



Drafting Practice Guide

Version 2024-1 (February 2024)

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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 Structure and layout¹

The structure and layout of legislation should be clear and logical. Organisation of material is key to a well-structured bill or regulation. Three key areas to consider when planning a draft are: the objective of the legislation, the framework, and the order in which material is to be arranged.²

Objective: What does the legislation need to do? In legal terms, what must the thing you are drafting (bill, regulation, part, division, section) achieve?

Framework: Work out the overall conceptual structure; group material into parts, divisions, sections, etc.

Order: Provisions should be arranged in a logical order. Place main messages first and arrange themes in the order most likely to make sense to readers. For example—

- substantive matters should come before procedural matters. Administrative and procedural provisions should be located after substantive provisions so as to give prominence to what is important to readers (e.g. readers should not have to read through a lot of provisions that set up bodies and define their functions and powers before they get to what really matters to them).
- the general should come before the particular. Provisions that have universal or wide application should come before provisions that have limited application.
- provisions can also be arranged chronologically or by reference to probability (most likely to least likely).

The arrangement of provisions should be consistent. If a particular order has been used in one place, the drafter should consider if that order is appropriate for other provisions with common themes and content.

Ensure that the structure and layout of each provision helps readers absorb messages by—

- presenting each section as a set of related ideas
- if appropriate, creating a narrative
- using paragraphs to enhance readability and clarity
- ensuring that each section does not have too many subsections.³

¹ Part added in Version 2021-2 as part of the DPG review.

² See NZ PCO's Principles of Clear Drafting: <http://www.pco.govt.nz/clear-drafting/>

³ See NZ PCO's Plain Language Standard Checklist: <http://www.pco.govt.nz/pco-plain-language-checklist/>

Further reading

Drafter's checklist (particularly 'Body of draft')

NZ PCO's Principles of Clear Drafting: <http://www.pco.govt.nz/clear-drafting/>

NZ PCO's Plain Language Standard Checklist: <http://www.pco.govt.nz/pco-plain-language-checklist/>

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 5 Criminal matters—transfers

Part 5.1 Transfers within ACT

Division 5.1.1 Transfers within ACT—generally

Division 5.1.2 Escorting young detainees etc

Part 5.2 Interstate transfers

Division 5.2.1 Interstate transfer—generally

Division 5.2.2 Transit through ACT

Example 2
Numbering—parts

- Part 4** **Conduct of controlled sports events**
- Division 4.1** **Code of practice for controlled sports events**
- Division 4.2** **Conduct of registered events**
- Subdivision 4.2.1** **Referees at registered events**
- Subdivision 4.2.2** **Medical supervision of registered events**
- Division 4.3** **Conduct of non-registrable events**

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** **Meaning of *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 Sustainability and the Environment Act 1993
Part 1.2	Intoxicated People (Care and Protection) Act 1994
Schedule 2	Technical amendments
Part 2.1	Commissioner for Sustainability and 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 schedule 1, division 1.2 NOT schedule 1, part 1, division 1.2
- 2 section 1.23 NOT schedule 1, section 1.23

Example 3⁴

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)

1.4 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.

1.5 Use of subdivisions

Use subdivisions only in exceptional cases. Consider alternative ways of organising the material. Use chapters if this will avoid the need for subdivisions.

⁴ Examples updated in Version 2013-1 to clarify references that are not necessary - see Standards decisions 23/04/13.

1.6 Headings⁵

1.6.1 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 heading should therefore—

- place keywords at the beginning of or early in the heading, where the first word or words are likely to catch the reader's eye
- be short (preferably no longer than one line)
- be unique (e.g. there should not be 2 headings titled 'Delegation') and clearly distinguishable from other headings (eg consider whether repeated text in consecutive headings is easy to read)
- clearly indicate 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
- accurately indicate the subject of the provision (e.g. if a provision deals with A, B and C, the heading should not indicate that it only deals with A and B).
- use language consistent with the language of the provision
- not include unnecessary detail.

The section heading may provide 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 could indicate that 2 or more provisions may be 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 (see div 1.6.3).

Make sure headings aid navigation by checking that headings overall:

- appear frequently enough to help readers scan and find specific information easily
- work well together
- have a clear and consistent hierarchy.⁶

⁵ Updated in Version 2021-2 as part of the DPG review.

⁶ See NZ PCO's Plain Language Standard Checklist: <http://www.pco.govt.nz/pco-plain-language-checklist/>

- 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 (see div 1.6.2).

Further reading

Div 1.6.2 (Headings—punctuation)

Div 1.6.3 (Headings—use of ‘etc’)

Ch 3 (Naming)

NZ PCO’s Plain Language Standard Checklist Supporting Documents: <http://www.pco.govt.nz/supporting-documents/>

1.6.2 Headings—punctuation

If a section heading is expressed as a question, a question mark should be used. If the use of a question mark 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 an em dash should be used in preference to a colon or semicolon (see example 2).

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.

Example 1

Recasting

What is a *fish*?

recast as—

Meaning of *fish*

Example 2

Using em dash

49 Code of practice—approval

....

50 Code of practice—contents

....

1.6.3 Headings—use of ‘etc’

Using ‘etc’ in headings enables shorter headings, but at the risk of omitting keywords. The effect can also be overly formal or vague, so use ‘etc’ sparingly. When proposing to use ‘etc’ in a heading, consider whether the provision should instead be broken up.

If the list of items in a provision is short, including ‘etc’ in the heading is usually unnecessary (see example 1).

It is misleading to use ‘etc’ to shorten lists in headings if the unlisted items are not reasonably able to be inferred from the listed items (see example 2).

Example 1

Don’t use ‘etc’ in short lists

- | | | |
|---|----|---|
| ✘ | 30 | <p>Register of accidents, incidents, etc
Every employer of seafarers on an Australian ship must maintain a register of accidents, incidents and mishaps.</p> |
| ✔ | 30 | <p>Register of accidents, incidents and mishaps
Every employer [<i>as above</i>]</p> |

Example 2

Don’t use ‘etc’ if unlisted items cannot be reasonably inferred

- | | | |
|---|----|--|
| ✘ | 37 | <p>Road and rail transport, etc</p> |
| ✔ | 37 | <p>Road, rail and water transport</p> |

1.6.4 Headings—provision abbreviations

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

1.6.5 Headings—mentions of definitions

Mentions of definitions in headings—see pt 13.6.

1.6.6 Headings—mentions of offence⁷

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

⁷ Part added in Version 2015-3 - see Standards decisions 17/03/15.

1.7 Table of contents

A table of contents is generated from the headings used in the document. A well-designed table of contents provides:

- a map of the whole document
- a quick guide to the location of information by page number
- an overview of the subject coverage of the document as a whole
- an overview that the reader can scan to locate a particular area of interest
- a logical and hierarchical breakdown of the subject matter.

Headings should be drafted with the table of contents in mind. Legislation should be structured with appropriate hierarchical heading levels. If the headings work well together, readers should identify the relationship between them.⁸

Include a table of contents in legislation when⁹:

- the table of contents goes over 1 page
- the legislation has parts or schedules
- it is principal legislation
- it amends 2 or more Acts or regulations.

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

Further reading

Crabbe, VCRAC (1993), *Legislative Drafting*, Cavendish Publishing Limited, London: pp 127-8.

New Zealand Office of Parliamentary Counsel, *Plain language*, New Zealand Office of Parliamentary Counsel, Wellington, <http://www.pco.govt.nz/plain-language/> (viewed November 2020).

Thornton, GC (1996), *Legislative Drafting*, 4th ed, Bloomsbury Professional, West Essex: ch 9 (Formalities and arrangement), pp 183-184 (headings specifically).

⁸ See NZ PCO's Plain Language Standard Checklist—Supporting Documents (4.3: Headings work well together): <http://www.pco.govt.nz/4.3/>

⁹ Guidance updated/corrected in Version 2024-1.

2 Preamble or recital¹⁰

2.1 General principles

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 *National Environment Protection Council Act 1994*). According to Helen Xanthaki in *Thornton's Legislative Drafting*, preambles should generally be avoided, but are acceptable in 2 legislative areas:

- where the subject matter of the legislation is of constitutional or international importance;
- where the legislation is of a formal or ceremonial character.¹¹

A preamble or other recital to an Act or statutory instrument is part of the Act or instrument (see Legislation Act, s 126 (3)).

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 generally 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. The enacting words do not have a paragraph number. Unlike enacting words in bills without preambles, the enacting words in a preamble are not omitted editorially under the Legislation Act, s 116 (1) (k) (i).

Consideration may be given to whether the enacting words are needed or whether different words should be used, however, this should only be done with parliamentary counsel's approval.

Example 1

See the following legislation for examples of preambles:

- *Corrections Management Act 2007*
- *Crimes (Sentence Administration) Act 2005*
- *Electoral Act 1992*
- *Family Violence Act 2016*
- *Human Rights Act 2004*

¹⁰ Rewritten in Version 2021-1 as part of the DPG review.

¹¹ Xanthaki, H (2013), *Thornton's Legislative Drafting*, 5th ed, Bloomsbury Professional, West Sussex: 235-239, 237.

- *Jurisdiction of Courts (Cross-vesting) Act 1993*
- *Native Title Act 1994*
- *Terrorism (Extraordinary Temporary Powers) Act 2006.*

Example 2

Human Rights Act 2004

Preamble

- 1 Human rights are necessary for individuals to live lives of dignity and value.
- 2 Respecting, protecting and promoting the rights of individuals improves the welfare of the whole community.
- 3 Human rights are set out in this Act so that individuals know what their rights are.
- 4 Setting out these human rights also makes it easier for them to be taken into consideration in the development and interpretation of legislation.
- 5 This Act encourages individuals to see themselves, and each other, as the holders of rights, and as responsible for upholding the human rights of others.
- 6 Few rights are absolute. Human rights may be subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic society. One individual's rights may also need to be weighed against another individual's rights.
- 7 Although human rights belong to all individuals, they have special significance for Aboriginal and Torres Strait Islander peoples—the first owners of this land, members of its most enduring cultures, and individuals for whom the issue of rights protection has great and continuing importance.

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

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

2.2 Use of preambles in statutory interpretation

A preamble is a useful guide to the intention of the Parliament ‘in that it may detail the mischief to which the Act is directed; explain the reason, purpose, object or scope of the Act; and detail facts or values which are relevant to the Act’¹².

A preamble, as part of the wider context of a statute, should be included in the reading of an Act as a whole. A preamble has been said to have two roles in statutory interpretation:

- a contextual role, where the preamble confirms the ordinary meaning of the provisions, and assists with determining if there is any ambiguity in the Act;
- a constructive role, where the preamble clarifies or modifies the meaning of ambiguous provisions.¹³

However, ‘the interpretation of an Act will not automatically be affected just because an alternative meaning (thus an ambiguity) is raised through reference to the preamble. To restrain or enlarge the enactments, the enactment must be able to bear the alternative meaning, and there must be a compelling indication that the preamble is the most accurate guide to the intention of the legislature regarding the meaning of the substantive words.’¹⁴

This is reiterated by Pearce and Geddes, who point out that a preamble should not limit the operation of the enactments of a statute merely because the enactments go further than the preamble,¹⁵ and Xanthaki in *Thornton’s*, who states that ‘a preamble is not to influence the meaning otherwise attributable to the enacting part unless there is a compelling reason for it¹⁶ ... the function is to provide background information, but not with the intention of influencing the construction of the body of the Act nor in such a form as is likely to affect construction’.¹⁷

Further reading

Berry, D, *Professor Helen Xanthaki’s ‘Drafting Legislation’: A Practitioner’s Perspective*, Commonwealth Association of Legislative Counsel’s ‘The Loophole’, Issue No 2 of 2017 (June 2017): 20, 22, 90

Pearce, D C (2019), *Statutory Interpretation in Australia*, 9th ed, Lexis Nexis, Chatswood: 29, 191 (pt 4.62).

Pearce, D C and Geddes, R S (2014), *Statutory Interpretation in Australia*, 8th ed, Lexis Nexis, Chatswood: 194-195.

Xanthaki, H (2014), *Drafting Legislation: Art and Technology of Rules for Regulation*, Hart Publishing, Oxford: 135-137.

Xanthaki, H (2013), *Thornton’s Legislative Drafting*, 5th ed, Bloomsbury Professional, West Sussex: 235-239.

Winckel, A, *The contextual role of a preamble in statutory interpretation*, Melbourne University Law Review, Vol 23, No 1, April 1999: 184-210.

¹² Winckel, A, *The contextual role of a preamble in statutory interpretation*, Melbourne University Law Review, Vol 23, No 1, April 1999: 184-210, 185.

¹³ Ibid.

¹⁴ Ibid, 210.

¹⁵ Pearce, D C and Geddes, R S (2014), *Statutory Interpretation in Australia*, 8th ed, Lexis Nexis, Chatswood: 194-195, 194.

¹⁶ Xanthaki, H (n 1), 235.

¹⁷ Ibid, 237.

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*.¹⁸

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*.

¹⁸ Example added in Version 2014-2.

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)' (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 director-general 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 Commencement¹⁹

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.²⁰ However, above that say 'X years' rather than 'XX months' for whole years.

4.2 Republication practice—generally²¹

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 **U** immediately before the provision heading. When the remaining provisions commence, another republication is published and the symbol **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 **U** before the amending law commences to show uncommenced amendments. Any uncommenced amendments that affect the republished law are noted on the current law tab of the item page for that law and are hyperlinked to the uncommenced amendments' item page on the register. The uncommenced amendments are also listed in the law history tab of the affected law.

¹⁹ Updated in Version 2021-1 as part of the DPG review.

²⁰ Sentence added in Version 2015-4.

²¹ 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.

The reason the standard commencement uses the day after rather than the day of notification is to stop unintended retrospective commencement of legislation. This follows the principle that generally legislation is prospective rather than retrospective. 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, obligations could apply to people before the time the legislation was notified. (See also part 4.8 (Retrospective commencement)).

