyone else with the court’s leave.

Paragraphs or subparagraphs that are introduced with ‘following:’ but any following subparagraphs or sub-subparagraphs are not, the subparagraphs or sub-subparagraphs (except the last) must end with an ‘and’ or an ‘or’.

Example 2
‘Following’ paragraphs and no ‘following’ subparagraphs

(2) Without limiting subsection (1), the order may do 1 or more of the following:
   (a) prohibit the respondent from being on premises where the aggrieved person lives;
   (b) prohibit the respondent from being in a particular place;
   (c) state the conditions on which the respondent may—
      (i) be on particular premises; or
      (ii) be in a particular place; or
      (iii) approach or contact a particular person.
15.4.2  No following

Paragraphs, subparagraphs and sub-subparagraphs (except the last) that are not introduced with ‘following:’ should be introduced with a dash and end with an ‘and’ or an ‘or’.

Example 1
No ‘following’ paragraphs

(4) If the application is made by a person other than an offender, the court must not make an exclusion order for the property unless it is satisfied that—

(a) the applicant has an interest in the property; and

(b) the applicant was not a party to the relevant indictable offence or any related offence; and

(c) if the interest was acquired completely or partly, or directly or indirectly, from the offender—the interest was acquired honestly and for sufficient consideration and the applicant took reasonable care to establish that the interest may be lawfully acquired by the applicant; and

(d) the property does not have evidentiary value in any criminal proceeding.

Paragraphs or subparagraphs not introduced with ‘following:’ but the subparagraphs or sub-subparagraphs are, the subparagraphs or sub-subparagraphs (except the last) should be introduced with a dash and not end with an ‘and’ or an ‘or’.
Example 2
No ‘following’ paragraphs with ‘following’ subparagraphs

(2) In this section:

**domestic violence offence** means an offence against—

(a) section 34 (which is about contravening protection orders); or

(b) a provision of the *Crimes Act 1900* mentioned in schedule 1 (which deals with domestic violence crimes); or

(c) any of the following provisions of the *Road Transport (Safety and Traffic Management) Act 1999*:

(i) section 6 (1) (which is about negligent driving);

(ii) section 7 (1) (which is about furious, reckless or dangerous driving);

(iii) section 8 (1) or (2) (which are about menacing driving).

‘And’ and ‘or’ must be used consistently. If a combination of ‘or’ and ‘and’ is needed, the subsection can be split, for example, the paragraphs can end with ‘and’ and the subparagraphs can end with ‘or’.

Example 3
Mixed conjunctions

Correct

A wombat must—

(a) eat liquorice worms on Thursdays; and

(b) either—

(i) dig holes in roads each Friday; or

(ii) run in a marathon every 2nd Friday.

Incorrect

A wombat must—

(a) eat liquorice worms on Thursdays; and

(b) dig holes in roads each Friday; or

(c) run in a marathon every 2nd Friday.
15.4.3 Use of ‘or’ as conjunction

‘Or’ is the appropriate conjunction to use in a list of things that may be done but need not be done. Examples are functions or orders.

Example 1
Conjunctive ‘or’

(1) For this Act, a person carries on a security activity if, as part of a business or the person’s employment, the person—
   (a) acts as a bodyguard or crowd controller; or
   (b) patrols, protects, watches or guards property (including cash in transit); or
   (c) installs, maintains, monitors, repairs or services security equipment; or
   (d) employs or provides people to carry on an activity mentioned in paragraphs (a) to (c).

However, in some cases, the use of ‘or’ as a conjunction can lead the reader to mistakenly believe that only 1 of the things in the list may be done at a time. A better approach is to explicitly state that an entity may do ‘1 or more of the following’, or ‘do any 1 of the following’.

Example 2
Use of ‘1 or more of the following’

(2) Without limiting subsection (1), the order may do 1 or more of the following:
   (a) prohibit the respondent from being on premises where the aggrieved person lives;
   (b) prohibit the respondent from being on premises where the aggrieved person works;
   (c) prohibit the respondent from being on premises where the aggrieved person is likely to be.
15.4.4 Use of ‘but’ as conjunction

‘But’ may be used as a conjunction for paragraphs, subparagraphs and sub-subparagraphs if appropriate. ‘But’ is usually used if a long section, paragraph or subparagraph is complicated and cannot easily be broken up, or to separate important elements of the section, paragraph or subparagraph for greater clarity.

**Example 1**
**Use of ‘but’ as conjunction**

For this Act, an injured person is partially incapacitated for work if, because of a functional impairment caused by the injury, the person—

(a) cannot do all the work the person could do before the injury;  
but
(b) is not totally incapacitated.

‘But’ may also be used between ‘means’ and ‘does not include’ paragraphs of a definition. It may be used with an ‘and’ if the meaning is clear to the reader.

**Example 2**
**Use of ‘but’ as conjunction with ‘and’**

(‘and’ and ‘but’ underlined)

*electrical installation*—

(a) means electrical wiring used…for carrying…electricity; and

(b) includes—

(i) a wiring system…connected to wiring or cable; and
(ii) a switch, fuse…appliance; and
(iii) a consuming device…changed in its character;  
but

(c) does not include—

(i) a generator or storage device…to the installation; or
(ii) an appliance that receives…a socket connection; or
(iii) an electricity network or part of a network.
15.5 Bullets or paragraphs in notes

If an em dash is used—paragraphs should follow using conjunctions.

If a colon is used—bullets should follow without conjunctions. Bullets are usually used to form a list.

Example 1
Paragraphs

Note
An unregistered person who is engaging in a regulated activity under this section commits an offence under s 13 if the person continues to engage in the activity after—
(a) the person’s application for registration is withdrawn (see s 20); or
(b) the person is given a negative notice (see s 40).

Example 2
Bullets

Note
Information about representatives of units owned by 2 or more part-owners, or by a company, must be provided to the owners corporation under the following sections:
• s 11 (Part-owners of units—authorisation of representatives)
• s 13 (Company-owned units—authorisation of representatives).

15.6 Examples

15.6.1 General

Examples may be used in legislation to provide helpful illustrations of complex and/or technical provisions.

Examples are a particularly useful drafting technique to clarify material that may otherwise be difficult to understand by non-legally-trained users.

Examples can describe a specific case (which may be fictional) that helps to give meaning to the more abstract language of a provision or can be an example (which may be fictional) that clarifies the scope of a provision by illustrating cases that fall within the provision or cases that fall outside the provision, or both.

Bullets are usually used to form a list of examples. Otherwise use numbered examples.

Further reading
15.6.2 Status of examples

An example in an Act or statutory instrument is part of the Act or statutory instrument.

An example in an Act or statutory instrument—

- is not exhaustive; and
- may extend, but does not limit, the meaning of the Act or instrument, or the particular provision to which it relates.

15.6.3 Forms of examples

An example may take either of the following forms:

- a statement at the end of the provision it illustrates (or at the end of a provision containing the provision it illustrates) (see example 1);
- a statement forming part of the text of a provision that illustrates the operation of the provision, whether or not the words ‘for example’ are used (see example 2).

Examples can be a fragment of a sentence, a whole sentence, numbered or listed in dot points (see examples 3 to 6).

Example 1
Example at the end of the provision

1.26A Buildings—external shades

(1) In this section:

*external shade* means a device used to shade a window or door externally, and includes a pole, post or any other item associated with an external shade.

**Examples**
awning, blind, louvre, shutter

Example 2
Example forming part of the text of the provision

(6) Without limiting subsection (3) or (5), a regulation may prescribe requirements to be satisfied for additional material to be entered in the register under this section, including, for example, requirements about—

(a) the form of the material; and

(b) the making of requests for its entry in the register.
Example 3
Example using a fragment of a sentence

Example—reason for closing complaint
the complaint has been referred to the human rights commission

Example 4
Example using whole sentence/s

Example—change
Construction of a dwelling has development approval. The developer wishes to change the slope of the roof by less than 2o (see sch 1, s 1.24). The developer may construct the dwelling with the changed roofslope without seeking approval for the change.

Example 5
Example using a numbered format

Examples—processes and functions
1 decomposition and production of plant matter
2 energy and nutrient exchanges

Example 6
Example using dot points

Examples—personal property
• personal clothing
• toiletries
• books
• photographs
• house or car keys

Example 7
Example using dot points

Example—other provisions
the Crimes (Sentence Administration) Act 2005, pt 3.3 (Committal—miscellaneous)—
• s 20 (Directions to escort officers)
• s 21 (Orders to bring offender or remandee before court etc)

Further reading
LA, s 126 (Material that is part of Act or statutory instrument)
LA, s 132 (Examples)
15.6.4 Section, paragraph and subparagraph examples

An example for a subsection, paragraph or subparagraph should be placed directly after the provision to which it relates (see example 1). If it is deemed that placing the example directly after the provision to which it relates disrupts the flow of the whole provision then place the example at the end of the provision (see example 2). An example at the end of a series of subsections, paragraphs or subparagraphs should include an identifier to the provision the example relates to (see example 2) or a description of what the example relates to (see example 3) and should be at the subsection position (see div 15.6.5 for more examples of indentation).

Example 1
Example directly after provision to which it relates

*Legislation Act 2001*

5 Determinative and non-determinative provisions

(1) This Act consists of determinative and non-determinative provisions.

(2) A determinative provision is a provision of this Act that is declared to be a determinative provision.

Example
Section 4 (3) provides that s 4 is a determinative provision.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see s 126 and s 132).

(3) A non-determinative provision is any other provision of this Act.