Example

2 Commencement

This Act/regulation commences on the day after its 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 beginning on 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 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)).

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. Shortening the 6-month default does not require displacing LA, section 79 but only setting an earlier date (see example, subsection (2)).

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.

Legislation that does not use a default commencement mentioned in divisions 4.4.1 and 4.4.2 should expressly displace LA, section 79 and specify another default date of commencement (usually within a period of 9, 12 or 18 months beginning on notification).

An alternative to not specifying another default date of commencement may be to link the commencement to the happening of an event, such as the commencement of another piece of legislation (including the legislation of another jurisdiction) (see part 4.8).

If an alternative is not appropriate and specifying another date is not possible, approval should be sought from the parliamentary counsel. (See other examples at end of division).

Example 1

2 Commencement

- (1) This Act/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 Act/regulation has not commenced within 9 months beginning on its notification day, it automatically commences 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 commences 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 has not commenced within 18 months beginning on its notification day, it automatically commences on the first day after that period.

OR

- (2) If this Act/regulation has not commenced before 1 July 2011, it 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 3²²**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.

²² Example updated in Version 2014-2.

Other examples

For an example of a commencement provision that displaces LA, s 79 but does not include a default date for commencement, see the *COVID-19 Emergency Response Legislation Amendment Act 2020*.

For an example of a commencement provision that combines displacing LA, s 79 (for some provisions) with a 6-month default (for other provisions), see the *Justice Legislation Amendment Act 2020*, s 2 (6), note 2 and (7) and (8).

4.5 Commencement after stated period of time

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 (see example 2).

It is common for a commencement after a stated period of time to be combined with other types of commencements to form split commencements (see part 4.10 (Split commencement)).

Example 1

Commencement after 7 / 14 days

2 Commencement

This Act/regulation commences on the 7th / 14th day after its 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 commences 3 months after its notification day.

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

4.6 Commencement of subordinate laws and disallowable instruments after disallowance period²³

Some subordinate laws and disallowable instruments are subject to a provision in their authorising law that delays their commencement until after the disallowance period. The following examples set out wording for this kind of delayed commencement.

Example 1

Whole regulation

2 Commencement

This regulation commences in accordance with the Act, section ##.

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

Note 2 The Act, s ## delays the commencement of this regulation until after the disallowance period.

Example 2

Specific provision of regulation

2 Commencement

- (1) This regulation (other than section ##) commences on the day after this regulation's notification day.

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

- (2) Section ## commences in accordance with the Act, section ##.

Note The Act, s ## delays the commencement of section ## until after the disallowance period.

The following titles have a provision to commence the regulation/instrument after the disallowance period. See also part 10.21.

All regulations

Title	Reg-making provision
Auditor-General Act 1996	s 38
Electoral Act 1992	s 341
Integrity Commission Act 2018	s 302
Ombudsman Act 1989	s 38
Referendum (Machinery Provisions) Act 1994	s 21

²³ Inserted in Version 2020-2 – see Standards decisions 16/12/20.

Regulations made for a particular provision

Title	Provision
Civil Law (Property) Act 2006	s 259A (1) (a) (iv) – see s 259A (2)
Food Act 2001	s 110, s 111 – see s 112
Listening Devices Act 1992	see s 14
Planning and Development Act 2007	s 279 (2) – see s 279 (3)
Public Interest Disclosure Act 2012	s 9 (2) – see s 9 (3)

Instruments

Title	Provision
Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011	s 11 (can't grant NI until DI dealt with)
Domestic Animals Act 2000	s 81 (DI)
Gaming Machine Act 2004	s 151 (DI)
Gene Technology (GM Crop Moratorium) Act 2004	s 39 (Expiry of Act by DI)
Territory Superannuation Provision Protection Act 2000	s 14 (DI)

4.7 Fixed date and time commencement

4.7.1 Commencement—fixed date

A fixed date commencement is usually used for new principal legislation or amending 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 to provide certainty about financial obligations or benefits.

Example

2 Commencement

This Act/regulation commences on 1 July 2004.

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

4.7.2 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) Act 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).

NOTE 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.

4.8 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 the most relevant provision of the other law which requires the same commencement. This avoids reliance on LA, section 80 (a) and removes any confusion if the other law is not all commenced at the same time. In the absence of an obvious relevant provision, refer to section 3, because it's the first provision that doesn't commence automatically.²⁴

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 and the legislation is not intended to be retrospective. 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.

The commencement can be linked to the Act's regulation-making power provision when the regulation is to commence at the same time as the Act (see example 4).²⁵

Example 1

2 Commencement

This Act/regulation commences 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)).

²⁴ Sentence added in Version 2023-2 – see Standards decisions 26/4/23.

²⁵ Sentence added in Version 2023-2 – see Standards decisions 26/4/23.

Example 2

2 Commencement

This Act/regulation commences on the later of—

- (a) the day after this Act’s/regulation’s 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

Gaming Legislation Amendment Act 2019

2 Commencement

This Act commences immediately after the commencement of the *Gaming Legislation Amendment Act 2018*, section 72.

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.

Example 4²⁶

Veterinary Practice Regulation 2018

2 Commencement

This regulation commences on the commencement of the *Veterinary Practice Act 2018*, section 147 (Regulation-making power).

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

NOTE: Commencement of a new regulation can be linked to the Act’s regulation-making power provision when the regulation is to commence at the same time as the Act.

²⁶ Example added in Version 2023-2 – see Standards decisions 26/4/23.

4.9 Retrospective commencement

4.9.1 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.

The Scrutiny Committee has commented that while it would generally prefer that subordinate legislation not have retrospective operation it accepts that retrospective application is occasionally required (see [ACT Legislative Assembly, Scrutiny Committee, Subordinate Legislation—Technical and Stylistic Standards, August 2011](#)). 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.

Particular care should be taken to ensure that the *Human Rights Act 2004*, section 25 (Retrospective criminal laws) and LA, section 84A (Creation of offences and changes in penalties) are considered when dealing with offences and penalties.

Example 1

2 Commencement

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

Example 2

2 Commencement

This Act/regulation commences, or is 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.²⁷

²⁷ Example added in Version 2014-2—(see J2014-365).

Example 4²⁸

Split retrospective commencement (no parts)

2 Commencement

- (1) Sections 3 and 4 are taken to have commenced on 1 July 2016.

Note The naming and commencement provisions are taken to have commenced 1 July 2016 (see Legislation Act, s 75 (2)).

- (2) Section 5 commences on the day after this regulation’s notification day.

NOTE: It is best practice to expressly commence section 3 (Legislation amended) with whatever provisions that are commencing retrospectively instead of having them commence under LA, s 75AA (2).

Example 5²⁹

Split retrospective commencement (parts)

2 Commencement

- (1) Parts 1 and 4 are taken to have commenced on 1 July 2016.

- (2) Part 3 commences on the day after this regulation’s notification day.

NOTE: There is no need to have any note about sections 1 and 2, or any reference to section 3 as all these provisions are in part 1.

²⁸ Added in Version 2023-3

²⁹ Added in Version 2023-3

4.9.2 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]

9 Conversion of Commonwealth leases New section 291 (4) to (6)

insert

- (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.³⁰

³⁰ Sentence updated in Version 2014-2.

4.10 Commencement on ‘the later of’

This type of commencement is used when the commencement of legislation needs to occur on or after the happening of two or more events (whether it is the commencement of legislation for which the exact commencement is unknown or the happening of certain days) as in example 2.

Example 1

Justice and Community Safety Legislation Amendment Act 2013³¹

2 Commencement

This Act commences on the later of—

- (a) the day after this Act’s notification day; and
- (b) the commencement of the *Retirement Villages Act 2012*, section 3.

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

Example 2

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 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.

³¹ Example added in Version 2024-1 to specify that the notification day comes first then the other law to be consistent with the examples in section 4.8 – see Standards decisions 30/1/24.

4.11 Split commencement

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 (see examples 1 and 5).

For amending legislation, the commencement of section 3 (Legislation amended) should be provided for in the commencement section where possible (see example 6). However, where this is not possible LA, section 75AA may be relied upon to commence section 3 (Legislation amended). (See example 1). In addition for amending legislation that is in parts, section 3 (Legislation amended) should be commenced alone rather than combined with the commencement of part 1.

Other examples

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

- *Justice Legislation Amendment Act 2020*
- *Employment and Workplace Safety Legislation Amendment Act 2020*
- *COVID-19 Emergency Response Legislation Amendment Act 2020*
- *Public Health (Emergencies) Amendment Act 2020*
- *COVID-19 Emergency Response Legislation Amendment Act 2020 (No 2)*
- *Electoral Legislation Amendment Act 2020, s 2*
- *For an example of a split commencement provision that combines displacing LA, s 79 (for some provisions) with a 6-month default (for other provisions) see the Justice Legislation Amendment Act 2020, s 2 (6), note 2 and (7) and (8).*

4.11.1 Commencement on specified date

Example 1

2 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

2 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.

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 4³²**Commencement with 3 or more provisions mentioned in subsection (1)****2 Commencement**

- (1) This Act (other than the provisions mentioned in subsection (2)) commences on the day after its notification day.

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

- (2) The following provisions commence 12 months after this Act's notification day:
- section 4
 - section 8
 - sections 12 to 15
 - sections 18 to 23
 - sections 26 to 32
 - sections 40 to 42
 - section 44
 - sections 46 to 48.

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.

³² Example updated in Version 2023-1 – see Standards decisions 21/2/23.

Example 6**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).

Example 7**Official Visitor Amendment Act 2019****2 Commencement**

- (1) The following provisions commence on a day fixed by the Minister by written notice:
- section 7
 - section 9

...

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).

- (2) The remaining provisions commence on the day after this Act's notification day.

Example 8**XYZ Amendment Act 2020****2 Commencement**

- (1) The following provisions commence on the day after this Act's/regulation's notification day:
- section 3
 - 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 notification day.

4.11.2 Commencements that include on 'the later of'

Example 1**Unit Titles Amendment Act 2008 (No 2)****2 Commencement**

- (1) This Act (other than the following provisions) commences on a day fixed by the Minister by written notice:
- section 7
 - section 16
 - ...
 - section 53
 - schedule 1, amendment 1.3.
- 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) 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.

NOTE: Section 3 (Legislation amended) is not listed in the commencement provision and relies on LA, section 75AA (Commencement of provisions identifying amended laws) to commence because the timing of each commencement event is unknown. (See example 2 and div 10.4.1 example 6 for when legislation amended provisions should be included in the commencement provision.)

Example 2

Residential Tenancies Legislation Amendment Act 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**Justice and Community Safety Legislation Amendment Act 2017 (No 2) [with changes]****2 Commencement**

- (1) This Act (other than the following provisions) commences on the 7th day after its notification day:
- part 5
 - sections 20 to 23
 - parts 8 and 9
 - parts 15 to 19.

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

- (2) Parts 5, 9, 15, 16, 17, 18 and 19 commence on the later of—
- (a) the commencement of the *Road Transport (Road Rules) Regulation 2017*, section 3; and
 - (b) the commencement of this Act, section 3.
- (3) Sections 20 to 23 commence on the commencement of the *Freedom of Information Act 2016*, section 3.
- (4) Part 8 commences on 1 July 2017.

NOTE: The wording in subsection (2) (b) needs to refer to ‘this Act, section 3’ because the commencement clause is complex so it needs to be clear that it is this Act.

Example 4***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 5***Justice and Community Safety Legislation Amendment Act 2017 (No 3)* [with changes]****2 Commencement**

- (1) This Act (other than the following provisions) commences on the 7th day after its notification day:
- parts 10 and 11
 - part 17.

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

- (2) Part 10 commences on the later of—
- (a) the day a regulation for section 115, definition of *corresponding law*, commences; and
 - (b) the commencement of this Act, section 3.
- (3) Parts 11 and 17 commence on the later of—
- (a) the commencement of the *Freedom of Information Act 2016*, section 3; and
 - (b) the commencement of this Act, section 3.

4.11.3 Avoid commencing part of a section / amendment where possible

The preferred approach is for amending legislation to use separate amending sections for provisions that require different commencements (see divisions 4.10.1 and 4.10.2).

Where this is not possible or where it leads to an undesirable result, commencing part of a section/amendment may be the better solution. However, this approach should only be used with the parliamentary counsel's approval and only if absolutely necessary. The example shows 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...'

Example

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.

4.12 Commencement on the expiry of a law³³

A commencement may be linked to the expiry of a law or a provision of a law.

Include the LA, s 85 note

Example

Associations Incorporation Amendment Regulation 2023 (No 1)

2 Commencement

This regulation commences on the expiry of the *Associations Incorporation Act 1991*, section 70AA.

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

Note 2 A provision of an Act expires at the end of the day fixed for its expiry (see Legislation Act, s 85 (3); **repeal** in s 85 includes expiry, see s 82).

³³ Section and example added in Version 2024-1 – see Standards decisions 30/1/24.

4.13 Amendments of uncommenced laws

4.13.1 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:

amending law amends	amending law commencement provision	LA, s 79A displaced?
commenced provisions; and uncommenced provisions	General provision, ie law commences <ul style="list-style-type: none"> • day after notification • day fixed by CN • day/event stated • default day 	No
only uncommenced provisions	General provision, ie law commences <ul style="list-style-type: none"> • day after notification • day fixed by CN • day/event stated • default day 	Yes
s 10 (uncommenced)	s 10 commences <ul style="list-style-type: none"> • day fixed by CN • day/event stated 	Yes

4.13.2 Drafting practice

Where the uncommenced law is an amending law, the preferred approach is to avoid amending the uncommenced law by amending the principal legislation immediately after the commencement of the amending law to negate the effect of the amendment. (See example, subsection (3)).

If this is not possible or where the uncommenced law is principal legislation, the uncommenced law may be amended but the amendment of an uncommenced law should not be expressed to commence before the commencement of that law.

For clarity, the preferred approach is not to 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.