Example
Section 3 does not contain a provision corresponding to s 4 (3). Therefore, s 3 is not a determinative provision.
Example 2
Example at the end of a series of subsections, paragraphs or subparagraphs

Legislation Act 2001

25 Authorised written versions

(1) A written copy of a law, republication or legislative material is an authorised version if—

(a) it is a written copy produced directly from an authorised electronic version of the law, republication or legislative material; or

(b) it is a written copy of another version of the law, republication or legislative material authorised by the parliamentary counsel.

Example—par (a)

An authorised electronic version of an Act is downloaded from an approved website and printed. The printed copy is an authorised written version of the Act.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see s 126 and s 132).

(2) …

Example 3
Example with descriptive heading

Legislation Act 2001

16 Meaning of provision

A provision of an Act or instrument is any words or anything else that forms part of the Act or instrument.

Examples—provisions consisting of groups of words
sections, subsections, paragraphs, subparagraphs, sub-subparagraphs, examples

Examples—provisions consisting of groups of other provisions
chapters, parts, divisions, subdivisions, schedules

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see s 126 and s 132).
15.6.5 Indentation of examples

Example directly after provision to which it relates

The example is indented to the same position as the provision which it follows.

Example 1
Subsection

(1) Subsection text

Example

Example text

Example 2
Paragraph

(1) Subsection text

(a) paragraph text

Example

Example text

Example 3
Subparagraph

(1) Subsection text

(a) paragraph text

(i) subparagraph text

Example

Example text
Examples for paragraphs or subparagraphs listed at the end of the provision

The example is indented to the subsection position.

Example

*Medicines, Poisons and Therapeutic Goods Regulation 2008*

32 Additional requirements for prescribing controlled medicines for human use

The following are the additional requirements for prescribing a controlled medicine for human use:

(a) the prescriber...

(b) if the approval is for a particular form of the medicine...

(c) if the approval is for a particular strength of the medicine...

(d) if the approval is for a particular quantity of the medicine...

(e) the prescriber complies with...

(f) if the controlled medicine is dronabinol for human use—

   (i) the prescriber also has...

   (ii) the prescriber complies...

Example—par (b)

If a slow release form of a medicine is approved, the prescriber is not authorised to prescribe an immediate release form of the medicine.

Example—par (c) and par (d)

If a doctor is given an approval to prescribe 25 morphine 20mg capsules, the doctor may prescribe 5 20mg capsules and 10 15mg capsules. Later, if the approval is still in force, the doctor may prescribe not more than 10 morphine capsules of any strength up to and including 20mg.

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).
**Example for the last subsection, paragraph or subparagraph**

The example is indented to the same position as the provision which it follows and should include an identifier to the provision the example relates to or a description of what the example relates to. The identifier is necessary because the example could get confused as an example for the whole section or subsection.

**Example 1**

Medicines, Poisons and Therapeutic Goods Regulation 2008

10 **General overview of authorisations for medicines**

(1) The Act requires that a person must...

**Example**

the Act, s 35 is about obtaining certain substances (which include medicines)

**Note 1** The Act, s 19 sets out when a person deals with a medicine.

**Note 2** An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

... (4) An authorisation under this regulation may be subject to limitations.

**Examples—s (4)**

1 a health professional’s authorisation is subject to any condition or restriction to which the health professional is subject to under the Health Professionals Act 2004 (see s 20)

2 the authorisation of a person to prescribe a medicine is subject to any restriction included in sch 1 in relation to the person (see s 30 (1) (b))

**Note** For the power to impose other restrictions, see the Act, ch 8.

**Example 2**

Planning and Development Act 2007

... (5) In deciding whether a document is an estate development plan, the planning and land authority must consider whether—

(a) ...

(b) ...

(c) the document includes plans or a proposal for the subdivision of land and related infrastructure development.

**Examples—related infrastructure**

sewers, footpaths, street lighting

**Note** An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).
Example for the section

The example is indented to the subsection position. A description of what the example relates to may be used but is optional.

Example

Legislation Act 2001

106 References to provisions of laws are inclusive

In an ACT law, a reference to any part of a law is a reference to the following:

(a) the provision of the law that begins the part;
(b) the provision of the law that ends the part;
(c) any provision of the law between the beginning and end of the part.

Examples

1 A reference to ‘sections 5 to 9’ includes both s 5 and s 9.
2 A reference to ‘sections 260 to 264’ includes a provision such as a part heading between s 260 and s 261.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see s 126 and s 132).

15.6.6 Example note

Example in section

Include an example note after the example. If there are multiple notes, include an example note after the first example only.

Example in definition

Include an example note after the example. If there are multiple notes, include an example note as the last note.

Example in a note

Do not include an example note after the example.

15.6.7 Use of provision abbreviations

A reference in an example to a provision of an Act/regulation/rules should always be expressed using the appropriate provision abbreviation.

Use a provision abbreviation as the first word of a sentence cautiously. For example, a sentence in an example should start with ‘Section 40’ rather than ‘S 40’, which looks awkward. But a sentence in an example may start with ‘Ch 10’ or ‘Div 10’. If unclear, consult the parliamentary counsel.
15.7 Expiries

LA, section 85 states that if a law is repealed (repeal includes lapse and expire) on a day—

- if the law is remade on that day—the repeal take effect when the remade law commences; or
- if the law is not remade on that day—the law continues in force until the end of the day and the repeal (expiry) takes effect at midnight on the day.

Example 1

## Expiry—pt ##

This part expires 12 months after the day it commences.

Example 2

(#) This section expires on the day it commences.

Example 3

(#) Subsections (4) and (5) and this subsection expire 6 months after the day this section commences.

Example 4

(#) Subsection (4) and this subsection expire 12 months after the day they commence.

Example 5

(#) This section expires 12 months after the day the XYZ Act 2014 [, section #] commences.

Example 6

(#) Schedule 1, part 1.2 (hdg) and this subsection expire at the beginning of the day that section 32 (hdg) commences.68

Example 7

Whole Act/regulation expiry

## Expiry—Act ##

This Act expires 12 months after the day it commences.

## Expiry—regulation ##

This regulation expires on 13 December 2010.

---

15.8 Figures

Do not use commas to separate groups of figures. For figures more than 999, a space should be inserted between each group of 3 figures (eg 10 000 not 10000].

Use a decimal point to separate dollars from cents. Use 2 figures after the decimal point (eg $2.50). Express all amounts in a consistent way showing 2 or more figures after the decimal point as required.

Example 1

*Road Transport (Offences) Regulation 2005*

**Part 1.8A**

*Road Transport (Mass, Dimensions and Loading) Act 2009*

<table>
<thead>
<tr>
<th>column 1 item</th>
<th>column 2 offence provision and, if relevant, case</th>
<th>column 3 short description</th>
<th>column 4 offence penalty (pu)</th>
<th>column 5 infringement penalty ($)</th>
<th>column 6 demerit points</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1</td>
<td>128</td>
<td>direction under s 126</td>
<td>fail to comply with direction to stop and rectify—minor risk breach of mass/dimension/loading requirement</td>
<td>50</td>
<td>1 000</td>
</tr>
<tr>
<td>1.2</td>
<td></td>
<td>direction under s 127</td>
<td>fail to comply with direction to move and rectify—minor risk breach of mass/dimension/loading requirement</td>
<td>50</td>
<td>1 000</td>
</tr>
</tbody>
</table>

Example 2

*Legislation Act 2001, s 133*

(2) A *penalty unit* is—

(a) for an offence committed by an individual—$150⁶⁹; or

(b) for an offence committed by a corporation—$750.

Example

‘Maximum penalty: 10 penalty units.’ means that a person who is convicted of the relevant offence is liable to a maximum fine of 10 penalty units.

- If the person is an individual, the maximum fine is, therefore, $1 500 ($150 x 10).
- If the person is a corporation, the maximum fine is, therefore, $7 500 ($750 x 10).

15.9 Fractions and formulas

15.9.1 Fractions

A fraction can be created using the drafting template, ‘macros’, ‘create fraction’.

Example

\[ \frac{1}{2} \]

15.9.2 Formulas

A formula can be used to explain how an amount is worked out if the explanation in words is lengthy or involved.

In general, avoid the unnecessary use of formulas. But, if possible, use formulas instead of provisions that express concepts as proportions of each other.

If you are amending a provision containing a formula that does not comply with current drafting practice, amend the provision to bring the formula into line with current drafting practice.

Formulas should be centred, and use normal text (unless the formula would not fit across the page).

Formulas should not be bolded or end with a full stop (even if the formula is at the end of a subsection (see example 5) or is part of a definition (see example 6)).

A formula can be created using the drafting template, ‘Extra Matter’, ‘Insert Formula’.

Example 1

There is no point in saying \[ \frac{x}{2} \] instead of ‘\(1/2\) of x’.
Example 2

*Rates and Land Tax Act 1926, section 22E (6)*

before

22E Payment of land tax

(6) If a parcel of land is subject to land tax for a part only of a quarter, the amount of tax payable in relation to that quarter is the amount that bears the same proportion to the amount of land tax that would have been payable if that parcel had been subject to land tax for the whole of the quarter as the number of days in that part of the quarter bears to the number of days in the quarter.

after

## Land tax for part of quarter

(1) This section applies to a parcel of land if—

(a) the parcel starts or stops being rateable in the quarter; and

(b) land tax is payable for the parcel at any time during the quarter.

(2) In working out the land tax payable for the parcel of land under section 9 (Imposition of land tax), the amount of land tax payable for the parcel for the quarter is the amount worked out by the commissioner as follows:

\[
\text{land tax otherwise payable for quarter} \times \frac{\text{taxable days}}{\text{quarter days}}
\]

*quarter days* means the number of days in the quarter.

*taxable days* means the number of days in the quarter that land tax was payable for the parcel of land.