Example

ACT Civil and Administrative Tribunal Amendment Act 2016 (No 2) [with changes]

2 Commencement

- (1) This Act (other than the following provisions) commences on the day after its notification day:
- section 4
 - schedule 1, part 1.4, amendments 1.7 and 1.8
 - schedule 1, part 1.5.

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

- (2) Section 4 and schedule 1, part 1.5 commence 6 months after this Act's notification day.
- (3) Schedule 1, part 1.4, amendments 1.7 and 1.8 commence on the commencement of the *Judicial Commissions Amendment Act 2015*, section 3.

4.13.3 Republication practice

If an amendment of an uncommenced provision commences when the provision commences, the amended 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 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).

4.14 Amendment of commencement provision³⁴

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.

A principal law **does not** get republished when the commencement provision is amended. The commencement information in the 'Law history' on the Legislation Register item page for the law is updated and the 'as notified' version has the following note added.³⁵

Date notified	Effective	Files/Formats	Notes
11 April 2023	Not yet effective	 HTML  PDF  Word	The commencement of this Act was amended by A2023-20 pt 5

Examples

- *Criminal Code 2001*
- *Freedom of Information Act 2016*
- *Senior Practitioner Act 2018*
- *Integrity Commission Act 2018*
- *Professional Engineers Act 2023*

Further reading

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

Pearce, *Statutory Interpretation in Australia*, (9th ed.), Ch 10

Pearce, *Interpretation Acts in Australia*, Ch 2

Thornton, *Legislative Drafting*, (5th ed.), [10.36] – [10.49]

Bennion on Statutory Interpretation, (7th ed.), Ch 5

³⁴ Part added in Version 2014-2.

³⁵ Republication practice and examples added in Version 2024-1 – see Standards decisions 30/1/24.

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 The Legislation Act contains definitions relevant to this Act.
For example:

- ACT
- contravene
- exercise
- found guilty
- function
- law, of the Territory
- must (see s 146)
- police officer.

³⁶**NOTE:** 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.

³⁶ Updated in Version 2014-2—see Standards decisions 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 relevant to this regulation.
For example:

- ACT
- administrative appeals tribunal
- appoint
- chief health officer
- disallowable instrument (see s 9)
- doctor
- document
- function
- nurse
- State
- the Territory.

Note 2 Terms used in this regulation have the same meaning that they have in the *Public Health Act 1997*. [For example, the following terms are defined in the Act, dict:]

In Note 2 only list the terms if considered necessary.³⁷

If a definition listed in Note 1 or 2 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 1 or 2 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.

³⁷ Added in Version 2021-1 as part of the review of notes.

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 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.³⁸

Further reading

LA, s 127 (1), (4) and (5)

6.2 General principles for use of notes³⁹

Notes are a useful way to assist users of legislation navigate their way through complex legislation and to find relevant law located in other legislation such as the Legislation Act, the Criminal Code and the *Financial Management Act 1996*.

Too many notes (consecutive or otherwise), however, can disrupt the flow of the legislation.

Including a note only because it is in a similar provision in other legislation should be avoided: principles that apply to the drafting of a substantive provision apply to the inclusion of a note ie text should only be included if it's needed and the circumstances of the particular legislation being drafted warrants its inclusion. The drafter should also consider whether the matter being addressed by the note would be better dealt with through drafting alternatives, the explanatory statement or other explanatory/guidance material prepared by the instructing agency.

Notes referring to internal definitions and definitions in the Legislation Act should be avoided in favour of relying on the structure of the legislation (eg where terms are defined) and language that can be readily identified as being a definition. Terms defined in the Legislation Act can be included in note 1 in the Dictionary.

³⁸ Updated in Version 2021-1 to remove note consistent with the removal of standard notes—see Standards decisions 16/12/20.

³⁹ Inserted in Version 2022-2 – see Standards decisions 30/09/20.

6.3 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'.

Similarly, the abbreviation for Dictionary (*dict*) can look awkward when used in a note for a signpost definition. *Note ABC—see the Alphabet Act 2020, dict.* may be changed to *Note ABC—see the Alphabet Act 2020, 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 The registrar is not obliged to release a dog if its keeper has relinquished ownership (see s 70).

Example 2

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

Example 3

Use of '*dict*' / '*dictionary*'

Note ***Land*** includes stratum (see *Duties Act 1999, dict*).

Note ***Sufficient consideration***—see the *Confiscation of Criminal Assets Act 2003, dictionary*.

Further reading

Pt 5.3 (Dictionary notes)

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

6.4 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)
- NSW WCA: *Workers Compensation Act 1987* (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)

6.5 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.

6.6 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.

Consider placing paragraph notes at the end of the relevant section/subsection to avoid this disruption (see example 1). The notes are indented to the subsection position.

Example 1

Convenient Example Act 2020

(1) The licensee must—

- (a) ...
- (b) ...
- (c) ...
- (d) ...
- (e) ...

Note For par (c), ...

6.7 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).

6.8 Standard notes⁴⁰

Table 1 lists the standard notes that a drafter must include in a Bill or statutory instrument. Table 2 lists the standard optional notes that a drafter may consider including in a Bill or statutory instrument to assist users of legislation (see pt 6.2 for principles about when to include optional standard notes).

The text of a mandatory note should not be changed and the text of an optional note should only be altered if there is a compelling argument that the note would be more useful if customised. Any changes to a note should be discussed with the settling officer.

2020 review of notes

During 2020 PCO reviewed the use of notes and decided to reduce the amount of notes, including mandatory notes, to improve the readability of our legislation. The Standards Committee decisions of 16 December 2020 set out which notes were removed from the mandatory and optional listings as well as changes to notes that remained in use.

It was decided that the notes would not be removed editorially when legislation titles are republished and they would not be removed by amendment through a Statute Law Amendment Bill.

When amending a provision that contains a note that has been removed from the mandatory listing, the note should be removed from the re-drafted provision.

Table 1—mandatory notes		
column 1 item	column 2 Text of note	column 3 Guidance for use
Appoint		
1	For laws about appointments, see the Legislation Act, pt 19.3.	Must be used if appointment provision included. For more information about appointments and acting appointments, see pts 10.1 to 10.3.
Delegate		
2	For laws about delegations, 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.

⁴⁰ Added in 2017-1 – see Standards decisions 15/6/16. Updated in Version 2020-2 – see Standards decisions 16/12/20.

Table 1—mandatory notes		
column 1 item	column 2 Text of note	column 3 Guidance for use
Apply Other Instruments		
3	<p><i>Note</i> 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)).</p>	<p>Must be used if—</p> <ul style="list-style-type: none"> • a law provides for a law to be applied, adopted or incorporated; and • the Legislation Act, s 47 (5) or (6) is not disapplied. <p>For more information about notes for applying other instruments, see pt 10.21.</p> <p>For more information about incorporation of external material by reference, see ch 12, in particular, pts 12.3 and 12.4.</p> <p>Example <i>Working with Vulnerable People (Background Checking) Act 2011</i>, s 27 (2), notes 1 and 2</p>
Disapply LA, s 47		
4	<p>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].</p> <p><i>OR</i></p> <p>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.</p>	<p>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.</p> <p>See pt 10.22 for more information about the note to disapply LA, s 47.</p> <p>Examples <i>Lifetime Care and Support (Catastrophic Injuries) Act 2014</i>, s 93 (3), note <i>Utilities (Technical Regulation) Act 2014</i>, s 14 (3), note <i>Public Pools Act 2015</i>, s 56 (2), note</p>
Note for Dictionary - Act		
5	<p>The Legislation Act contains definitions relevant to this Act. For example:</p>	<p>Standard note must be included at beginning of the dictionary to an Act.</p> <p>For more information about dictionary notes, see pt 5.3.</p>

Table 1—mandatory notes		
column 1 item	column 2 Text of note	column 3 Guidance for use
Note for Dictionary - Reg		
6	<p><i>Note 1</i> The Legislation Act contains definitions relevant to this regulation. For example:</p> <p><i>Note 2</i> Terms used in this regulation have the same meaning that they have in the Act name. [For example, the following terms are defined in the Act name, dict:]</p>	<p>Standard notes that must be included at beginning of the dictionary to a regulation.</p> <p>For note 2, consider if it is necessary to list terms.</p> <p>For more information about dictionary notes, see pt 5.3.</p>
Evidential Burden		
7	The defendant has an evidential burden in relation to the matters mentioned in s (#) (see Criminal Code, s 58).	<p>Must be used in a provision that creates an exception, excuse, qualification or justification for an offence (eg, of reasonable excuse).</p> <p>If a provision has 2 or more exceptions etc, the note should only be used after the first exception with a cross reference to the other subsection(s).</p> <p>For more information about the form of a provision creating an exception, see div 11.7.2.</p> <p>For more information about reasonable excuse defence, see div 11.8.2.</p> <p>Examples</p> <p><i>Public Unleased Land Act 2013</i>, s 90 (5), note</p> <p><i>ACT Teacher Quality Institute Act 2010</i>, s 70 (4), note</p>
Legal Burden		
8	The defendant has a legal burden in relation to the matters mentioned in s (#) (see Criminal Code, s 59).	<p>Must be used in a provision that creates a defence to an offence that requires the defendant to prove certain matters.</p> <p>For more information about defences, see pt 11.8.</p> <p>Examples</p> <p><i>Nature Conservation Act 2014</i>, s 238 (4), note</p> <p><i>Workplace Privacy Act 2011</i>, s 36 (1), note</p>

Table 1—mandatory notes		
column 1 item	column 2 Text of note	column 3 Guidance for use
Commencement		
9	<p><i>Note 1</i> The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).</p> <p><i>Note 2</i> 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)).</p> <p><i>Note 3</i> 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).</p>	<p>Must be used in commencement provision.</p> <p>For more information about commencement provisions, see ch 4.</p>
LA, s 88		
10	A transitional provision is repealed on its expiry but continues to have effect after its repeal (see Legislation Act, s 88).	<p>Must be inserted after the expiry provision for a transitional part. (Use note in item 11 for transitional regulation provision).</p> <p>For more information on notes about the effect of the Legislation Act, s 88, see pt 17.3.</p>
11	A transitional provision under s (1) continues to have effect after its repeal, however, a modification under s (2) has no ongoing effect after its repeal (see Legislation Act, s 88).	<p>Must be inserted at the end of a Transitional regulation-making provision (see pt 17.8).</p> <p>For more information on notes about the effect of the Legislation Act, s 88, see pt 17.3.</p>

Table 1—mandatory notes		
column 1 item	column 2 Text of note	column 3 Guidance for use
Self-incrimination		
12	The Legislation Act, s 170 and s 171 deal/s with the application of the privilege against self-incrimination and client legal privilege.	<p>LA, s 170 and s 171 are statutory expressions of the common law presumption of statutory interpretation that legislation is presumed not to alter fundamental common law rights. The purpose of this note is to draw attention to the presumption in contexts where its application would be relevant. It must be used in a provision that requires a person to give an official particular information, answer questions or produce documents.</p> <p>Examples <i>Controlled Sports Act 2019</i>, s 77 (1) (e) <i>Emergencies Act 2004</i>, s 34 (1) (n) <i>Freedom of Information Act 2016</i>, s 79 (1)</p> <p>However, do not use if the privilege is displaced.</p> <p>Example <i>Senior Practitioner Act 2018</i>, s 34 and s 37</p> <p>Further reading: Peace and Geddes, 8th ed, pars 5.30 – 5.33 LA Guidebook (LA Explanatory material), p 196 – 201.</p>
Public Sector Management Act 1994 – head of service powers to employ staff		
13	The <i>Public Sector Management Act 1994</i> , div 8.2 applies to the authority in relation to the employment of staff (see <i>Public Sector Management Act 1994</i> , s 152).	<p>Must be used if an Act provides that a statutory office-holder or director-general may employ staff and that the staff must be employed under the PSMA.</p> <p>See pt 10.4 for further information.</p>
Financial Management Act – territory authorities		
14	For laws about the corporate status, powers and governance of the [authority], see the <i>Financial Management Act 1996</i> , pt 9.	<p>Must be used if newly established authority is a relevant territory authority ie is prescribed by the financial management guidelines for the <i>Financial Management Act 1996</i>, pt 8 (see <i>Financial Management Act 1996</i>, s 54, s 72, def relevant territory authority and s 73).</p>

Table 1—mandatory notes		
column 1 item	column 2 Text of note	column 3 Guidance for use
15	For laws about the functions of the governing board, see the <i>Financial Management Act 1996</i> , div 9.2.	Must be used if governing board established for a relevant territory authority ie an authority prescribed by the financial management guidelines for the <i>Financial Management Act 1996</i> , pt 8 (see <i>Financial Management Act 1996</i> , s 54, s 72, def relevant territory authority and s 73).
16	For laws about the composition of the governing board and appointment of governing board members, see the <i>Financial Management Act 1996</i> , div 9.2.	Must be used for provision about governing board members for a relevant territory authority ie an authority prescribed by the financial management guidelines for the <i>Financial Management Act 1996</i> , pt 8 (see <i>Financial Management Act 1996</i> , s 54, s 72, def relevant territory authority and s 73).
State includes Territory		
17	State includes the Northern Territory (see Legislation Act, dict, pt 1).	Must use if a provision refers to a State. See 14.5 for further information. Example <i>Information Privacy Act 2014</i> , s 14, def Australian law , note
Reviewable Decision Notice		
18	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 <i>ACT Civil and Administrative Tribunal Act 2008</i> , s 67A).	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. Examples <i>Surveyors Act 2007</i> , s 76, notes <i>Nature Conservation Act 2014</i> , s 361, notes

Table 1—mandatory notes		
column 1 item	column 2 Text of note	column 3 Guidance for use
Reference to National Law		
19	The ACT Act name , s ## applies the National Law name set out in the Jurisdiction Act name (jurisdiction) , schedule as if it were an ACT law called the National law name (ACT).	<p>Must be used when referencing a National Law that is not republished on the register website. See chapter 23 for further guidance.</p> <p>Examples</p> <p><i>Land Titles Act 1925</i>, dict, def <i>E-Conveyancing Law</i></p> <p><i>Long Service Leave (Portable Schemes) Act 2009</i>, sch 3, s 3.1 (2), def <i>education and care service</i></p> <p><i>Residential Tenancies Act 1997</i>, s 46A (5), def <i>registered community housing provider</i></p> <p><i>Workers Compensation Act 1951</i>, s 16A, def <i>educator</i></p>

Table 2—optional notes		
column 1 item	column 2 Text of note	column 3 Guidance for use
Statement of reasons		
1	For what must be included in a statement of reasons, see the Legislation Act, s 179.	May be used if a provision requires a person to give a statement of reasons for the doing of a thing. Do not use if reviewable decision notice is required to be given.
Appointment – Assembly committee consultation		
2	Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).	<p>Use note only if a non public servant may be appointed.</p> <p>For more information about appointments and acting appointments, see pts 10.1 to 10.3.</p>

Table 2—optional notes		
column 1 item	column 2 Text of note	column 3 Guidance for use
Service		
3	For how documents may be given, see the Legislation Act, pt 19.5.	<p>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).</p> <p>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.</p> <p>Example <i>Utilities Act 2000</i>, s 42 (1) (a), note</p> <p>Not to be used in relation to internal workings of government.</p> <p>Examples <i>Financial Management Act 1996</i>, s 24 (1) <i>Crimes (Sentence Administration) Act 2005</i>, s 116M (1)</p> <p>Not to be used if, in the context, proof of service would not be an issue.</p> <p>Example <i>Crimes (Sentence Administration) Act 2005</i>, s 215A (3)</p>
Functions		
4	A provision of a law that gives an entity a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196).	May be used in a provision that sets out an entity’s functions.