Example 3

A-B=C

Example 4

The fee for a licence issued for part of a year is—

\[
\text{annual fee} \times \frac{\text{whole and part months for which licence issued}}{12}
\]

If possible, express the variables of the formula in words rather than symbols.

If words are used in this way, it may not be necessary to define the variables.
If it is not possible to express the formula in words, express it using symbols. Wherever possible use symbols that represent the initial letters of the variables. This makes the formula easier to remember and apply.

If it is necessary to define the variables, use the styles used for ordinary definitions, that is, use bold italics for the defined terms, end each definition with a full stop, and use 'means' rather than 'is'.

The definitions should be located directly after the formula (i.e., not in a separate subsection) (see examples 5) and should be in alphabetical order, not the order they appear in the formula.70

If possible, the use of formulae in definition provisions should be avoided (see example 6).

**Example 5**

(1) The minimum general rate levy is—

\[ \text{minimum levy} \times \text{number of units} \]

*minimum levy* means the minimum general rate levy that would, apart from this section, be payable for the land.

*number of units* means the number of units subject to the scheme.

**Example 6**

(3) In this section:

*averaging factor*, for a financial year, means the number worked out, to 2 decimal places, as follows:

\[ \frac{T}{3V} \]

*T* means the total of the values of all rateable land for the financial year and the previous 2 financial years.

*V* means the total of the values of all rateable land for the financial year.

**Further reading**


---

15.10 Gazette

Gazette should be lower case without italics. The Commonwealth Gazette should be capitalised without italics but must expressly be referred to as the Commonwealth Gazette to avoid confusion with the gazette (see LA, dict, pt 1, def gazette).

Further reading
LA, dict, pt 1, def gazette

15.11 Penalties in penalty units not $

Fines should be expressed in penalty units, not dollar amounts to allow for consistent increases of penalties by way of an amendment to the definition of penalty unit in LA, section 133.

However, infringement notice penalties and other amounts that are not offence penalties cannot use penalty units and need to be expressed in dollar amounts.

Also, it is often more helpful for the public for notices and forms to include the amount of a penalty, rather than a number of penalty units.

Further reading
LA, s 133 and dict, pt 1, def penalty unit
15.12 **Regulation section headings**

Clear and descriptive section headings provide readers with key information about the context of a provision. The heading of a provision in a regulation should give the reader information about the nature of the provision and the statutory basis for its existence.

The heading of a provision in a regulation made under a specific enabling provision should cite the enabling provision (see example for section 12A). This provides readers (eg. scrutiny committees, courts etc) with a clear statement of the statutory power for making the provision in the regulation. It also ensures a drafter and instructor turn their minds to the sufficiency of statutory power for a proposed regulatory provision.

However, the heading of a regulation should not cite an enabling provision if the enabling provision is the general regulation making power under the enabling Act or a particular power within the general regulation making power. Provisions in regulations that do not include an enabling provision citation in their heading are assumed to be made under the general regulation making power of the enabling Act.

Current drafting practice for prescribing matters in regulations is to be as brief as possible.

In general, in the Act provision do not use the words ‘for this section/paragraph/definition’ but in a few cases it may be necessary for clarity.

**Example**

**Act provision**

25 **What is a notifiable contract?**

(1) For this part, a *notifiable contract* is a written contract for procurement entered into by the Territory or a territory entity.

(2) However, *notifiable contract* does not include the following:

(a) a contract with a total consideration, or estimated total consideration, that is less than the amount prescribed by regulation;

... 

**Regulation provision made under Act, section 25 (2) (a) [with changes]**

12A **Notifiable contract threshold—Act, s 25 (2) (a)**

The notifiable contract threshold amount is $25 000.

---

15.13 **Single rather than double quotes**

If it is necessary to use quotation marks in principal or amending legislation, use single quotation marks (not double quotation marks). Single quotes should also be used for quotes within quotes.

**Examples**

1 For example, the signpost definition ‘effective control’, of property—see section 14.’ means that the term ‘effective control’ is defined in that section.

2 If the Minister publishes a notice that says ‘a wombat named Roy said ‘hi’’, …
15.14 Tables

Each table in an Act or subordinate law should have a heading with the word ‘Table’ and, if appropriate, a brief description of the subject of the table.

Examples

1. Table 16 Collective hazard divisions
2. Table 68 Text of notice
3. Table 96 Notifiable imports

For this purpose, a single table in a schedule that does not contain other provisions (apart from the schedule heading) should be treated as a schedule and not a table. In such a case the schedule heading serves the same function as a table heading and the table is not separately numbered.

15.14.1 Numbering

Each table in an Act or subordinate law (other than a table in a schedule without a separate table heading) is given a unique number that enables the table to be easily identified.

Tables in sections

Tables are numbered based on the number of the section that they appear in (eg table 97 for a single table in section 97—see example 1). If there are 2 or more tables in a section, use decimal numbers to give the tables a unique number (eg table 97.1, table 97.2 etc).

Tables in schedule sections

Tables are numbered based on the number of the schedule section that they appear in (eg table 1.7 for a single table in schedule 1, section 7—see example 2). If there are 2 or more tables in a schedule section, use an additional decimal number to give the tables a unique number (eg table 1.7.1, table 1.7.2 etc).

Tables in schedules (no sections)

If a schedule only contains a single table, the table should not be numbered (see example 3). If there are 2 or more tables in a schedule not separated by parts, use decimal numbers based on the schedule number that they appear in to give the tables a unique number (eg table 1.1, table 1.2 etc for tables in schedule 1).
### Example 1

**Table numbering—section**

*Crimes (Forensic Procedures) Act 2000, section 97*

97  Permissible matching of DNA profiles

#### Table 97  Table of permissible matching of DNA profiles

<table>
<thead>
<tr>
<th>Item</th>
<th>Column 2</th>
<th>Column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>.....</td>
<td>......</td>
</tr>
</tbody>
</table>

### Example 2

**Table numbering—schedule section**

**Schedule 1  Vehicle standards**

#### 1.7  Operation and performance of warning lights

#### Table 1.7

<table>
<thead>
<tr>
<th>Item</th>
<th>Column 2</th>
<th>Column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Angle</td>
<td>Horizontal angle from centre of light</td>
</tr>
<tr>
<td>1</td>
<td>-30°</td>
<td>-20°</td>
</tr>
<tr>
<td>2</td>
<td>10°</td>
<td>50</td>
</tr>
<tr>
<td>3</td>
<td>5°</td>
<td>180</td>
</tr>
</tbody>
</table>
Example 3
Table numbering—schedule (no sections)

*Magistrates Court (Security Industry Infringement Notices) Regulations 2003, schedule 1*

**Schedule 1**  Security Act infringement notice offences and penalties

(see s 7 and s 8)

<table>
<thead>
<tr>
<th>column 1 item</th>
<th>column 2 offence provision</th>
<th>column 3 offence penalty (penalty units)</th>
<th>column 4 infringement penalty ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>10 (1)</td>
<td>50</td>
<td>500</td>
</tr>
<tr>
<td>2</td>
<td>38 (1)</td>
<td>50</td>
<td>500</td>
</tr>
</tbody>
</table>

15.14.2  Referring to tables

**Referring to a table in the body of an Act or subordinate law**

There is no need to use the section number and table number.

……an entity mentioned in table 22, column 2….

NOT

……an entity mentioned in section 22, table 22, column 2….

**Referring in the body of an Act or subordinate law to a table outside the body of the law (eg in a schedule)**

Use the schedule number and table number.

...an entity mentioned in schedule 1, table 1.1, column 2...

**Referring in a schedule to a table in the same schedule**

There is no need to use the schedule number and table number.

...an entity mentioned in table 1.1, column 2...

**Referring to a table in a schedule without sections**

There is no table number.

...an entity mentioned in schedule 1, column 2 (or item 1)....
Example 1

(1) An application mentioned in table 15, column 2 must contain the information, and be accompanied by any document, mentioned in column 3 in relation to the application.

Example 2

(2) The holder of a licence mentioned in an item in table 68, column 2 who is a member of an approved shooting club, must comply with the minimum participation rate mentioned in the item, column 3.

Example 3

reviewable decision means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

Example 4

alternative offence, for an offence against a provision mentioned in an item in table 33, column 2, means an offence against a provision mentioned in the item, column 3.

15.14.3 Part headings for tables

Part headings for tables should not be included in a table cell. This allows the part heading to be put in a header if required.

If it is necessary to divide a table into parts, and the table is in the body of an Act or subordinate law, each part should generally begin on a new page. If the table is in a schedule, each part need not begin on a new page.

15.14.4 Column headings

Use the heading 'item' not 'item no'.

A symbol applying to a column (eg ‘allowed amount ($’) and ‘kg’) should directly follow any term to which it relates and not be on a separate line. Do not use this form of heading unless all the material in the column to which the symbol relates is the same (eg all $’s).
15.14.5  Item numbers

Items in tables should be numbered from ‘1’ onwards.

15.14.6  Use of figures

The same rules mentioned in pt 15.6 apply to the use of figures in tables.

15.14.7  Styles

A 2, 3 or 4-column table can be created using the drafting template 'Global' group 'Tables' menu. The styles for tables are also found there.

15.14.8  Formatting

The format of tables should remain the same as provided for by the template, that is—
- aligned with the left and right margins
- 9 point Arial, bold font for column headings (all lower case)
- 10 point Times New Roman font for table text
- 25% grey colour on all borders
- solid black line under column headings.

<table>
<thead>
<tr>
<th>Table ##</th>
</tr>
</thead>
<tbody>
<tr>
<td>column 1</td>
</tr>
<tr>
<td>item</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>
15.15 **Use of quotation marks**

Single quotation marks may be used when it is necessary to specify specific wording to be used for signs, addresses etc. Do not use double quotation marks.

**Example 1**  
*Eggs (Labelling and Sale) Act 2001*

7  
**Cage eggs—retail display**  
(1) A person who displays cage eggs...

(2) For subsection (1)—

(a) the display must have a sign containing the following statement:

‘THESE ARE CAGE EGGS. Birds are continuously housed in cages within a shed.’; and

**Example 2**  
*Food Regulation 2002*

14  
**Prescribed nutritional information for standard food outlets—Act, s 110 (3) (a)**

(1) The following nutritional information is prescribed..:

(a) the average energy content of the food item...;

(b) the following statement:

‘The average adult daily energy intake is 8,700kJ’.

**Example 3**  
*Crimes (Child Sex Offenders) Regulation 2005*

7  
**How offender may report travel details—Act, s 45 (2)**

A registrable offender may report travel details...

(a) by telephoning 1800 031 722;

(b) by email to csort@afp.gov.au;

(c) by prepaid post to the following:

‘CSORT  
Woden Police Station  
GPO Box 401  
Canberra ACT 2601’.

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Part added in version 2012-5.
16 Spelling, abbreviations, capitals, punctuation and symbols

16.1 Spelling, Abbreviations and Symbols Guide

See the Spelling, Abbreviations and Symbols Guide for the use of hyphenation, setting solid and spacing of words (and some phrases), use of foreign words, spelling of words with alternative spellings, abbreviations, contractions and symbols.

16.2 Capitals

Capitalise words used in the title of bills, the name of the legislation and in chapter, part, division and subdivision headings only if the words would be capitalised when used in a sentence (other than at the beginning). The first word of these provisions is capitalised.

For references to any terms defined in LA, dictionary, part 1, follow the use of capitals given in the defined term in the dictionary (see examples 1).

If a term is not defined in the dictionary, follow the practice used in LA, dictionary, part 1. If in doubt, consult the parliamentary counsel.

References to dictionaries, examples, notes, tables, columns of tables, forms and appendixes should not use capitals (see examples 2).

When names of organisations and other bodies are abbreviated to the generic element for subsequent references, do not capitalise them (see examples 3).

Examples 1

1 Attorney-General
2 auditor-general
3 Australia
4 chief executive
5 chief health officer
6 Chief Justice
7 Chief Minister
8 Coroner’s Court
9 director of public prosecutions
10 (the) Executive
11 judge
12 Legislative Assembly
13 Minister
14 registrar (of court or tribunal)
15 registrar-general
16 regulation
17 the Territory
18 territory land

Examples 2
1 the dictionary
2 example 1
3 note 1
4 table 1
5 table 20, column 1
6 form 1
7 the forms in schedule 1
8 the Consumer Credit (Queensland) Act, appendix

Examples 3
1 the Justice and Community Safety Directorate…..the directorate
2 the Royal Commission on the Constitution…..the royal commission
3 the Parliamentary Counsel’s Office…..the office

Further reading
Style Manual: p 123
16.3 Abbreviations and contractions—eg / ie / etc

See the Spelling, Abbreviations and Symbols Guide, section 4 (Abbreviations and contractions).

In legislation, only use the abbreviations ‘eg’ and ‘ie’ in notes, tables and non-text examples and, in appropriate cases, inside brackets.

Example 1
‘example’

(1) The Minister must not open a cemetery at a place unless a hydrological analysis (for example, a ground water survey) has been done for the place.

Example 2
‘eg’

(1) A wombat may not play a game on a Thursday without written permission from a keeper.

Examples of games
1 ball games (eg croquet, ping pong or pinball)
2 travelling games (eg numberplate lotto or 20 questions)

Use ‘etc’ only in notes and headings to sections or rules. Etc should not be used in chapter, part, division or subdivision headings. If an appropriate heading cannot be found for a chapter without using etc, it may be necessary to rearrange the provisions of the legislation into more appropriate groupings.

Use abbreviations of legislation units only in notes, headings to chapters, parts, divisions, subdivisions, sections and rules, non-text examples and, in appropriate cases, in brackets.

Further reading
Spelling, Abbreviations and Symbols Guide: p v
Words and Phrases Guide, eg, etc, ie

16.4 Semicolons as provision dividers

Do not use semicolons to divide provisions other than paragraphs, subparagraphs or sub-subparagraphs. Recast the provision to avoid the use of semicolons.
16.5 Apostrophes in expressions of time

An apostrophe should not be used in plural expressions of time. It is left out as the sense of these phrases is more descriptive than possessive (Style Manual, p 87) (see example 1).

An apostrophe remains in singular expressions of time to help mark the noun as singular (see example 2).

Examples 1
Plural expressions
1 5 weeks time not 5 weeks’ time
2 12 months imprisonment not 12 months’ imprisonment
3 4 weeks holiday not 4 weeks’ holiday

Examples 2
Singular expressions
1 1 week’s time not 1 weeks time
2 1 month’s imprisonment not 1 months imprisonment
3 1 week’s holiday not 1 weeks holiday

16.6 Em dash (—) in paragraphs and subparagraphs

An em dash (—) is generally used in a paragraph or subparagraph (or sub-subparagraph) to separate the case to which the provision applies from its operative words. In this form, it aids clarity.

The em dash should not be used to separate matter that is not a ‘case’ but is an integral part of the provision.

Example 1
Correct use of em dash—case

For subsection (6)—

(a) if maintenance or repair work has been done on a testable backflow prevention device—it must be tested within 7 days after the day the work was done; or

(b) in any other case—it must be tested within 12 months after the day the last test was done on the device under this section.
Example 2
Incorrect use of em dash

A person who installs a testable backflow prevention device must—

(a) tell the chief executive that the device has been installed; and
(b) ensure that the device is tested by a suitably qualified person in accordance with AS2845.3; and
(c) **within 7 days after the device is tested**—give the chief executive a test report prepared by the person who did the test.

The words underlined in example 2 are an integral part of paragraph (c). They provide the time within which the test report must be prepared. They should be separated from the verb ‘give’ by a comma and not an em dash or put at the end of the paragraph.

16.7 Spacing in quantities expressed using symbols

A quantity expressed using a symbol should not contain a space between the number and the symbol.

**Examples**

1. 50mm **not** 50 mm
2. 30L **not** 30 L
3. 4km/h **not** 4 km/h

16.8 ‘Per cent’, ‘percent’ or ‘per centum’

Use the symbol ‘%’ and not the terms ‘per cent’, ‘percent’ or ‘per centum’.

16.9 ‘Nil’ not ‘0%’

Use the word ‘nil’ not 0% for percentages.

**Example**

*prescribed percentage*, for a month, means—

(a) for the part of the gross revenue of the club for the month that is less than $15 000—nil; and

(b) for the part of the gross revenue of the club for the month that is $15 000 or more but less than $25 000—15%.
Transitional provisions are used when an existing legislative scheme is repealed and a new legislative scheme begins. Transitional provisions preserve existing rights and explain how they fit into the new scheme. The better approach is generally for a new legislative scheme to take over completely from an old scheme. However, it is not uncommon for an old legislative scheme, although repealed, to be taken to apply to certain proceedings or other things that happened before the commencement of the new scheme.

The Legislation Act, section 84 saves the operation of a repealed law so that things done under the repealed law continue to be valid after the repeal takes effect. Although section 84 saves a repealed law, it is appropriate to include a transitional provision to confirm the continuing effect of the repealed law if the transitional provision makes the continuing operation of the repealed law clearer or more certain for the people to whom the law applies.

Example
A repealed law provides for the conduct of an investigation that may lead to criminal proceedings. It will be clearer, and provide more certainty, for the parties and the court in a prosecution, if the court can rely on a transitional provision that confirms the continuing validity of the investigator's powers and the investigation instead of having to satisfy the court that section 84 applies to the investigation.

Transitional provisions for amending legislation should be drafted as insertions into the legislation being amended and not as provisions of the amending legislation. If this is not done, the amending legislation will not automatically expire under LA, section 89 (1).

A subsection should not contain both a transitional provision and a provision with an ongoing effect. The provisions should be separated and an expiry provision included for the transitional provision.

Examples
See the following legislation as precedents:

Transitional part inserted
- *Road Transport (Alcohol and Drugs) Legislation Amendment Act 2010*, section 91

Transitional part with modification provisions inserted
- *Liquor Amendment Regulation 2010 (No 1)*, sections 4 and 5.

72 Chapter updated in version 2015-1 – see Standards Committee decision 9/12/14.
17.2 Notes

Notes are only expressly repealed if they would otherwise be difficult for the republications team to identify as being spent.

17.3 Expiry and LA, s 88 declaration

If a transitional or application provision is being included in legislation, it must have an expiry provision unless the parliamentary counsel otherwise approves. This will allow the provision to be removed under LA after it has expired.

It is preferable to say '12 months' rather than '1 year'.

A note about the effect of LA, section 88 should be included after the expiry.

Example

## Expiry—ch/pt/div ##

This chapter/part/division expires ## months/years after the day it commences.

Note

Transitional provisions are kept in the Act/regulation for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see Legislation Act, s 88).

17.4 Use of ‘commencement day’ definition

A definition of ‘commencement day’ may be included for the transitional chapter/part if it is used multiple times throughout the chapter/part.

Otherwise, if multiple times in a section just define for the section.

If only used 1 or 2 times there is no need for a definition just set out in full.

Example

commencement day means the day the XYZ Act, section # commences.