Table 2—optional notes		
column 1 item	column 2 Text of note	column 3 Guidance for use
Ref to Stat Instrument		
5	A reference to an Act includes a reference to any regulation or other statutory instrument made or in force under the Act (see Legislation Act, s 104). ⁴¹	<p>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 regulations/statutory instruments in force under the Act.</p> <p>Examples</p> <p><i>Utilities (Technical Regulation) Act 2014</i>, s 7 (2), note</p> <p><i>Public Pools Act 2015</i>, s 11 (1), note 2</p>
Power to Make Provision for Difference Categories		
6	Power to make a [regulation/name of statutory instrument] includes power to make different provision in relation to different matters or different classes of matters [, and to make a regulation/an instrument] that applies differently by reference to stated exceptions or factors] (see Legislation Act, s 48).	<p>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.</p> <p>Example</p> <p><i>Fuels Rationing Act 2019</i>, s 8</p>
False Information		
7	<p>Giving false or misleading information is an offence against the Criminal Code, s 338.</p> <p>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).</p> <p>The <i>Statutory Declarations Act 1959</i> (Cwlth) applies to the making of statutory declarations under ACT laws.</p>	<p>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.</p> <p>The third option may be used if a person is required to give a statutory declaration.</p>

⁴¹ Wording of note updated in Version 2023-1 – see Standards decisions 21/2/23.

Table 2—optional notes		
column 1 item	column 2 Text of note	column 3 Guidance for use
Law Reference		
8	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).	<p>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.</p> <p>For more information about reference to laws of jurisdictions other than the ACT, see pt 13.3.</p> <p>Example <i>Planning and Development Act 2007</i>, dictionary def land management agreement, note</p>
Amount Owning		
9	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).	<p>May be used if a provision requires a person to pay an amount to another person.</p> <p>Do not use this note for an amount owing under a court order, which is enforced under the <i>Court Procedures Rules 2004</i>, pt 2.18.</p> <p>Example <i>Litter Act 2004</i>, s 24B (1), note</p>
Offence Includes Ancillary		
10	A reference to an offence against a territory law includes a reference to a related ancillary offence, eg attempt (see Legislation Act, s 189).	<p>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.</p> <p>For more information about ancillary offences, see pt 11.9.</p> <p>Examples <i>Working with Vulnerable People Background Checking) Act 2011</i>, s 26, def relevant offence, note</p> <p><i>Utilities (Technical Regulation) Act 2014</i>, s 24 (2), note 1</p>

Table 2—optional notes		
column 1 item	column 2 Text of note	column 3 Guidance for use
Other notes		
11	<i>Established</i> includes continued in existence (see Legislation Act, dict, pt 1).	<p>May be used if other forms of a defined term are used in the body of the Act or legislative instrument.</p> <p>Examples <i>Human Cloning and Embryo Research Act 2004</i>, s 23, def <i>use</i>, note <i>Planning and Development Act 2007</i>, dictionary, def <i>environment</i>, note</p>
12	<p>X must comply with this section as soon as possible after Y is done (see Legislation Act, s 151B).</p> <p>[The text of the note may vary, depending on what the provision requires.]</p>	<p>May be used if a provision doesn't fix a time for doing something, however, should only be used if there is a specific concern about people being aware of the application of the Legislation Act, s 151B.</p> <p>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.</p> <p>Examples <i>Public Interest Disclosure Act 2012</i>, s 23 (1), note <i>Information Privacy Act 2014</i>, s 37, note 1</p>
13	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).	<p>May be used if a provision requires a person to make a decision and there is a specific concern about people being aware that the decision maker also has the power to reverse or change their decision.</p> <p>Examples <i>Auditor-General Act 1996</i>, s 9B (1), note <i>Road Transport (Third-Party Insurance) Act 2008</i>, s 184 (6), note</p>

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 (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.

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

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)

- o 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).⁴²
- o 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.~~

⁴² 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 as in force from time to time.

Note 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)).

Regulation provision

456 Minimum standards—gasfitting work—Act, s 123

- (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

(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 (ie 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

Aitken, J K (1995), *Piesse, the Elements of Drafting*, 9th edn, Law Book Company, Sydney: pp 42–52.

Butt, Peter and Castle, Richard (2001), *Modern Legal Drafting: A Guide to Using Clearer Language*, Cambridge University Press, Cambridge: pp 118–20; 142–44.

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Dick, Robert C (1995), *Legal Drafting in Plain Language*, 3rd edn, Carswell, Toronto: pp 79–86.

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

Thornton, G C (1996), *Legislative Drafting*, 4th edn, Butterworths, London: pp 144–54.

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—ie ‘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.⁴³

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.⁴⁴

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*).

⁴³ Sentences added in Version 2014-2—see Standards decisions 1/07/14.

⁴⁴ 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—includes 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—⁴⁵Act

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 #.#)⁴⁶

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

⁴⁵ Examples 1 and 2 updated in Version 2014-2 to reflect current legislative drafting practice.

⁴⁶ Example updated in Version 2015-4.

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 Appointments⁴⁷

10.1.1 Generally

Appointments are dealt with in LA, part 19.3. Division 19.3.1 sets out general rules for appointments, including that:

- an appointment must be in writing (s 206 (1)), usually for a stated period (s 206 (2)) (see example, subsection (3))
- an appointment may be made by naming a person or the occupant of a position (s 207) (see example, subsection (1))
- the power of appointment includes the power to suspend the appointee, end the appointment, reappoint the appointee (s 208) (see DPG, division 10.1.2) and to make an acting appointment (s 209) (see DPG, part 10.2)
- an appointment may end by resignation (s 210) (see DPG, division 10.1.3)
- an appointment is not affected by appointer changes (i.e. membership of a body changes or the person occupying a position changes) (s 211)
- an appointment is not invalid only because of a defect or irregularity in the appointment (s 212).

Appointments should be drafted ‘as’ the commissioner/chief surveyor/an inspector, rather than ‘to be’ (see example, subsection (1)).

If an appointment provision is included in legislation, a note must be used (see DPG, part 6.8, table 1, item 1) (see example, subsection (1) note).

Because an appointment must be made ‘by writing’ and is an **instrument of appointment** (see s 206 (1)), there is no need to state that an appointment is a notifiable or disallowable instrument.

⁴⁷ Updated in Version 2023-2 – see Standards decisions 26/4/23.

Example**Labour Hire Licensing Act 2020, s 9** [with changes]**9 Appointment of commissioner**

- (1) The Minister must appoint a person as the Labour Hire Licence Commissioner.

Note For laws about appointments, see the Legislation Act, pt 19.3.

- (2) The Minister must not appoint a person as the commissioner unless satisfied that the person has the experience or expertise necessary to exercise the commissioner's functions.
- (3) A person must be appointed for a term not longer than 5 years.
- (4) The commissioner's conditions of appointment are the conditions agreed between the Minister and the commissioner stated in the instrument of appointment, subject to any determination under the *Remuneration Tribunal Act 1995*.

Further reading

LA, pt 19.3 (Appointments)

DPG, div 10.1.2 (Reappointment) and 10.1.3 (Resignation)

DPG, pt 10.2 (Acting appointments)

DPG, pt 6.8 (Standard notes), Table 1—mandatory notes, item 1 (Appoint)

10.1.2 Reappointment

The words 'and is eligible for reappointment' or words to that effect should not be used in an appointment provision. This is because, under LA, section 208 (1) (b) and (c), an appointer can reappoint a person who still satisfies the criteria for appointment. Such words are also unnecessary as LA, dictionary, part 1 defines **appoint** to include 'reappoint'.

However, 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.

A reappointment provision should only be included in legislation if an appointee is not eligible for reappointment in accordance with LA, s 208 (1) (c) (see examples).

Example 1**Integrity Commission Act 2018, s 28 (3)**

- (3) A person who has been the commissioner for 7 years is not eligible for reappointment.

Example 2
Surveyors Act 2007, s 65 (4)

- (4) The Minister must not reappoint a person as a professional entity representative if the person would be a professional entity representative for longer than 3 consecutive years.

Further reading

LA, s 208 (1) (b) and (c) (Power of appointment includes power to suspend etc)
 LA, dict, pt 1, def **appoint**

10.1.3 Resignation

Under LA, s 210 (1), an appointment ends if the appointee resigns by signed notice of resignation given to the appointer.

Resignation provisions should generally not be included in legislation.

A resignation provision is only included in legislation if the policy officer instructs that the position-holder is not to be able to resign in accordance with LA, s 210.

Example 1
Building Act 2004, s 19D (2) and (3)

- (2) An entity may resign an appointment as certifier only—
- (a) with the written approval of the construction occupations registrar; and
 - (b) by written notice given to the owner of the land.
- (3) The construction occupations registrar may approve the resignation of the entity as certifier only if satisfied that—
- (a) the certifier cannot exercise the entity’s functions as a certifier in relation to the building work because of mental or physical incapacity; or
 - (b) the entity has arranged for another certifier to take over the entity’s functions as a certifier in relation to the building work; or
 - (c) it is otherwise appropriate to approve the resignation.

Example 2

Legislative Assembly (Office of the Legislative Assembly) Act 2012

18 Resignation of clerk

- (1) The clerk may resign by signed notice given to the Speaker.
- (2) The Speaker must give a copy of a notice received under subsection (1) to each member of the Legislative Assembly not later than 5 business days after the day the notice is received by the Speaker.

Further reading

LA, s 210 (Resignation of appointment)

10.2 Acting appointments⁴⁸

10.2.1 Generally

Among other things, LA, division 19.3.2 deals with the following in relation to acting appointments:

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

Acting provisions should generally not be included in legislation, unless there is to be a standing acting arrangement (see div 10.2.3).

Further reading

LA, div 19.3.3 (Appointments—Assembly consultation)

⁴⁸ Updated in Version 2023-2 – see Standards decisions 26/4/23.

10.2.2 References to acting appointments

References to people acting in a position should not generally be included in legislation (e.g. 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)

10.2.3 Standing acting arrangements

Under LA, division 19.3.2A, if a law provides that a person acts in a position in stated circumstances, the person acting in the position has all the functions of the occupant of the position.

Example

Long Service Leave (Portable Schemes) Act 2009, s 79H (2)

- (2) If the registrar is absent or cannot for any reason exercise the functions of the registrar, the deputy registrar must act as registrar.

Further reading

LA, div 19.3.2A (Standing acting arrangements)

10.3 Appointments—Assembly consultation⁴⁹

LA, division 19.3.3 applies if a non-public servant may be appointed by a Minister to a statutory position and the functions of the position are not limited to advising the Minister (see LA, s 227).

Generally, the appointment must be for at least 6 months (see LA, s 227 (2) (b)).

If division 19.3.3 applies, the Minister must consult with the appropriate Assembly committee before making the appointment, and a note to this effect may be included in the appointment provision (see example), but is optional (see DPG, part 6.8, table 2, item 2).

The instructor should be consulted about whether the appointment is more appropriately one to be made by the Executive, the Minister or relevant director-general.

LA, division 19.3.3 does not apply to Ministerial or director-general appointments.

Example

Note Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

Further reading

LA, div 19.3.3 (Appointments—Assembly consultation)

DPG, pt 6.8 (Standard notes), Table 2—optional notes, item 2 (Appointment – Assembly committee consultation)

10.4 Public Sector Management Act—employment of staff provisions⁵⁰

10.4.1 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, pt 1). 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.

⁴⁹ Updated in Version 2023-2 – see Standards decisions 26/4/23.

⁵⁰ Updated in Version 2023-2 – see Standards decisions 26/4/23.

A **territory instrumentality** is defined as follows (see LA, dictionary, pt 1 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’ (see the *Territory-owned Corporations Act 1990*, s 6 and sch 1) is 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 (see PSMA, s 17 (3)). 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 (see PSMA, s 18 (1)), the power is often given directly to an entity in legislation. However, historically, statutory provisions dealing with the employment of staff were varied, 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 (a **public sector employer**) 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. s 152 management powers);
- the Territory may be required to make public servants (and other Territory facilities) available to the entity;
- the entity needs a power to engage consultants and/or contractors.

The examples below 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, s 152.

Note that an entity may be given all 3 employment powers within the one Act (e.g. see *City Renewal Authority and Suburban Land Agency Act 2017*, ss 32-34 and *Inspector of Correctional Services Act 2017*, ss 13-15).

Examples—direct power to employ public servants

If an entity is given the direct power to employ public servants under the PSMA, the following note must be included (see pt 6.8, table 1, item 13):

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 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).

Example 3***Integrity Commission Act 2018*****48 Commission employed staff**

- (1) The commission may employ staff on behalf of the Territory.
- (2) The staff must be employed under the *Public Sector Management Act 1994*.

Note The *Public Sector Management Act 1994*, div 8.2 applies to the commissioner 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***Board of Senior Secondary Studies Act 1997*** [with changes]**19A Arrangements for staff**

The board may arrange with the head of service to use the services of a public servant.

Example 2***Children and Young People Act 2008*** [with changes]**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.

Example 3

Inspector of Correctional Services Act 2017 [with changes]

15 Other arrangements for staff and facilities

The inspector may arrange with the head of service to use the services of a public servant or Territory facilities.

Examples—engagement of consultants and contractors

These examples 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

Integrity Commission Act 2018

49 Commission consultants and contractors

- (1) The commission may, on behalf of the Territory, engage consultants and contractors to assist the commission in exercising its functions.
- (2) Consultants and contractors may be engaged on terms and conditions decided by the commission.
- (3) However, the commission must not enter into a contract of employment under this section.

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

Labour Hire Licensing Act 2020 [with changes]⁵¹

9 Appointment of commissioner

- (1) The Minister must appoint a person as the Labour Hire Licence Commissioner.

Note For laws about appointments, see the Legislation Act, pt 19.3.

- (2) The Minister must not appoint a person as the commissioner unless satisfied that the person has the experience or expertise necessary to exercise the commissioner’s functions.
- (3) A person must be appointed for a term not longer than 5 years.
- (4) The commissioner’s conditions of appointment are the conditions agreed between the Minister and the commissioner stated in the instrument of appointment, subject to any determination under the *Remuneration Tribunal Act 1995*.
- (5) The appointment of the commissioner is a notifiable instrument.

Further reading

LA, s 208 (1) (b) and (c) (Power of appointment includes power to suspend etc)

LA, dict, pt 1, def **appoint**

⁵¹ Example updated in Version 2021-1—see Standards decisions 11/3/21.

10.6 Resignation⁵²

Resignation provisions should generally not be included in legislation.

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 19D (2) and (3)

- (2) An entity may resign an appointment as certifier only—
 - (a) with the written approval of the construction occupations registrar;
and
 - (b) by written notice given to the owner of the land.
- (3) The construction occupations registrar may approve the resignation of the entity as certifier only if satisfied that—
 - (a) the entity can not exercise the entity's functions as a certifier in relation to the building work because of mental or physical incapacity;
or
 - (b) the entity has arranged for another certifier to take over the entity's functions as a certifier in relation to the building work; or
 - (c) it is otherwise appropriate to approve the resignation.

Further reading

LA, s 210 (Resignation of appointment)

⁵² Updated in Version 2021-1—see Standards decisions 11/3/21.

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 20⁵³.

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 laws about delegations, 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)

⁵³ Section reference updated in Version 2023-1 – see Standards decisions 21/2/23.

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.
- (2) A determination is a disallowable instrument.

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'.

Example

- (1) A person may apply in writing to the director-general for a licence.⁵⁴

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.

Further reading

LA, pt 6.3 (Making of certain statutory instruments about fees)

⁵⁴ Approved form note and fee note removed in Version 2021-1—see Standards decisions 16/12/20.

10.10 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 optional standard note from 'served' to 'given'.

Examples

Optional standard note (not mandatory)

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.

10.11 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.

10.12 Approved forms

The *Statute Law Amendment Act 2021* (A2021-12) removed approved forms sections from legislation titles where no approved forms were made. Only include an approved forms section if satisfied that the making of approved forms will be necessary.⁵⁵

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 laws about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

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.

Further reading

LA, s 255 (Forms)

⁵⁵ Updated in Version 2021-1 in line with amendments in A2021-12. Approved forms notes removed—see Standards decisions 16/12/20.

10.13 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 30⁵⁶ 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).⁵⁷

Example 1

General provision

Regulation-making power

The Executive may make regulations for this Act.⁵⁸

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) ...;

...

⁵⁶ Penalty unit updated to keep consistent with amendments of part 11.13.

⁵⁷ Updated for Standards Committee decision 23/8/17.

⁵⁸ Updated in Version 2021-1 to remove note—see Standards decisions 16/12/20.

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 4⁵⁹**Adopt an instrument**

- (2) A regulation may apply, adopt or incorporate an instrument as in force from time to time.

Note 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)).

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)

⁵⁹ Example added in Version 2012-5.

10.14 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 6⁶⁰

review after amendment

Criminal Code 2022

801 Review of amendments made by Justice (Age of Criminal Responsibility) Legislation Amendment Act 2023

- (1) The Minister must—
 - (a) review the operation and effectiveness of the amendments to all Acts made by the *Justice (Age of Criminal Responsibility) Legislation Amendment Act 2023* as soon as practicable after the end of 5 years after this section commences; and
 - (b) present a report of the review to the Legislative Assembly before the end of 6 years after this section commences.
- (2) This section expires 7 years after it commences.

Example 7⁶¹

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.

⁶⁰ Example added in 2023-1

⁶¹ Example added in 2017-1

10.15 Amended legislation sections

See Amending Guide, chapter 1 (Structure).

10.16 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.

10.17 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**.

The commencement provision of the Act should provide for the section that makes the regulation to commence on the Act's notification day. This will enable an 'as notified' version of the regulation to be published on the legislation register on the day the Act is notified. This is important for accessibility, especially if the regulation has a delayed commencement.

The commencement of the regulation itself should be provided for in the section that makes the regulation (see s # (2) (b)) and can be tied to the commencement of the schedule in the Act where the new principal regulation is set out.

If a new regulation is made by a principal Act, the section that makes the regulation should be placed in a 'Miscellaneous' part after the standard 'Regulation-making provision'.

Example 1⁶²

New principal Act

2 Commencement

- (1) This Act (other than section #) commences on [*insert date etc*].

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

- (2) Section # commences on this Act's notification day.

Part # Miscellaneous

...

⁶² Updated in Version 2020-2 – see Standards Decision 16/12/20.

The *Civil Law (Property) Regulation 2020* was made in the *Unit Titles Legislation Amendment Act 2020* which was notified in February 2020 and commenced in November 2020. It was amended by a regulation that was notified in September 2020, however the uncommenced amendment could not be recorded on the register because the provision making the principal regulation didn't commence until the Act commenced.

See the following legislation for examples prior to Standards Decision 16/12/20:

- *Domestic Relationships Regulation 2012*
- *Unit Titles (Management) Regulation 2011*

Regulation-making power**# New XYZ Regulation**

- (1) The provisions set out in schedule 1 are taken 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 schedule 1; 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 schedule 1 commences.

...

Schedule 1 New XYZ Regulation

(see s #)

...[text of regulation including crest etc]...

Example 2⁶³**Amending Act****1 Name of Act**

This Act is the *ABC Amendment Act 2020*.

2 Commencement

- (1) This Act (other than section 4) commences on [*insert date etc*].

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

- (2) Section 4 commences on this Act's notification day.

3 Legislation amended

This Act amends the legislation mentioned in schedule 1.

4 New ABC Regulation—sch 2

- (1) The provisions set out in schedule 2 are taken to be a regulation made under the *ABC Act 2020*, 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 schedule 2; 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]...

⁶³ Updated in Version 2020-2 – see Standards decisions 16/12/20.

See the following legislation for examples prior to Standards decisions 16/12/20:

- *Eggs (Labelling and Sale) Regulation 2019*
- *Juries Regulation 2018*
- *Tobacco and Other Smoking Products Regulation 2018*

10.18 Amendments to the Environment Protection Act 1997 by regulation⁶⁴

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.

⁶⁴ Part added in Version 2014-2 to include the note in the amending regulation.

10.19 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, ie 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.
- (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.

10.20 Commencement of subordinate laws and disallowable instruments after disallowance period⁶⁵

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 the disallowance period. This can apply to all regulations (see example below) or to a regulation made for a specific provision (see *Public Interest Disclosure Act 2012, s 9*).

See part 4.6 for how to word the instrument's commencement provision and for a list of legislation titles with this provision.

Example

Auditor-General Act 1996, s 38

38 Regulation-making power

- (1) The Executive may make regulations for this Act.⁶⁶
- (2) The Executive must consult with the auditor-general and the public accounts committee before making a regulation under this Act.
- (3) Subject to any disallowance or amendment under the Legislation Act, chapter 7, a regulation under this Act commences—
 - (a) if there is a motion to disallow the regulation and the motion is negated by the Legislative Assembly—on the day after the day the motion is negated; 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 regulation provides for a later date or time of commencement—on that date or at that time.

⁶⁵ Updated in Version 2020-2 – see Standards decisions 16/12/20.

⁶⁶ Note removed in Version 2021-1—see Standards decisions 16/12/20.

10.21 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).

Example⁶⁷

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

Note 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)).

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.

⁶⁷ Example wording and note updated in Version 2024-1 to be consistent with the mandatory text on the template.

10.22 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 disappplied (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) do 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.

10.23 Specification of notification and publication requirements⁶⁸

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.
- (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*

⁶⁸ Part added in Version 2012-5—see Standards decisions 22/8/12.

10.24 Establishing authorities, boards, commissions etc⁶⁹

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.

10.25 Codes of practice⁷⁰

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 practice⁷¹ may apply, adopt or incorporate an instrument as in force from time to time.

Note 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)).

- (2) An approved code of practice is a disallowable instrument.

⁶⁹ Part added in Version 2012-5—see Standards decisions 22/8/12.

⁷⁰ Part added in Version 2012-6.

⁷¹ 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.

10.26 Standards⁷²

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 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)).

- (2) An approved standard is a disallowable instrument.

⁷² Part added in Version 2012-6.

10.27 Guidelines⁷³

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 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)).

- (3) A guideline is a notifiable instrument.

⁷³ Part added in Version 2012-6.

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.

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.

10.28 Validation⁷⁴

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. Although there does not seem to be a settled view as to what is properly a validating bill or provision, section 88 (9) of LA sheds some light as to what is a 'validating law' when providing for its continuing effect after expiry.

Section 88 (9) LA provides that a 'validating law' means—⁷⁵

- (a) a law that validates something that is or may be invalid; or
- (b) a law that makes provision consequential on a law mentioned in paragraph (a).

Most authorities appear to characterise a law as a validating law if the law is made to remedy the defect or irregularity, and cure the consequences of that defect or irregularity.⁷⁶

Each validating law is unique to the defect or irregularity that it seeks to cure, the list of examples of validation provisions on the PCO database demonstrates that the form and structure it takes varies, depending on the situation.

Retrospective commencement—see part 4.9.

Example of validating provisions—see PCO database.

Part # Validation⁷⁷

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)).

⁷⁴ Part added in Version 2016-1 and updated in Version 2021-2 as part of the DPG review.

⁷⁵ *Legislation Act 2001* (ACT) sub-s 88(9).

⁷⁶ Helen Xanthaki, *Thornton's Legislative Drafting* (Bloomsbury Professional, 5th ed, 2013) pt 14.1.

⁷⁷ Example simplified in 2017-1 – see listed precedents for example wording.

Example 1

Stand-alone bill

See the following legislation as examples:

- *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:

- *Electricity Feed-in (Large-scale Renewable Energy Generation) Amendment Act 2020*
- *Workers Compensation Amendment Bill 2020*, section 13
- *Crimes Legislation Amendment Act 2017*
- *ACT Civil and Administrative Tribunal Amendment Act 2016*
- *Health (National Health Funding Pool and Administration) Act 2013*, section 38(2)
- *Race and Sports Bookmaking (Validation of Licences) Amendment Act 2011*

Further reading

Dennis C Pearce and Robert S Geddes, *Statutory Interpretation in Australia* (LexisNexis Butterworths, 8th ed, 2014) pt 10.14.

Helen Xanthaki, *Thornton's Legislative Drafting* (Bloomsbury Professional, 5th ed, 2013) ch 14.

10.29 Notification and review of decisions⁷⁸

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. For provisions with multiple reviewable decisions the description of the decision in column 3 provides the distinction between decisions.⁷⁹

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 #)

column 1 item	column 2 section	column 3 decision	column 4 entity
1			

⁷⁸ Part added in Version 2017-1.

⁷⁹ Sentence added in Version 2023-2 – see Standards decisions 26/4/23.

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).⁸⁰
- 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).

⁸⁰ 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 2017⁸¹ 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.

⁸¹ 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—
 - o an act (eg assaulting a person, making a statement); or
 - o an omission to act (eg failing to comply with a registration requirement); or
 - o a state of affairs (eg being in possession of a weapon)
- 2 a result of conduct
 - o eg grievous bodily harm; obstruction of an official
- 3 a circumstance in which conduct, or a result of conduct, happens
 - o 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

Criminal Law Group - Guidelines for harmonisation (2005)

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

Cwth Attorney-General's Department, *The Commonwealth Criminal Code—A Guide for Practitioners*: p 61, p 87

Ian Leader-Elliott, *Criminal Code 2002 (ACT)—Information Session Discussion Paper*: pp 22–23

Criminal Law Group - *Guidelines for harmonisation (2005)*

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

Cwth Attorney-General's Department, *The Commonwealth Criminal Code—A Guide for Practitioners*: p 61, p 87

Ian Leader-Elliott, *Criminal Code 2002 (ACT)—Information Session Discussion Paper*: pp 22–23

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.

Physical elements	fault elements	
	available (s 17–21)	default (s 22)
conduct	intention	intention
	negligence	
result	intention	recklessness
	knowledge	
	recklessness	
	negligence	
circumstance	intention	recklessness
	knowledge	
	recklessness	
	negligence	

Further reading

Commonwealth Attorney-General's Department, *The Commonwealth Criminal Code—A Guide for Practitioners*, March 2002

Criminal Code, ch 2

Criminal Law Officers Committee, *Model Criminal Code*, Chapter 2, final report, December 1992

Criminal Law Group - *Guidelines for harmonisation* (2005)

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 2010⁸².