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73 Sentence added and example updated in version 2015-4.
74 Added in 2017-1
17.5 Saving instruments under repealed legislation\textsuperscript{75}

If certain instruments under repealed legislation need to be saved (remain effective) it is better to provide for these instruments \textit{to be taken to be instruments made under the new legislation} (see example 1).

This technique is clearer for legislation users to understand and easier to accurately indicate the status of the instrument on the register. See also, the \textit{Amending Guide}, part 12.3 (Some instruments saved).

Instruments that are expressly repealed and have their operation saved by transitional arrangements are difficult for legislation users to understand as the instruments are marked on the register as “repealed" and remain listed under the repealed Act but are in fact "effective".

Example 1

Recommended precedent

\textit{Work Safety Legislation Amendment Act 2009}, section 4 and amendment 1.23

\begin{verbatim}
# Transitional—[matter / type of instrument]

[matter / type of instrument] under the repealed Act, section ##, that is in force immediately before the commencement day, is taken to be [matter / type of instrument] under this Act, section ##.
\end{verbatim}

Example 2

Not recommended

\textit{Planning and Development Act 2007}, sections 428 and 467.

\textsuperscript{75} Part updated in version 2015-4.
17.6 Format of headings

For a transitional chapter or part in principal legislation the heading can simply be ‘Transitional’ (see example 1).

The heading for a transitional chapter or part being inserted into principal legislation by amendment should contain the amending Act’s name (see example 2). In addition a note describing the amendments may be included.

Do not use the word ‘transitional’ in section headings that are in a chapter/part/division that is titled ‘Transitional’. If a single transitional provision is being inserted into a chapter/part/division titled ‘Miscellaneous’ then use the word ‘transitional’ in the section heading.

Example 1
Principal legislation

Part ##  Transitional

Example 2
Amending legislation

Part ##  Transitional—Duties Amendment Act 2008

Note  The Duties Amendment Act 2008 inserted s 72B which provides for the expiry of s 59 (Establishment of a trust relating to unidentified property and non-dutiable property), s 60 (1) (Instrument relating to managed investment scheme) and s 61 (Instruments relating to superannuation) on 30 June 2008.

Example 3
Transitional sections in a transitional ch/pt/div

##  Renewal of building surveyor licences

Example 4
Transitional sections in a miscellaneous ch/pt/div

##  Transitional—renewal of building surveyor licences
17.7 Location

Transitional provisions should be grouped in a separate part (or chapter) at the end of the relevant legislation (after the Miscellaneous part (if there is one) and before the ‘Repeals and consequential amendments’ part (if there is one), otherwise before schedules and dictionary). However, if the transitional provision relates to a single clause, with the parliamentary counsel’s approval it can be included in the clause in a separate provision with its own expiry provision.

To assist users of legislation it is necessary to look at the endnotes in the current republication of the legislation being amended to determine exactly where the transitional part should be inserted. A new transitional part (including section numbers) should take a new number, that is, do not reuse numbers that have already been used for a previous transitional part that has now expired.

Example 1

*Human Rights Commission Legislation Amendment Bill 2006, sch 1, pt 1.1 [with changes]*

Part 1.1 Health Records (Privacy and Access) Act 1997

[1.1] New part 10

*insert*


50 Effect of Health Records (Privacy and Access) Amendment Act 2005 (No 2)

The *Health Records (Privacy and Access) Amendment Act 2005 (No 2) A2005-63* is taken to have always had effect as if each amendment of the dictionary were an amendment of section 4.

51 Expiry—pt 10

This part expires on the day it commences.

*Note* Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see Legislation Act, s 88).

*Health Records (Privacy and Access) Act 1997—endnotes*

*Regulation-making power*

s 36 sub 2001 No 44 amdt 1.2070

am A2005-63 s 17; ss renum R9 LA

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76 Sentence updated in version 2014-2.
INSERT TRANSITIONAL PART

pt 10 hdg ins A2006-## amdt 1.1 exp 25 December 2006 (s 51)

Effect of Health Records (Privacy and Access) Amendment Act 2005 (No 2)
s 50 ins A2006-## amdt 1.1 exp 25 December 2006

Expiry—pt 10
s 51 ins A2006-## amdt 1.1 exp 25 December 2006 (s 51)

Amendments of other Acts
sch om 2001 No 44 amdt 1.2071

Example 2
Asbestos Legislation Amendment Bill 2006, sch 1, pt 1.4 [with changes]

Part 1.4 Construction Occupations (Licensing) Act 2004

[1.32] New part 15

insert

Part 15 Transitional—Asbestos Legislation Amendment Act 2006

155 Effect of building licence authorising specialist building work involving asbestos
(1) This section applies in relation to a person if—
…..

156 Renewal of building surveyor licences
(1) This section applies to the renewal of a licence as a building surveyor if the applicant for renewal was licensed immediately before the commencement of this section.
…..

157 Expiry—pt 15

This part expires 1 year after the day it commences.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see Legislation Act, s 88).

Construction Occupations (Licensing) Act 2004—endnotes

Transitional regulations
s 152 exp 1 September 2005 (s 153 (1))

Expiry of pt 13
s 153 exp 1 September 2005 (s 153 (1))
NEW TRANSITIONAL PART 14 BEING INSERTED BY

Construction Occupations Legislation Amendment Bill 2006

Transitional—Construction Occupations Legislation Amendment Act 2006
pt 14 hdg           ins A2006-## amdt 1.17
om R## LA

Conduct engaged in before 1/9/04
s 154               ins A2006-## amdt 1.17
exp 25 December 2006 (s 154 (4))

INSERT TRANSITIONAL PART

Transitional—Asbestos Legislation Amendment Act 2006
pt 15 hdg           ins A2006-## amdt 1.32
exp 25 December 2006 (s 157)

Effect of building licence authorising specialist building work involving asbestos
s 155               ins A2006-## amdt 1.32
exp 25 December 2006 (s 157)

Renewal of building surveyor licences
s 156               ins A2006-## amdt 1.32
exp 25 December 2006 (s 157)

Expiry—pt 15
s 157               ins A2006-## amdt 1.32
exp 25 December 2006 (s 157)

New regulations
sch 1               om R1 LA

Dictionary
dict  def AS 3500 mod SL2004-36 reg 55 (as am by SL2004-44 reg 5)
sub A2005-34 amdt 1.29
17.8 Transitional regulation-making powers

Before including the ‘Transitional regulations’ provision, the drafter should check that the Act in which the provision is to be included has a regulation making power to the effect that the Executive may make regulations for the Act.77

The ‘Transitional regulations’ provision should include the words ‘(including in relation to another territory law)’ (see subsection (2) below).

Subsection (3) has attracted comments from the Scrutiny of Bills Committee. It is recommended that drafters provide the material set out below in ‘Advice for instructors’ for inclusion in explanatory statements.

Example

## Transitional regulations

(1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the XYZ Act/this Act.

(2) A regulation may modify this chapter/part (including in relation to another territory law) to make provision in relation to anything that, in the Executive’s opinion, is not, or is not adequately or appropriately, dealt with in this chapter/part.

(3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.

Advice for instructors:
Advisers should include the following text, or similar words, in the explanatory statement for the bill to ensure that it is made clear to the Legislative Assembly that the section is not expressed, and does not intend, to authorise the making of a regulation limiting future enactments of the Legislative Assembly:

Section ## enables the Executive to make regulations dealing with transitional matters.

The section contains 2 different regulation making powers.

Section ## (1) enables the making of a regulation to deal with any transitional matter that arises as a result of the enactment of the Bill. However, the scope of the regulation must be confined to the same sphere of operation as the amended Act, be strictly ancillary to the operation of the Act and not widen the Act’s purpose.

Section ## (2) enables the making of a regulation that modifies the Act. A regulation under this section may only modify chapter/part ## of the Act, and only if the Executive is of the opinion that the part does not adequately or

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77 Added in 2018-1—see Standards Decisions 27/6/18.
appropriately deal with a transitional issue. A provision of this kind is an important mechanism for achieving the proper objectives, managing the effective operation, and eliminating transitional flaws in the application of the Act in unforeseen circumstances by allowing for flexible and responsive (but limited) modification by regulation.

Section ## (3) gives a regulation under section ## (2) full effect according to its terms. A provision of chapter/part ## of the Act modified by regulation will operate in the same way (in relation to another provision of the Act or any other territory law) as if it were amended by an Act, and in accordance with established principles of statutory interpretation. The section is not expressed, and does not intend, to authorise the making of a regulation limiting future enactments of the Legislative Assembly. Also, any modification by regulation of chapter/part ## of the Act has no ongoing effect after the expiry of that chapter/part.

See the following legislation as precedents:
- *Duties (Transitional Provisions) Regulation 2008*
- *ACT Civil and Administrative Tribunal (Transitional Provisions) Regulation 2009*
- *Children and Young People (Transitional Provisions) Regulation 2009*

**Further reading**

LA, s 88, s 89 and dict, pt 1, def *transitional*
17.9 Transitional provisions regulations

Transitional provisions regulations modifying the Act must include a provision to expire the section modifying the Act (see example 1) as well as a provision to expire the transitional regulation (see example 2). The provision expiring the modification section should be linked to the transitional provisions regulation. The provision expiring the transitional provisions regulation should be linked to the transitional chapter/part of the Act that provides for a regulation to modify the Act.

Example 1

*Nature Conservation (Transitional Provisions) Regulation 2015*

5 **Modification of Act, ch 20—Act, s 414 (2)**

The Act, chapter 20 applies as if the following section were inserted:

‘404A **Notification of lists**

(1) A list made by the Minister under section 63 is, if notified, taken to be a list of species notified under section 91 (2) (a)

……

(3) This section expires on the day the *Nature Conservation (Transitional Provisions) Regulation 2015* expires.’

Example 2

*Nature Conservation (Transitional Provisions) Regulation 2015*

6 **Expiry—regulation**

This regulation expires on the day the *Nature Conservation Act 2014*, chapter 20 expires.
18 Modifications

18.1 General

A law may need to modify another law in different circumstances, the 2 most common being:

- a law applies and modifies another law for an ongoing purpose (ongoing modification);
- a regulation modifies another law for transitional purposes (transitional modification).

Transitional modifications are more common but should only be drafted with the approval of the parliamentary counsel.

A modification includes modification by alteration, omission, substitution and addition (LA, dict). A modified law operates as modified but the modification does not amend the text of the law (LA, s 95). It operates like a gloss over the modified law.

18.2 Ongoing modification

If a law applies another law for an ongoing purpose, adjustments are often needed to help the operation of the applied law. This usually involves adjusting concepts, processes and references to fit the new context. These adjustments are frequently done by referential provisions to the effect that the applied law operates as if, for example, 'X' were 'Y'.

Sometimes, the modification technique can be useful (with or without referential provisions) if higher level conceptual adjustments are not adequate and adjustments are needed at a textual level. Generally, it is better to avoid or minimise detailed textual modifications as much as possible. They make the modified law harder to understand.

Examples of ongoing modifications include:

- Territory Owned Corporations Act 1990
- Referendum (Machinery Provisions) Act 1994
- Aboriginal and Torres Strait Islander Elected Body Act 2008
18.3 Transitional modification

18.3.1 General

This part does not apply to ongoing modifications.

Acts for substantial new legislative schemes should normally include the standard regulation-making section (see example) for prescribing transitional matters necessary or convenient to be prescribed because of the enactment of the new law.

The standard section also gives the power to modify the new Act’s transitional chapter/part to make provision in relation to anything that is not, or is not adequately or appropriately, dealt with in the chapter/part. The power should generally be limited to only modifying sections that are in the ‘Transitional’ chapter/part but the power does extend to sections outside the ‘Transitional’ chapter/part and in some cases it can extend to other legislation.

Example
Standard transitional regulation-making provision

## Transitional regulations

(1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the XYZ Act/this Act.

(2) A regulation may modify this chapter/part (including in relation to another territory law) to make provision in relation to anything that, in the Executive’s opinion, is not, or is not adequately or appropriately, dealt with in this chapter/part.

(3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.

Examples of transitional modifications include:

- ACT Civil and Administrative Tribunal (Transitional Provisions) Regulation 2009
- Children and Young People (Transitional Provisions) Regulation 2009
- Duties (Transitional Provisions) Regulation 2008
18.3.2 Drafting practice

Because of the complex nature of modifications, the power should be used sparingly and only with the parliamentary counsel’s approval. If possible, regulations under subsection (1) should be used, rather than modifying regulations under subsection (2). Modifying regulations should only be used as a last resort (ie, if other avenues to resolve an issue are not available) and only if it is necessary to modify a provision of an Act.

18.3.3 Republication practice

The text of the modification is set out in a separate schedule to the regulation and that schedule is included in the endnotes of the republication of the Act.

Legislation users are alerted to the presence of modifications to the transitional chapter/part of the new Act by the symbol [M] next to the heading of the modified section and the following note is added by the republications team.79

Note The text of this modification appears in endnote 5.

18.4 Format

Modifications should generally be made using a modifications clause with the modifications set out in a separate schedule using the ‘amending schedule clause’ style. This format avoids the use of inverted commas around the modification text (except in the case of modifications of section/s outside the transitional chapter/part). Also, it is easier to read for the legislation user and clearer for the republication team.

An expiry should be included in the modification clause. The expiry is normally linked to the expiry of the ‘Transitional’ chapter/part.

79 Note referring to endnotes added in 2018-1—see Standards Decisions 27/6/18.
18.4.1 Ongoing modification—format

Example

*Health Practitioner Regulation National Law (ACT) Act 2010*

PROVISION IN ACT

6  **Application of Health Practitioner Regulation National Law**

The Health Practitioner Regulation National Law, as in force from time to time, set out in the schedule to the Qld Act—

(a) applies as a territory law, as modified by schedule 1; and

(b) ...

(c) ...

MODIFICATION SET OUT IN THE SCHEDULE OF THE ACT

Schedule 1  **Modification—Health Practitioner Regulation National Law**

*(see s 6)*

[1.1]  **New section 35A**

*insert*

35A  **National Board consideration of criminal history**

(1) In making a decision under this Act that relates to an individual’s criminal history, a National Board must consider—

...
18.4.2 Transitional modification—format

Modification of section/s in the transitional chapter/part

Preferred approach
Multiple modifications (set out in a schedule)

Example

Family Violence (Transitional) Regulation 2017

3 Modification of Act, pt 20—Act, s 201 (2)
The Act, part 20 is modified by schedule 1.

4 Expiry
This regulation expires on …..

MODIFICATION SET OUT IN THE SCHEDULE OF THE REGULATION
(Note, s 198 is within the transitional chapter/part)

Schedule 1 Modification of Act
(see s 3)

[1.1] Section 198, new definition of operational date

insert

operational date means the day a regulation for the Act, section 115, definition of corresponding law, commences.

...

80 Example updated 2017-1 to reflect current drafting practice of making stand alone transitional regulations instead of amending the principal regulation to insert modification.
Exception for simple single modification

Single modification

Example

*Firearms Regulation 2008*

81 Modification of Act, pt 20—Act, s 415

The Act, part 20 applies as if the following section were inserted:

‘416A Authorised possession or use of prohibited firearms with pistol grips for sport or target shooting

(1) The holder of a category B...

...

(4) This section expires on the day the Firearms Regulation 2008, part 17 expires.’
Modification of section/s outside the transitional chapter/part

Example

*Family Violence (Transitional) Regulation 2017*

3 **Modification of Act, pt 20—Act, s 201 (2)**

The Act, part 20 is modified by schedule 1.

4 **Expiry**

This regulation expires on …..

MODIFICATION/S SET OUT IN THE SCHEDULE OF THE REGULATION
(Note, s 197 is NOT within the transitional chapter/part)

**Schedule 1** Modification of Act [with changes]

(see s 3)

…

[1.4] **New sections 429A to 429F**

**insert**

429A **Modification—s 197 (Applications to amend development approvals)**

Section 197 (1) applies as if it read as follows:

‘(1) This section applies if—

(a) the planning and land authority has given...

(b) the development proposal changes ...

(c) section 198C does not apply to the changed development proposal.’

…

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*Example updated 2017-1 to reflect current drafting practice of making stand alone transitional regulations instead of amending the principal regulation to insert modification.*
Modification of another Act

Example

Duties (Transitional Provisions) Regulation 2008

PROVISION IN REGULATION TO MAKE THE MODIFICATION

3 Modification of Act, ch 17—Act, s 451

The Act, chapter 17 applies as if the following section were inserted:

‘451A Modification—Payroll Tax Act 1987


(2) This section expires on the day the Duties (Transitional Provisions) Regulation 2008 expires.’

MODIFICATION/S SET OUT IN THE SCHEDULE OF THE REGULATION

Schedule 1 Modification—Payroll Tax Act 1987

(see s 3)

[1.1] Dictionary, definition of stock exchange

substitute

stock exchange—see the Duties Act 1999, dictionary, definition of recognised stock exchange.
19 Court Procedures Rules

19.1 General

Rules under the Court Procedures Act 2004 (the Act) are made by a rule-making committee with the assistance of an advisory committee. The rule-making committee is established under the Act, section 9 and consists of 5 members including the Chief Justice of the Supreme Court and the Chief Magistrate. The advisory committee is established under the Act, section 11 and consists of 12 members drawn from the courts, the ACT Bar Association, the ACT Law Society and the government, including parliamentary counsel.

The Act, section 7 (Rule-making power) provides that the rule-making committee may make rules in relation to the practice and procedure of ACT courts, prescribed tribunals and their registries and anything else mentioned in schedule 1 (Subject matter for rules). Rules are subordinate laws (see LA, s 8).

The rule-making committee does not make rules for the ACT Civil and Administrative Tribunal (ACAT).

A rule is taken to be made, (or a form is taken to be approved), when it is signed, (or approved in the case of a form), by 3 or more committee members, including the Chief Justice and the Chief Magistrate, or, if not the Chief Magistrate, the other appointed magistrate.

Rules are generally amended twice a year on 1 January and 1 July.

Please note, if the Court Procedures Rules 2006 require amendment as a result of the introduction of a new legislative scheme or extensive changes to an existing scheme, instead of including the amendments in a Consequential Amendments Bill (as would normally be the case), please tell the drafter responsible for preparing amendments of the Rules what changes are needed. The drafter meets with the rule-making committee on a regular basis and will tell the committee about any changes needed to the rules as a consequence of new legislative schemes etc. The rule-making committee prefers that amendments of the rules are prepared and made only by the rule-making committee.

19.2 Schedule 6 (Corporations Rules)

The Court Procedures Rules 2006, schedule 6 is model legislation of the Federal Court (Corporations) Rules 2000 (Cwlth). Because of this some aspects of the schedule, for example, rule numbering and language, do not comply with current drafting practice.

19.3 Approved forms

The rule-making committee may also approve forms for the Act, or for use in or in relation to ACT courts, prescribed tribunals and their registries.

An approved form is a notifiable instrument (see Act, s 8 (4)).
19.3.1 Approval statement

An approval statement needs to be drafted in conjunction with any new form being made. If a new form is replacing another that has already been notified the approval statement must provide for the repeal of the old form. If the approved forms need to commence on a particular day include a commencement provision in the approval statement.