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).

⁸² Sentence updated in Version 2014-2.

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 provisions⁸³

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.

If there is more than 1 offence in the provision use 'Offences—' in the heading.⁸⁴

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.

⁸³ Division added in Version 2015-3 - see Standards decisions 22/07/2009 and 17/03/2015.

⁸⁴ Sentence add in Version 2023-1 – see Standards decisions 21/2/23.

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.⁸⁵

Note The defendant has an evidential burden in relation to the matters mentioned in s (#) (see Criminal Code, s 58).

If the note refers to more than 1 provision use the following formats⁸⁶:

Note The defendant has an evidential burden in relation to the matters mentioned in s (#) and s (#) (see Criminal Code, s 59).

Note The defendant has an evidential burden in relation to the matters mentioned in ss (#), (#) and (#) (see Criminal Code, s 59).

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.

⁸⁵ Information about use of the standard note added in Version 2015-5.

⁸⁶ Information about multiple provision add in Version 2023-1 – see Standards decisions 21/2/23.

Further reading

Commonwealth Criminal Code – Guide for Practitioners: p 337

Criminal Code, pt 2.6

Criminal Law Group - Guidelines for harmonisation (2005)

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:

'It is a defence to a prosecution for an offence against this section/subsection x if the defendant proves that...'

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.⁸⁷

Note The defendant has a legal burden in relation to the matters mentioned in s (#) (see Criminal Code, s 59).

If the note refers to more than 1 provision use the following formats:⁸⁸

Note The defendant has a legal burden in relation to the matters mentioned in s (#) and s (#) (see Criminal Code, s 59).

Note The defendant has a legal burden in relation to the matters mentioned in ss (#), (#) and (#) (see Criminal Code, s 59).

⁸⁷ Information about use of the standard note added in Version 2015-5.

⁸⁸ Information about multiple provision add in Version 2023-1 – see Standards decisions 21/2/23.

11.9 Ancillary offences⁸⁹

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:

Note 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.

⁸⁹ 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.

Example⁹⁰

Senior Practitioner Act 2018

49 Criminal liability of executive officer

- (1) An executive officer of a corporation is taken to commit an offence if—
 - (a) the corporation commits an offence against this Act (a *relevant offence*); and
 - (b) the officer was reckless about whether the relevant offence would be committed; and
 - (c) the officer was in a position to influence the conduct of the corporation in relation to the commission of the relevant offence; and

⁹⁰ Example update in Version 2023-1 – see Standards decisions 21/2/23..

- (d) the officer failed to take reasonable steps to prevent the commission of the relevant offence.

Maximum penalty: The maximum penalty that may be imposed for the commission of the offence by an individual.

- (2) Subsection (1) does not apply if the corporation would have a defence to a prosecution for the relevant offence.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see Criminal Code, s 58).

- (3) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the commission of the offence, a court must consider any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):

- (a) that the corporation arranges regular professional assessments of the corporation's compliance with the provision to which the offence relates;
- (b) that the corporation implements any appropriate recommendation arising from such an assessment;
- (c) that the corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the provision to which the offence relates;
- (d) any action the officer took when the officer became aware that the offence was, or might be, about to be committed.

- (4) Subsection (3) does not limit the matters the court may consider.

- (5) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.

- (6) In this section:

executive officer, of a corporation, means a person, however described and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

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 240.⁹¹

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).

⁹¹ 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 legislation⁹²

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 10.13 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).

⁹² 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.

Incorporated material → Incorporating law ↓	ACT law (including definitions incorporated by signpost)	Other Australian or NZ law (including definitions incorporated by signpost)	Other document (eg Australian Standard, industry code) (including definitions incorporated by signpost)
Act point-in-time	1 Express statement required <i>see div 12.3.2</i> 2 No notification required	1 Express statement required <i>see div 12.3.2</i> 2 No notification required	1 Express statement required <i>see div 12.3.3</i> 2 Notification required (full/qualified) <i>see div 12.3.4</i>
Act rolling	1 Default <i>see div 12.3.2</i> 2 No notification required	1 Default <i>see div 12.3.2</i> 2 No notification required	1 Express statement required <i>see div 12.3.3</i> 2 Notification required (full/qualified) <i>see div 12.3.4; appendix 12.B, example 1</i>
statutory instrument point-in-time	1 Express statement required <i>see div 12.4.4</i> 2 No notification required	1 Default (from date of making of instrument) <i>see div 12.4.2</i> 2 Notification optional (qualified) <i>see div 12.4.5–12.4.8</i>	1 Default (from date of making of instrument) <i>see div 12.4.2</i> 2 Notification required (full/qualified) <i>see div 12.4.5–12.4.7; appendix 12.B, example 2 (adapt for stat. instruments)</i>
statutory instrument rolling	1 Default <i>see div 12.4.4</i> 2 No notification required	1 Express statement required <i>see div 12.4.3</i> 2 Notification optional (qualified) <i>see div 12.4.5–12.4.8; appendix 12.B</i>	1 Express statement required <i>see div 12.4.3</i> 2. Notification required (full/qualified) <i>see div 12.4.5–12.4.7; appendix 12.B, example 3</i>

- any **requirement** mentioned may be as a matter of law or drafting policy (see chapter for details).
- **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.
- **full notification** means notification of the full text of the incorporated document, replacements and amendments.
- **notification** means notification in the legislation register; but see ‘qualified notification’.
- **point-in-time** means incorporated as in force on a particular date on or before the commencement of the incorporating Act or statutory instrument.
- **rolling** means incorporated as in force from time to time on and after the commencement of the incorporating Act or statutory instrument.
- **statutory instrument** means any instrument made under an Act—subordinate law, disallowable instrument etc.
- **qualified notification** means notification of details of incorporated documents, replacements and amendments (rather than full text), with provision for inspection on request.

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, Cwllth, 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 *incorporates by reference* the definition in the other law.

12.2.1 Terminology used in this chapter

For convenience, the term **incorporation by reference** is used in this chapter, though elsewhere (eg LA, s 47) the terms *application* and *adoption* are sometimes used instead in similar contexts.

Point-in-time and rolling incorporation

External material can be incorporated by reference in 2 ways:

- **point-in-time incorporation**—the material is incorporated as at a particular time (see example 1)
- **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 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)).

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 The Snouty Marsupial Guidelines do not need to be notified under the Legislation Act because s 47 (5) does not apply (see Legislation Act, s 47 (7)). The Snouty Marsupial Guidelines are accessible at www.legislation.gov.au.

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 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)).

Example 2**Rolling 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 in January 2004 as in force from time to time.

Note The Snouty Marsupial Guidelines do not need to be notified under the Legislation Act because s 47 (6) does not apply (see Legislation Act, s 47 (7)). The Snouty Marsupial Guidelines are accessible at www.legislation.gov.au.

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.

AS 123 means AS123-3-1998 (National Marsupial Code) as in force on 1 January 1998.

Note AS 123 may be purchased at www.standards.org.au.⁹³

99 Disapplication of Legislation Act, s 47 (5)

The Legislation Act, section 47 (5) does not apply to AS 123 under this regulation.

Note AS 123 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see Legislation Act, s 47 (7)). The standard may be purchased at www.standards.org.au.

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.

⁹³ Note updated in Version 2015-3.

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.

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.

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.⁹⁴

99 Disapplication of Legislation Act, s 47 (6)

The Legislation Act, section 47 (6) does not apply to AS 123 under this regulation.

Note AS 123 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.

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.

⁹⁴ 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) do 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 *Utilities Act 2000* scheme forming a package with the *Electricity Safety Act 2000*, the *Gas Safety Act 2000* and the *Water and Sewerage Act 2000*.
- 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 are incorporated into 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 director-general 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

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 director-general 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.

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 director-general 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 director-general.

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 director-general 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.

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 director-general 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 director-general.

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

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 director-general 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.

127 Inspection of incorporated documents

The director-general 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 director-general.

13 References to laws and provisions

13.1 Referencing ACT bills⁹⁵

When referencing ACT bills that will not pass until the following year, always use the Act title of the bill as it appears in the 'Name of Act' section.

However, when referencing ACT bills in regulations, use the year 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 that are not yet Acts) should be in italics.

Examples

- 1 *Children and Young People Act 2008*
- 2 *Children and Young People Amendment Act 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).

⁹⁵ Part added in Version 2015-4.

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.

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 laws⁹⁶

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**

⁹⁶ 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.

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)
- 3 *Seat of Government (Administration) Act 1910* (Cwlth)
- 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

⁹⁷Further 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)

⁹⁷ 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

- 1section 54, definition of *child care centre*
- 2the 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 provisions⁹⁸

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.

⁹⁸ 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

1	section 10 (1)	[s 10 (1)]
2	section 10 (1) (a)	[s 10 (1) (a)]
3	section 10 (1) (a) (i)	[s 10 (1) (a) (i)]
4	section 10 (1) (a) (i) (A)	[s 10 (1) (a) (i) (A)]
5	subsection (1) (a)	[s (1) (a)]
6	subsection (1) (a) (i)	[s (1) (a) (i)]
7	subsection (1) (a) (i) (A)	[s (1) (a) (i) (A)]
8	paragraph (a) (i)	[par (a) (i)]
9	paragraph (a) (i) (A)	[par (a) (i) (A)]
10	subparagraph (i) (A)	
11	sub-subparagraph (A)	

Examples 2

Rules

1	rule 10 (1)	[r 10 (1)]
2	rule 10 (1) (a)	[r 10 (1) (a)]
3	rule 10 (1) (a) (i)	[r 10 (1) (a) (i)]
4	rule 10 (1) (a) (i) (A)	[r 10 (1) (a) (i) (A)]
5	subrule (1) (a)	[r (1) (a)]
6	subrule (1) (a) (i)	[r (1) (a) (i)]
7	subrule (1) (a) (i) (A)	[r (1) (a) (i) (A)]
8	paragraph (a) (i)	[par (a) (i)]
9	paragraph (a) (i) (A)	[par (a) (i) (A)]
10	subparagraph (i) (A)	
11	sub-subparagraph (A)	

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 <i>Crimes Act 1900</i> , 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 <i>fish</i> , 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 / 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 / Territory

Despite the LA definition of ‘the Territory’,⁹⁹ 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**

⁹⁹ Words added in Version 2023-1 – see Standards decisions 21/2/23.

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

Generally, references to the Australian States and Territories other than the ACT should be to ‘a State’ or ‘a State or another Territory’. Avoid ‘another State’ or ‘a State or 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 other territories apart from the Northern Territory, the words should not be used.

For example, ‘in a State or another Territory’ could be used to apply to something in Australia anywhere outside the ACT. By contrast, using ‘in a State’ might be more appropriate in the context of a cooperative scheme applying only in the 6 States, the ACT and the NT.

If referring only to ‘a State’, include the following standard note:

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

A reference to ‘another Territory’ will include an external territory unless the context indicates otherwise. For clarity, expressly mention external territories only if there are specific arrangements for the external territories (e.g. to expressly exclude external territories from a provision). It is unusual that a particular external territory would need to be mentioned in ACT legislation.

LA, dictionary, part 1 defines **Australia**, in a geographic sense, to not include the external territories. If the word ‘Australia’ is used to determine the geographic extent of a legislative provision or scheme, ensure it is not inconsistent with other related provisions that could otherwise be interpreted to apply to the external territories.

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). ACT legislation also applies in 3 external territories (see *Australian Antarctic Territory Act 1954* (Cwlth), s 6, *Application of Laws Ordinance 1973 (Coral Sea Islands)* (Cwlth) and *Heard Island and McDonald Islands Act 1953* (Cwlth), s 5). Some of these territories apply the criminal laws of Jervis Bay instead of directly applying ACT criminal legislation.

Further reading

LA, dict, pt 1 def **Australia**, def **external territory**, def **internal territory**, def **State**

14.6 Being / 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 / body corporate

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 / terminate¹⁰⁰

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') or if "terminate" is the term adopted in the legislation being amended (see for example, *Residential Tenancies Act 1997*).

Further reading

Words and Phrases Guide, **cease**, **terminate**

¹⁰⁰ Updated in Version 2021-1 as part of the DPG review.

14.14 Fail to comply with / 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.¹⁰¹

Further reading

LA, dict, pt 1, def **contravene**

See Guide to Framing Offences¹⁰²

14.15 Foreign words and phrases¹⁰³

Avoid using foreign words. See Words and Phrases guide, pages xvi to xviii.

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.

¹⁰¹ Paragraph added in Version 2012-6—see Standards decisions 17/10/12.

¹⁰² Added in Version 2021-1 as part of the DPG review.

¹⁰³ Updated in Version 2021-1 as part of the DPG review.

14.19 Guidelines

Always use 'A guideline is a disallowable instrument' NOT 'Guidelines are a disallowable instrument'.

14.20 He / she / they¹⁰⁴

Consistent with the recognition of sex and gender diverse people, the use of personal pronouns in the masculine or feminine ('he or she') is no longer appropriate drafting practice for substantive provisions in the ACT. While personal pronouns may be used in examples consider whether this is appropriate on a case by case basis.

Some legislation still includes references to 'he or she' in substantive provisions. These references are being removed incrementally.

As a matter of interpretation, words indicating a gender include every other gender—see LA, section 145 (a).

To avoid the need for the use of a personal pronoun in drafting substantive provisions, the standard drafting practice is to repeat the noun that is the subject of the sentence or to recast the provision.

Example 1

Liquor Act 2010, s 164 (1)

- (1) As soon as practicable after an authorised person seizes a thing under this part, the authorised person must give a receipt for it to the person from whom it was seized.

If there is more than one potential subject of the sentence the use of any pronoun may introduce ambiguity and needs to be avoided.