Example

Australian Capital Territory

**Court Procedures Act 2004—approved forms**

approval statement for

**Approved forms AF2012— to AF2012—**

made under the

_Court Procedures Act 2004, section 8 (Approved forms)_

We, members of the rule-making committee—

(a) approve the following forms for the _Court Procedures Rules 2006:_
   • forms 2, 3 and 19 to 23
   • form 6.10; and

(b) repeal the following forms for the _Court Procedures Rules 2006:_
   • AF2006-418
   • AF2007-133;

to commence on 1 July 2012.

2012

Chief Justice
Chief Magistrate

President of the Court of Appeal
Magistrate

Judge
19.3.2 Notes

If an approved form is made for a particular provision the provision should have a note directing the reader to the specific form to be used. It should state the form number and title.

If a form title is changed the corresponding note should also be changed by amendment in the amending rules.

Example
Note in amending rule

Note 1 See approved form 5.2 (Supreme Court—application for leave to appeal).

19.3.3 Republication practice—AF number link

When a form is re-made or a new form made the approved form number is added to the note by the republication team.

Example
Note in republication

Note See approved form 5.2 (Supreme Court—application for leave to appeal) AF2006-386.

19.4 Requesting notification

Note for Editing and Republications team when sending out final version

Because the republication process can be quite lengthy, for example when updating approved form notes, it is helpful to include in your email to the client a suggestion to reserve instrument numbers and to liaise with the Legislative Publishing Section regarding the notification date.

Example
Words to include in email

You can reserve instrument numbers or request notification as soon as you are ready. Please call Karen Moxon (Notification Manager) if you need any assistance with this process. Reserving the numbers and arranging a notification date will assist our republication team in preparing a new republication of the Court Procedures Rules.

If you have any questions please contact either myself (ext 537##) or Karen Moxon (ext 53783).
20 Road transport legislation

20.1 What is the road transport legislation?

The road transport legislation is made up of the following Acts, and regulations made under the Acts (see Road Transport (General) Act 1999, section 6):

- Road Transport (Alcohol and Drugs) Act 1977;
- Road Transport (Driver Licensing) Act 1999;
- Road Transport (General) Act 1999;
- Road Transport (Public Passenger Services) Act 2001;
- Road Transport (Safety and Traffic Management) Act 1999;
- Road Transport (Third-Party Insurance) Act 2008;
- Road Transport (Vehicle Registration) Act 1999.

The road transport legislation is also made up of—

- any other Act or regulation that is prescribed by a regulation made under the Road Transport (General) Act 1999; and
- the Australian Road Rules (see Road Transport (Safety and Traffic Management) Regulation 2000, section 6).

Other laws dealing with road transport include the Dangerous Goods (Road Transport) Act 2009 and the Heavy Vehicle National Law (ACT).83

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83 Sentence added in version 2015-3.
20.2 Definitions

20.2.1 Background and signposting

If a word or expression is defined in an Act (but not a regulation or another publication) that forms part of the road transport legislation, the definition applies to the word or expression wherever it is used throughout the road transport legislation unless the contrary intention appears (see Road Transport (General) Act 1999, section 8).

The Road Transport (General) Act 1999 occupies a central place in the road transport legislation scheme. In keeping with this role, defined terms in the road transport legislation must conform with the following drafting practices:

- A word or expression defined in the Road Transport (General) Act 1999 and used in another Act that forms part of the road transport legislation must be identified by dictionary note in the other Act as being a word defined in the Road Transport (General) Act 1999 (see for example Road Transport (Alcohol and Drugs) Act 1977, dictionary, note 3).

- A word or expression defined in an Act that forms part of the road transport legislation (other than the Road Transport (General) Act 1999) and used in another Act that also forms part of the road transport legislation must be defined in the other Act by use of a signpost definition referring back to the first Act (for example, see Road Transport (Alcohol and Drugs) Act 1999, dictionary, definition of restricted licence).

- For a key word or expression that is used in other Acts that form part of the road transport legislation, the definition for the word or expression (if the same in each Act) may be located in the Road Transport (General) Act 1999 (even if the word or expression is not used in that Act). Also, a dictionary note must be inserted in each Act in which the word or expression is used stating that it is defined in the Road Transport (General) Act 1999 (see for example Road Transport (Vehicle Registration) Act 1999, dictionary, note 3).

20.2.2 References to terms defined more than once and differently

The expression heavy vehicle is defined in the Road Transport (Vehicle Registration) Act 1999, dictionary, as well as the Road Transport (Mass, Dimensions and Loading) Act 2009 (repealed), section 7. A signpost definition for the expression heavy vehicle, must specify which Act’s definition applies.

The expression responsible person is defined in the Road Transport (General) Act 1999, dictionary (in relation to vehicles generally) as well as the Road Transport (Mass, Dimensions and Loading) Act 2009 (repealed), section 12 (in relation to heavy vehicles). A signpost definition for the expression responsible person must specify which Act’s definition applies.
20.3 Australian Road Rules

The Australian Road Rules (the rules) are set out in a Commonwealth regulation (see National Transport Commission (Road Transport Legislation – Australian Road Rules) Regulations 2006 (Cwlth), schedule 1) made under the National Transport Commission Act 2003 (Cwlth).

The Rules can be found on the ACT Legislation Register site as a legislative instrument under the Road Transport (Safety and Traffic Management) Act 1999.

20.3.1 Application of rules in ACT & background

The Road Transport (Safety and Traffic Management) Regulation 2000 (the regulation) makes the rules part of the law of the ACT, and also modifies and supplements the rules.

Chapter 1 of the regulation deals with preliminary matters and key definitions.

Chapter 2 deals with the rules as a whole, and in the following way:

Part 2.1 defines Australian Road Rules (see section 5) and incorporates the rules into the regulation (see section 6) subject to anything else in the regulation that may modify the rules—and therefore into territory law;

Part 2.2 adjusts the way in which the rules are incorporated into territory law by modifying particular provisions of the rules;

Part 2.3 provides for additional road rules that are particular to the ACT.

Chapter 3 establishes a parking scheme in the ACT.

Chapter 4 deals with traffic offence detection devices (Schedule 1 deals with the meaning of location codes on camera detection devices).

Chapter 5 deals with miscellaneous provisions, including disposal of impounded and forfeited vehicles.

The Rules are amended periodically. The Regulation does not simply incorporate the rules as in force from time to time because changes to the rules require careful consideration by Territory authorities and may require extensive associated implementation action by the authorities. Accordingly, the definition of Australian Road Rules (see section 5) must be updated each time the rules are amended and republished. The Rules as amended and republished are shown on the legislation register.

The Rules are not completely self-contained and are intended to be read with associated laws of each jurisdiction. Therefore, many of the rules provide for ‘another law of this jurisdiction’ to define terms used in the rules for the application of the rules in the ACT, to permit things to be done in the ACT otherwise prohibited by the rules or to exempt people in the ACT from complying with the rules.
20.3.2 How rules are incorporated by *Road Transport (Safety and Traffic Management) Regulation 2000*, chapter 2

Part 2.1 contains key provisions that incorporate the body of the rules into ACT law (in particular, see section 6). The only other provisions that should be included in this part are provisions that substantially affect or modify the incorporation of a particular provision or provisions of the rules or the interpretation of the rules, and that cannot be appropriately dealt with under part 2.2. For example, if a provision of the incorporated rules needs to be delayed, or taken to be read in a particular way, part 2.1 is the appropriate part in which to make such modifications (see example 1).

All modifications should be inserted into part 2.2.

For sections in the *Road Transport (Safety and Traffic Management) Regulation 2000* that are 'associated laws' (see 20.3.1 above), the section heading should as far as possible apply the heading wording and conventions of the provision in the rules to which the section relates.

Part 2.2 contains provisions that must be read alongside provisions of the rules, and which serve as important modifiers to ensure a tailored application of the rules to the ACT.

20.3.3 If making provision for rules elsewhere

The table to note 2 for the *Road Transport (Safety and Traffic Management) Regulation 2000*, division 2.2.1 sets out other provisions of the rules for which provision is made by other territory laws. Accordingly, any change outside the *Road Transport (Safety and Traffic Management) Regulation 2000* for the rules needs to be reflected in the table.
20.4 Road Transport (Offences) Regulation

20.4.1 Background

All offences created under the road transport legislation are listed in schedule 1 of the regulation. The schedule is made up of a table that includes the following information:

- in column 2—the section number for each offence, including the section number(s) of any variations (or 'cases') of the offence (see 20.4.2);
- in column 3—a short description of each offence;
- in column 4—the maximum penalty for the offence (in penalty units/maximum term of imprisonment);
- in column 5—the infringement notice penalty for the offence (in dollars) if it is an offence that may be dealt with by infringement notice;
- in column 6—the demerit points for the offence if demerit points are prescribed for the offence.

When creating a new offence under the road transport legislation, or amending an existing offence, the offence must always be included and correctly described in the schedule.
20.4.2 Schedule 1 descriptions for offences

When describing an offence that contains related variations (or cases), the oblique symbol ( / ) should be used when the offence in all its cases is mentioned in the Road Transport (Offences) Regulation 2005, schedule 1 (see example 1). Column 2 of schedule 1 identifies the section number for each offence listed in the schedule. If an offence consists of more than 1 case, each case must be stated separately in a bullet point sub-item (see example 2).