Example 2

Liquor Act 2010, s 159 (3)

- (3) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

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 in appropriate cases.

¹⁰⁴ Updated in Version 2021-2—see Standards decisions 25/3/21.

It is appropriate to use ‘their’ and ‘they’ instead of repeating the noun that is the subject of the sentence when it is clear who is being referred to and it generally improves the readability of the provision.¹⁰⁵

Example 3

- (1) The decision-maker may, in writing, require an applicant to give them additional information or documents, within a stated time, that they reasonably need to decide the application.

Example 4

Motor Accident Injuries Act 2019, s 187 (3) (a)

- (3) However, an application for internal review may be made after the 28 days (a *late application*) if—
 - (a) the applicant satisfies the insurer that they have a full and satisfactory explanation for the delay; and

Example 5

Cemeteries and Crematoria Act 2020, s 89 (2)

- (2) An authorised person who enters premises under a warrant may seize anything at the premises that they are authorised to seize under the warrant.

Example 6

Births, Deaths and Marriages Registration Amendment Act 2020, s 29E (4) (a)

- (4) The young person—
 - (a) must state in the application that they understand the ACAT must give notice about the application to each parent or person with parental responsibility for the young person under section 29F (1) (a); and

Currently ‘you’ is rarely used and only in provisions for cautions and in advice to voters on the giving of preferences in elections. While it creates a style that addresses the reader directly it should only be used if it is clear to the reader who ‘you’ is.

Further reading

LA, s 145 (Gender and number)

Words and Phrases Guide, *he, she, they*

¹⁰⁵ Sentenced updated and example 3 added in Version 2024-1 – see Standards decisions 30/1/24.

14.21 Home address, business address, email address¹⁰⁶

Use 'home address', 'business address' and 'email address' as required in the context.

If the context relates to serving a document at an address—see LA, pt 19.5 (Service of documents).

Further reading

LA, s dict, pt 1, def *home address*

LA, s dict, pt 2, def *home address*, def *business address*, def *email address* for pt 19.5 (Service of documents)

14.22 If any¹⁰⁷

'If any' is sometimes inserted as a qualifier to signal that a circumstance or case may not exist, an instrument may not have been made or a statutory power may not have been exercised. The problem with this usage is that it may be seen as unnecessary as almost all legislative provisions apply only to the extent that the circumstance described in the provision is in existence.

Example 1

Crimes Act 1900, s 205 (4)

- (4) If an application is made to an issuing officer under this section and the issuing officer, after considering the information and having received and considered the further information (if any) that the issuing officer required, is satisfied that—

Example 2

Children and Young People Act 2008, s 90

After receiving a family group conference agreement, the director-general must implement the arrangements in the agreement in a way that complies with the family group conference standards (if any).

Inserting (if any) after a defined term is particularly problematic if it leads to prolific repetition of the qualifier. To avoid this, consider using 'any' before the matter that is subject to qualification (see example 3).

¹⁰⁶ Updated in Version 2021-1—see Standards Committee decision 25/3/20.

¹⁰⁷ Updated in Version 2021-1—see Standards Committee decision 25/3/20.

Example 3

Public Sector Workers Compensation Fund Act 2018, s 23 (2)

In managing claims, including individual claims, a claims manager may do the following in accordance with any guideline:

Another issue that arises in the use of the qualifier 'if any' is the appropriate punctuation to use: brackets or commas. As a matter of practice, if the qualifier (if any) is used in ACT legislation, brackets are the preferred form of punctuation.

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 generally¹⁰⁸

- 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, relating to, in regard to*

LA, dict, pt 1, def *in relation to*

¹⁰⁸ Examples updated in Version 2014-2.

14.26 Might or may tend to incriminate¹⁰⁹

In provisions dealing with self-incrimination, *might* is generally preferred to *may*. If a national Law uses *may*, do not change it to *might*.

Approaches to modifying the common law privilege against self-incrimination that do not use the phrase ‘might tend to incriminate’ may also be used. See example 3.

Example 1

Utilities (Technical Regulation) Act 2014, s 24

24 Self-incrimination etc

A person is not excused from providing information or producing a document or thing when required to do so under section 22 (Technical regulator—obtaining information and documents) 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.

¹⁰⁹ Part added in Version 2015-1 – see Standards Committee decision on 9/12/14 and updated in Version 2021-2—see Standards Committee decisions on 25/3/21..

Example 3*Integrity Commission Act 2018, s 175***175 Privileges against self-incrimination and exposure to civil penalty do not apply**

A person cannot rely on the common law privileges against self-incrimination and exposure to the imposition of a civil penalty to refuse to—

- (a) produce a document or other thing as required under an examination summons; or
- (b) answer a question or provide information as required—
 - (i) under an examination summons; or
 - (ii) at an examination.

Further reading

LA, s 146 meaning of *may* and *must*

LA, s 170 (Privileges against self-incrimination and exposure to civil penalty)

14.27 Law applying in the ACT¹¹⁰

Use 'law applying in the ACT' instead of 'law in force in the ACT'.

14.28 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*

¹¹⁰ Section added in Version 2024-1 – see Standards Committee decisions 30/1/24.

14.29 Medical practitioner / doctor

In all new legislation use 'doctor' instead of 'medical practitioner'.

If doctor is used in legislation, it should be included in 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**

14.30 Must¹¹¹

Use 'must' to mean 'is required to' and 'must not' to mean 'is required not to' (see LA, s 146 (2)).

There is no rule preventing 'must' or 'must not' being used in relation to the Executive, Ministers, courts or judges (see example 1).

Examples 1

Freedom of Information Act 2016, s 104 (5)

- (5) The Minister must consult the ombudsman before determining a fee.

Planning and Development Act 2007, s 229 (4)

- (4) Also, the Minister must not appoint any of the following people to an inquiry panel for an EIS:

Supreme Court Act 1933, s 37H (3)

- (3) A judge must not sit on an appeal from an order made by the judge.

Evidence Act 2011, s116 (1)

- (1) If identification evidence has been admitted, the judge must tell the jury—

If the provision involves a power that is required to be exercised only after certain conditions are met consider the use of 'may...only if' (see example 2)

¹¹¹ Updated in Version 2021-2—see Standards decisions 25/3/21.

Example 2**'May....only if'*****Integrity Commission Act 2018, s 231 (1)***

- (1) The Speaker may appoint a person as the inspector only if the person has been—

Care must be taken to ensure that offence provisions including 'a person must' comply with the current drafting practice (see ch 11 (Offences)). A requirement to not to engage in certain conduct unless licensed or registered must be supported by a properly formulated offence (see example 3).

Example 3***Labour Hire Licensing Act 2020, s 23 and 33*****23 Requirement to hold labour hire licence**

A person must not provide labour hire services unless the person holds a labour hire licence.

Note Section 33 makes it an offence to provide labour hire services without a licence.

33 Providing labour hire services without licence

- (1) A person commits an offence if the person—
- (a) provides labour hire services; and
 - (b) does not hold a labour hire licence.

Maximum penalty:

- (a) for an individual—800 penalty units; or
- (b) for a corporation—3 000 penalty units.

Further reading

LA, s 146 meaning of **may** and **must**

Words and Phrases Guide, **shall**

14.31 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 14.46).

14.32 One / 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

Change

- 1 more than/less than ~~one~~ 1
- 2 ~~one~~ 1 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**

14.33 On reasonable grounds

Do not use commas around the words 'on reasonable grounds'.

14.34 Period, of not less/longer / period, not less/longer¹¹²

Using 'not less than' etc as an interrupter in a sentence (see example 1) is preferable without the 'of'. As opposed to it being a key part of the sentence (see example 2).

Example 1***Modern Slavery Bill 2022***

(3) The notice must state—

...

- (c) the period, not less than 7 days after the notice is given, in which the notice must be complied with.

¹¹² Part added in Version 2023-1 – see Standards decisions 21/2/23.

Example 2***Residential Tenancies Act 1997***

The lessor must keep the condition report for a period of not less than 1 year after the end of the tenancy

14.35 Person with parental responsibility¹¹³

Use ‘person with parental responsibility’ instead of ‘person who has parental responsibility’ and include a definition (see example 1).

If it doesn’t interrupt the flow of the provision refer to ‘person with parental responsibility for the [child or young person] under the *Children and Young People Act 2008*, division 1.3.2’ without putting in a separate definition (see example 2).

Example 1***Drugs of Dependence (Personal Use) Amendment Act 2022*****171A Offence notices**

...

- (2) If an offence notice is served on a child and the police officer serving the notice believes on reasonable grounds that the child is living with a person with parental responsibility for the child, the police officer must serve a copy of the notice on the person with parental responsibility.

...

- (7) In this section:

person with parental responsibility**[, for a child or young person,]**—means a person with parental responsibility for the **[child or young person]** under the *Children and Young People Act 2008*, division 1.3.2

NOTE: The red text indicates text that can be altered by the drafter as sometimes it might be ‘child’ or ‘young person’ or ‘child or young person’.

Example 2***Mental Health Act 2015*****15 Information to be given to people**

...

- (e) if the person is a child—each person with parental responsibility for the child under the *Children and Young People Act 2008*, division 1.3.2; and

¹¹³ Part added in Version 2023-1 – see Standards decisions 21/2/23.

14.36 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**

14.37 Premises¹¹⁴

Use 'premises' whether referring to a single building and the property or grounds where the building and grounds are located or multiple buildings and grounds. 'Premises' in this context is always plural in form and takes a plural verb.

Similarly, when used in the context of a single building and the property or grounds where the building is located, there is no need to use an indefinite article. Refer to 'premises' or 'the premises' and never 'a premises' or 'a premise'. For example, there is no such thing as a business premise.

'Premises', in the context mentioned above derives from its use to refer to the people and items listed as a preliminary to a conveyancing deed.

'On the premises' is generally preferred, however 'at the premises' may be used if it better suits the situation.¹¹⁵

Further reading

Bill Bryson, *Troublesome Words* 2001, p160, entry for **premises**

Macquarie Dictionary online, entry for **premises**

Oxford Modern Australian Usage 1997 Nicholas Hudson

14.38 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.

¹¹⁴ Added in Version 2023-3 – see Standards decision 18 July 2023

¹¹⁵ Added in Version 2024-1 – see Standards decisions 30/1/24.

14.39 Refuse / 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*

14.40 Regulation made for¹¹⁶

Despite 'under' being defined in the LA to include 'for', it is clearer to say that a regulation is made 'for' a provision. The regulation as a whole is made under the regulation-making power.

Example 1

Residential Tenancies Act 1997

19A Minimum housing standards

- (1) A regulation may prescribe minimum standards (the *minimum housing standards*) for premises made available for occupation under a residential tenancy agreement, including in relation to the following matters:
 - (a) physical accessibility;
 - (b) ...
- (2) A regulation made for subsection (1) may incorporate a law or instrument, or a provision of a law of instrument, as in force from time to time.

Example 2

Climate Change and Greenhouse Gas Reduction Act 2010

13A Restriction on certain natural gas connections

- (1) A gas distributor must not provide a new gas connection for natural gas in an area, or to stated premises in an area, prescribed by regulation.
- (2) Before a regulation is made ~~under~~ for this section, the Executive must seek, and have regard to, the advice of the chief planning executive about the proposed regulation.

¹¹⁶ Part added in Version 2023-1 – see Standards decisions 21/2/23.

14.41 Satisfied / believes¹¹⁷

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

Gaming Machine Act 2004, s 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, s 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, s 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.

¹¹⁷ Part added in Version 2014-2 – see standards decision 1/04/14.

14.42 To remove any doubt¹¹⁸

‘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’.

14.43 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.

14.43.1 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’)

¹¹⁸ Part added in Version 2012-5—see Standards Committee decision on 22/8/12.

14.43.2 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’

14.44 Website addresses¹¹⁹

Use the term ‘accessible’ for information freely accessible on a website. Also, it is not necessary to use **https://** 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.

¹¹⁹ Part updated in Version 2015-6.

14.45 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**

Amending Guide, pt 9.2 note 4, pt 9.3 note 3

14.46 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’.

14.47 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, apostrophes and brackets. Do not follow the order on the legislation register.

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.

Examples

- *Crimes Act 1900*
- *Crimes (Sentencing) Act 2005*
- *Unit Titles Act 2001*
- *Unit Titles (Management) Act 2011*
- *Unit Titles Regulation 2001*

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.

Example 1¹²⁰

Motor Accident Injuries Act 2019, s 321 (6)

(6) In this section:

...

Mediator Standards Board means the incorporated body registered under the Corporations Act as the Mediator Standards Board Limited ACN 145 829 812.

Example 2

Veterinary Practice Act 2018

Dictionary

AVBC means the Australian Veterinary Boards Council Inc ABN 49 337 540 469.

¹²⁰ Examples added in Version 2021-1 as part of the DPG review.

15.3 Sandwich provisions¹²¹

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.

¹²¹ 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.

Further reading¹²²

Xanthaki H (2013) *Thornton's Legislative Drafting* 5th ed, Butterworths, London: par 3.41.

¹²² Added in Version 2021-1 as part of the DPG review.

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 'following:' 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

Xanthaki, H (2013) *Thornton’s Legislative Drafting* 5th ed, Butterworths, London: par 8.52 and par 8.53¹²³

¹²³ Updated in Version 2021-1 as part of the DPG review.

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.

Further reading¹²⁴

LA, s 126 (Material that is part of Act or statutory instrument)

LA, s 132 (Examples)

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

¹²⁴ Added in Version 2021-1 as part of the DPG review.

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 unless it is an example for the last provision in the list (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.

- (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 2¹²⁵

Example at the end of a series of subsections, paragraphs or subparagraphs

Plastic Reduction Act 2021

9 Meaning of *supply*

(1) In this Act:

supply, a plastic product—

(a) means provide, by way of sale or otherwise, a plastic product; and

(b) includes providing a plastic product to a person—

(i) as a container or packaging for another product that is provided to the person;
or

(ii) for use with, or in relation to, another product that is provided to the person;
but

(c) does not include providing a plastic product in a domestic setting.