Example 1
Road Transport (General) Act 1999, s 231

231 Person not to hinder or obstruct

A person must not, without reasonable excuse, hinder or obstruct a police officer, an authorised person or anyone else in the exercise of a function under the road transport legislation.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

Road Transport (Offences) Regulation 2005, sch 1, pt 1.7, item 17 [entry for Act s 231]

<table>
<thead>
<tr>
<th>column 1 item</th>
<th>column 2 offence provision and, if relevant, case</th>
<th>column 3 short description</th>
<th>column 4 offence penalty (pu)</th>
<th>column 5 infringement penalty ($)</th>
<th>column 6 demerit points</th>
</tr>
</thead>
<tbody>
<tr>
<td>17</td>
<td>231</td>
<td>hinder/obstruct police officer/authorised person/other person</td>
<td>50 pu/6 months prison/both</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Example 2

Road Transport (Driver Licensing) Act 1999, s 32 (3) (a)

32 Person not to hinder or obstruct

A person whose application for an Australian driver licence is refused in any jurisdiction, or whose Australian driver licence is cancelled by a court in Australia or under the law of any jurisdiction (other than under the Road Transport (General) Act 1999, section 66 (1) or a corresponding provision of the law of another jurisdiction), must not—

(a) drive a motor vehicle on a road or road related area without having subsequently obtained an Australian driver licence; or

(b) apply for a driver licence and in, or in relation to, the application omit to mention the refusal or cancellation.

Maximum penalty:

(a) for a first offender—50 penalty units, imprisonment for 6 months or both; or

(b) for a repeat offender—100 penalty units, imprisonment for 1 year or both.

Road Transport (Offences) Regulation 2005, sch 1, pt 1.5, items 15 & 16 [entries for Act, s 32 (3) (a)]

<table>
<thead>
<tr>
<th>column 1</th>
<th>column 2</th>
<th>column 3</th>
<th>column 4</th>
<th>column 5</th>
<th>column 6</th>
</tr>
</thead>
<tbody>
<tr>
<td>item</td>
<td>offence provision and, if relevant, case</td>
<td>short description</td>
<td>penalty (pu)</td>
<td>infringement penalty ($)</td>
<td>demerit points</td>
</tr>
<tr>
<td>15</td>
<td>s 32 (3) (a)</td>
<td>drive while licence cancelled/after licence refused—first offender</td>
<td>50 pu</td>
<td>6 months prison/both</td>
<td></td>
</tr>
<tr>
<td>15.1</td>
<td>first offender</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15.2</td>
<td>repeat offender</td>
<td>drive while licence cancelled/after licence refused—repeat offender</td>
<td>100 pu</td>
<td>12 months prison/both</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>s 32 (3) (b)</td>
<td>apply for licence after refusal/cancellation state name falsely/incorrectly/not mention refusal/cancellation—first offender</td>
<td>50 pu</td>
<td>6 months prison/both</td>
<td></td>
</tr>
<tr>
<td>16.1</td>
<td>first offender</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
20.4.3 Amendments of road transport legislation affecting provision numbers—changes to schedule 1 required

Any amendment that affects the numbering of an offence provision in the road transport legislation, or which omits an offence or creates a new offence, must be reflected in Road Transport (Offences) Regulation 2005, schedule 1.

20.4.4 Administering authority for infringement notice offences

All infringement notice offences under the road transport legislation are administered by an administering authority (either the road transport authority or the chief police officer).

The Road Transport (Offences) Regulation 2005, section 8 sets out which infringement notice offences are administered by the road transport authority, and which are administered by the chief police officer.

The road transport authority administers most, but not all, parking offences. If creating a new parking related offence seek instructions to establish who should be the administering authority for the offence.

20.5 Merits review of decisions—Road Transport (General) Regulation

Many decisions under the road transport legislation are reviewable by ACAT (see Road Transport (General) Regulation 2000, schedules 1 and 2). The decisions listed in schedule 1, other than decisions made personally by certain decision-makers (see Act, section 90, definition of internally reviewable decision), are internally reviewable before an application for review may be made to ACAT. Decisions listed in schedule 2, and decisions made personally by the specified decision-makers, are excluded from internal review and applications for review may be made direct to ACAT.

Accordingly, any amendment that affects the numbering of such a provision, or which omits such a provision or creates a new right of review, must be reflected in the schedule.

20.6 Road Transport (Safety and Traffic Management) Regulation—strict liability offences

An offence against the regulation (including the Australian Road Rules) is a strict liability offence (see section 4B). Accordingly, each offence provision in the regulation does not include the usual statement note that the offence is a strict liability offence. However, if an offence (that is not a strict liability offence) is inserted into the regulation, section 4B must be consequentially amended.
21 Infringement notices regulations

The *Magistrates Court Act 1930*, part 3.8 provides a system of infringement notices for offences against various Acts. The infringement notice system is intended to provide an alternative to prosecution.

Use the *Magistrates Court (Fair Trading Motor Vehicle Repair Industry Infringement Notices) Regulation 2012* as a precedent.

Do not include Act references in the section headings.

Only provide a definition for the Act citation if it is long, otherwise use the full citation when referencing the Act, including in the schedule heading.84

Use the terms mentioned below in the example for the dot points in note 2 and note 3. Include any other relevant terms/definitions (if any) in the dictionary (see example 2).85

Example 1
Structure of regulation / order of sections

1 Name of regulation
2 Commencement
3 Dictionary
4 Notes
5 Purpose of regulation
6 Administering authority
7 Infringement notice offences
8 Infringement notice penalties
9 Contents of infringement notices—identifying authorised person
10 Contents of infringement notices—other information
11 Contents of reminder notices—identifying authorised person
12 Authorised people for infringement notice offences

Schedule 1 XYZ Act 2012 infringement notice offences and penalties86

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84 Sentence amended in version 2012-3 to clarify that the full citation is also used in the schedule heading.
85 Sentence added in version 2012-3 to clarify that the dot points shown should always be used.
86 Example amended in version 2012-3 to clarify that the full citation is used in the schedule heading.
Example 2
Dictionary notes

Dictionary
(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this regulation.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- commissioner for fair trading
- corporation
- Corporations Act
- individual.

Note 3 Terms used in this regulation have the same meaning that they have in the Magistrates Court Act 1930 (see Legislation Act, s 148). For example, the following terms are defined in the Magistrates Court Act 1930, dict:

- administering authority
- authorised person
- infringement notice
- infringement notice offence
- reminder notice.
22 Legislative instruments

22.1 General

We draft a number of legislative instruments for clients, some on the basis of an established protocol, such as amendments to the Public Sector Management Standards and Court Procedures Rules and forms, and others on an ad hoc basis as instructed by clients.

22.2 Public Sector Management Standards

22.2.1 Drafting

Current protocol is for PCO to draft amendments to the Public Sector Management Standards as instructed by CMTEDD. The standard procedures applying to drafting a regulation apply to drafting the Standards. A draft document attached to the standard PCO drafting template is created. Instructions are received as normal and PDF drafts are sent out for review.

22.2.2 QAC

The document is QA checked and finalised by the Editing and Republications team. A PDF final is sent to the client for making.

See the QAC procedures for further information and email templates.

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87 Chapter added in version 2015-5—see Standards Decision 16/06/2015.
22.2.3 Notification

The client should follow the same process that applies to regulations for lodging and requesting notification. That is, when they submit it to their Ministerial unit, the authorised notifications officer will choose “Request notification (prepared by PCO)” on the document lodgment system.

22.3 Other instruments

22.3.1 Drafting

There has been an increase in the number of instruments drafted for clients on an ad hoc basis, in particular under the Planning and Development Act.

Drafters should liaise with their supervisor to decide if PCO will take on the drafting of the instrument from start to finish or whether only assistance will be given to the client. Where PCO will do the entirety of the drafting the standard procedures applying to drafting a regulation apply to drafting the instrument.

22.3.2 Format

The templates on the PCO website (www.pco.act.gov.au/pages/notifications/notifications.htm) should be used for disallowable and notifiable instruments. Liaise with the Notifications Manager for more information.

The document is not usually attached to the PCO templates.

The templates on the PCO website include the form of words for the name of the instrument and commencement (see example 1). The name of the instrument should include a number or space for a number to be inserted later (eg, ‘(No )’). The standard LA, s 75 (1) note is not used in the commencement section.

There is a variety of drafting styles in instruments, which is to be expected as they are predominantly drafted by clients. For instruments drafted by PCO, current drafting styles and formats should be used (regardless of whether the PCO drafting template is attached). Also, the term ‘revoke’ is widely used in instruments instead of ‘repeal’ (see example 1).
Example 1

1 Name of instrument
This instrument is the *XYZ Determination 2015 (No 1).*

2 Commencement
This instrument commences on the day after its notification day.

... 

# Revocation
This instrument revokes *XYZ Determination 2014 (No 1) (DI2014-##).*

22.3.3 QAC and notification

*Drafted by PCO (start to finish)*

The document is QA checked by the Editing and Republications team. A PDF final is sent to the client for making.

See the QAC procedures for further information and email templates.

The client should follow the same process for lodging and requesting notification as applies to regulations. That is, when they submit it to their Ministerial unit, the authorised notifications officer will choose “Request notification (prepared by PCO)” on the document lodgment system. There is an option for either “Disallowable instrument (prepared by PCO)” or “Notifiable instrument (prepared by PCO).”

Advise the client to give their Ministerial unit the PCO job number as this is required for the lodgment process. Liaise with the Notifications Manager for more information.

*Drafting assistance provided*

Where only assistance with drafting the instrument is given by PCO (eg, drafting only particular provisions of an instrument or drafting the instrument up to a particular stage) the document is sent as a Word version to the client who will take over control of the document (ie, further changes can/may be made).

The client will then lodge the instrument for notification in the same way as any other instrument.
23  Applied laws

23.1  Modified NOT amended

Applied territory laws CANNOT be amended.

Any changes that are necessary for application in the ACT must be done by modification.

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88 Added in 2017-1