Example—par (b) (i)

giving a customer in a restaurant a plastic take-away container to put uneaten restaurant food into

Example—par (b) (ii)

making plastic beverage stirrers available on the counter at a coffee shop

Examples—par (c)

1 a parent giving a child a plastic fork for the child to eat their home-packed lunch

2 taking plastic cutlery to a picnic

(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

¹²⁵ Example updated in Version 2022-1

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 or paragraph position and should have an identifier to the provision or a description.

Example¹²⁶**Children and Young People Act 2008****20 Long-term care responsibility for children and young people**

- (1) A person who has *long-term care responsibility* for a child or young person has—
- (a) responsibility for the long-term care, protection and development of the child or young person; and
 - (b) all the powers, responsibilities and authority a guardian of a child or young person has by law in relation to the child or young person.

Examples—long-term care responsibilities

- 1 administration, management and control of the child's or young person's property
- 2 religion and observance of racial, ethnic, religious or cultural traditions
- 3 obtaining or opposing the issuing of a passport for the child or young person
- 4 long-term decisions about education, training and employment

Education Act 2004**150 Minister may grant scholarships etc**

- (1) The Minister may give bursaries, exhibitions, free places, prizes, scholarships or other forms of assistance or reward to be used for—
- (a) the benefit of a student at a government school, or at a college or university in the ACT; or
 - (b) the benefit of a government school, or a college or university in the ACT; or
 - (c) a child registered for home education in the ACT.

Example—par (b)

a fund to provide for a teacher with particular skills to teach at a particular government school

¹²⁶ Example updated in Version 2022-1.

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.

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 The Act, s 19 sets out when a person deals with a medicine.

...

- (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

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.

15.6.6 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.

Example¹²⁷

Legislation Act 2001

43 Statutory instruments to be interpreted not to exceed powers under authorising law

- (1) A statutory instrument is to be interpreted ...
- (2) Without limiting subsection (1), if a provision of a statutory instrument would, apart from this section, be interpreted as exceeding power—
 - (a) the provision is valid to the extent to which it does not exceed power; and
 - (b) the remainder of the instrument is not affected.

Example

The *Agriculture Services Determination 2001*, pt 4 exceeds the determination-making power given by the *Agriculture Services Act 2000* (hypothetical). The other provisions of the determination are within power.

The determination (apart from pt 4) operates effectively. Pt 4 is treated as if it did not form part of the determination and is disregarded.

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.

¹²⁷ Example added in Version 2021-1 as part of the DPG review.

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.¹²⁸

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.

Example 8¹²⁹

Section(s) in chapter/part/division expires earlier

Expiry—pt

- (1) This part expires on 1 April 2028.
- (2) However, section ## and this subsection expire on 1 April 2024.

¹²⁸ Example added in Version 2014-2.

¹²⁹ Example added on Version 2023-1, when first expiry happens remaining expiry reads better than using “other than section ##” in s (1).

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 1¹³⁰

Road Transport (Offences) Regulation 2005

Part 1.12 Road Transport (Safety and Traffic Management) Act 1999

column 1 item	column 2 offence provision and, if relevant, case	column 3 short description	column 4 offence penalty (pu)	column 5 infringement penalty (\$)	column 6 demerit points
13	9 (1)	sell/offer for sale/buy traffic offence evasion article	20	1 396	
14	9 (2)	drive/park vehicle with traffic offence evasion article	20	1 396	

Example 2

Legislation Act 2001, s 133

- (2) A *penalty unit* is—
- (a) for an offence committed by an individual—\$160¹³¹; or
 - (b) for an offence committed by a corporation—\$810.

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, \$1 600 (\$160 x 10).
- If the person is a corporation, the maximum fine is, therefore, \$8 100 (\$810 x 10).

¹³⁰ Example updated in Version 2021-1 as part of the DPG review.

¹³¹ Penalty amounts updated in Version 2021-1.

15.9 Fractions and formulas

15.9.1 Fractions

A fraction can be created using the drafting template, 'Extra Matter', 'Insert 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, s 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 (ie not in a separate subsection) (see example 5) and should be in alphabetical order, not the order they appear in the formula¹³².

If possible, the use of formulae in definition provisions should be avoided (see example 6).

Example 5

- (1) The minimum general rate levy is—

minimum levy × 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

Cwllth Office of Parliamentary Counsel, *Plain English Manual*, p 29 (User-friendly algebraic formulae) (available on OPC website www.opc.gov.au, Plain Language)

NZ Law Commission (1996) Report no 35, *Legislation Manual: Structure and Style* p 57

¹³² Sentence updated in Version 2014-2.

15.10 Gazette¹³³

Gazette should be lower case without italics. The 'Commonwealth' in Commonwealth gazette should be capitalised; the term should not be italicised but must expressly be referred to as the Commonwealth gazette to avoid confusion with the gazette (see LA, dict, pt 1, def **Commonwealth gazette** and **gazette**).

Example—Commonwealth gazette

Electoral Act 1992

190 Definitions for pt 14

In this part:

.....

called, an extraordinary election is *called* on—

- (a) for an extraordinary election mentioned in section 101 (1) (a) or (b)—the day the notice under the Self-Government Act, section 16 or section 48 is published in the Commonwealth gazette; or
- (b) for an extraordinary election mentioned in section 101 (1) (c) or (d)—the day the determination under section 101 (2) or (3) is notified under the Legislation Act.

Further reading

LA, dict, pt 1, def **Commonwealth gazette** and **gazette**

¹³³ Updated in Version 2021-1 as part of the DPG review.

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.

Example—penalty in penalty units¹³⁴

Education Act 2004

17A Contravention of information and compliance notices

- (1) A child's parents commit an offence if—
- (a) an information notice is given to the parents; and
 - (b) the parents fail to comply with the notice.

Maximum penalty: 5 penalty units.

Example—infringement notice penalty

Magistrates Court (Heritage Infringement Notices) Regulation 2020

Schedule 1 Heritage Act 2004 infringement notice offences and penalties

(see s 7 and s 8)

column 1 item	column 2 offence provision	column 3 offence penalty (penalty units)	column 4 infringement penalty (\$)
1	74 (3)	100	1 000
2	75 (3)	100	1 000

Further reading

LA, s 133 and dict, pt 1, def *penalty unit*

¹³⁴ Examples added in Version 2021-1 as part of the DPG review.

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)

12A Notifiable contract threshold—Act, s 25 (2) (a)

The notifiable contract threshold amount is \$25 000.

15.13 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.

Example—table in a schedule¹³⁵

Planning and Development Act 2007

Schedule 1 Reviewable decisions, eligible entities and interested entities

(see s 407)

column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
1	decision under s 141 (4) to refuse to extend the period within which further information must be provided	applicant for extension of time	entity that made representation under s 156 in relation to the application
2	decision under s 162 to approve a development application in the code track subject to conditions	applicant for development approval	

15.13.1 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).

¹³⁵ Example added in Version 2021-1 as part of the DPG review.

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

column 1 item	column 2	column 3
1

Example 2**Table numbering—schedule section****Schedule 1 Vehicle standards**

.....

1.7 Operation and performance of warning lights

.....

Table 1.7

column 1 item	column 2 angle	column 3 horizontal angle from centre of light								
		-30°	-20°	-10°	-5°	0°	5°	10°	20°	30°
1										
2	10°				50	80	50			
3	5°		180	320	350	450	350	320	180	

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)

column 1 item	column 2 offence provision	column 3 offence penalty (penalty units)	column 4 infringement penalty (\$)
1	10 (1)	50	500
2	38 (1)	50	500

15.13.2 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.

15.13.3 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.

15.13.4 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).

15.13.5 Item numbers

Items in tables should be numbered from '1' onwards.

15.13.6 Use of figures

The same rules mentioned in pt 15.6 apply to the use of figures in tables.

15.13.7 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.

15.13.8 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 ##

column 1 item	column 2	column 3

16 Spelling, abbreviations, capitals, punctuation and symbols

16.1 Spelling, Abbreviations and Symbols Guide¹³⁶

See the Spelling, Abbreviations and Symbols Guide for the use of hyphenation, setting solid and spacing of words (and some phrases), spelling of words with alternative spellings, abbreviations, contractions and symbols.

Further reading

For a discussion about foreign words and phrases and English equivalents, see the *Words and Phrases Guide*; pp xvi-xviii.

16.2 Capitals¹³⁷

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 that part (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

¹³⁶ Updated in Version 2021-1 as part of the DPG review.

¹³⁷ Updated in Version 2021-1 as part of the DPG review.

- 4 chief health officer
- 5 Chief Justice
- 6 Chief Minister
- 7 Coroner's Court
- 8 director-general
- 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 Australian Explosives Code, appendix 2

Examples 3

- 1 the Justice and Community Safety Directorate.....the directorate
- 2 the Royal Commission into Aged Care Quality and Safety.....the royal commission
- 3 the Parliamentary Counsel's Office.....the office

Further reading¹³⁸

Style Manual: 6th ed; p 123; or

<https://www.stylemanual.gov.au/style-rules-and-conventions/names-and-terms/organisation-names>

¹³⁸ Updated in Version 2021-1 as part of the DPG review.

16.3 Abbreviations and contractions—eg / ie / etc¹³⁹

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) A person must not attach anything (for example, advertising material) to a parking meter.

Example 2

'eg'

- (1) A fee may be determined—
 - (a) by stating the fee; or
 - (b) by setting a rate by which the fee is to be worked out.

Examples—different methods of determining fees

An instrument may determine a fee by stating the fee (eg \$250) or setting a rate (eg \$7.50 per kilogram).

'Etc' may be used, sparingly, in notes and headings to chapters, parts, divisions, subdivisions, sections or rules if it assists brevity and avoids lengthy headings. The following should be considered:

- useful where related matters in the same class are being captured under the heading description;
- unlisted items captured under 'etc' should be reasonably easy to be inferred;
- ensure that key words that may help the reader are not omitted from the heading;
- avoid using 'etc' in headings if the list of items being captured is short eg if it is a list of 3 items it is more helpful to list the 3 items instead of listing 2 and adding 'etc';
- consider rearranging the provisions of the legislation into more appropriate groupings before using etc.

Example 1

'Etc' used in division heading

Division 15.1 Liability of managers etc

NOTE: The heading in example 1 extends also, under the division, to the liability of partners in a partnership and executive officers of a corporation (see *Waste Management and Resource Recovery Act 2016*).

¹³⁹ Updated in Version 2021-1 as part of the DPG review.

Example 2

'Etc' used in section heading

358 Damage etc to be minimised

- (1) In the exercise, or purported exercise, of a function under this part, a conservation officer must take all reasonable steps to ensure that the officer causes as little inconvenience, detriment and damage as practicable.

NOTE: The underlined words in example 2 are related matters that are captured by the heading.

Further reading

<http://www.pco.govt.nz/4.5/> (Using 'etc' in headings.)

For an example of a chapter heading with 'etc', see *Corrections Management Act 2007*; ch 4.

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.

Example 1

Notes

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

Note The defendant has a *legal* burden in relation to the matters mentioned in s (#) (see Criminal Code, s 59).

Example 2

Headings

Part 4.10 Inter-jurisdictional provisions—ch 4

113 Meaning of *treatment and care expenses*—ch 2

Further reading

Spelling, Abbreviations and Symbols Guide: p v

Words and Phrases Guide, **eg**, **etc**, **ie**

16.4 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.

Examples¹⁴⁰

- 1 A regulation may prescribe requirements in relation to the display of ‘no smoking’ signs in enclosed public places.
- 2 The written direction must state that ‘The occupier must not display at the premises a sign containing the words ‘account customers only’ or ‘regular customers only’ or any other similar words’. (Adapted from *Fuels Control Act 1979 (repealed)*; s 12 (1) (f))

16.5 Use of quotation marks in signs, addresses etc¹⁴¹

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’.

¹⁴⁰ Examples updated in Version 2021-1 as part of the DPG review.

¹⁴¹ Part added in Version 2012-5.

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:
‘Registrar, ACT Child Sex Offender Registry
GPO Box 401
Canberra ACT 2601’.

16.6 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.

16.7 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

Further reading

Style Manual: 6th ed; p 87; or

<https://www.stylemanual.gov.au/style-rules-and-conventions/punctuation-marks/apostrophes>

16.8 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 director-general 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 director-general a test report prepared by the person who did the test.

NOTE: 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 (see example 3).

Example 3¹⁴²

Example 2, par (c) revisions

- (c) within 7 days after the device is tested, give the director-general a test report prepared by the person who did the test.

OR

- (c) give the director-general a test report prepared by the person who did the test, within 7 days after the device is tested.

¹⁴² Example added in Version 2021-1 as part of the DPG review.

16.9 Spacing in quantities and measurements expressed using symbols

A quantity or measurement 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

16.10 Expressing percentages¹⁴³

Use the symbol ‘%’ and not the terms ‘per cent’, ‘percent’ or ‘per centum’.

Further reading

Words and Phrases Guide, *per cent / percent / per centum*

16.11 ‘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%.

¹⁴³ Updated in Version 2021-1 as part of the DPG review.

16.12 Genus and species names¹⁴⁴

The genus and species form the definitive name of a plant, animal or bacterium. They are formatted as follows:

- the genus is in italics and has an initial capital
- the species is in italics and is lower case.

For any taxonomic terms broader than genus (eg order or family), the term is not in italics and has an initial capital (see example 2).

Example 1

Urban Forest Bill 2022

remnant tree means a native tree that is a remnant of, or has regenerated from, the original vegetation that existed on the land where the tree is located.

Examples

Eucalyptus blakelyi, *Eucalyptus mannifera*, *Eucalyptus rossii*, *Eucalyptus macrorhyncha*, *Eucalyptus melliodora*, *Eucalyptus polyanthemos*, *Eucalyptus albens*, *Eucalyptus dives*, *Eucalyptus bridgesiana*

Example 2

Biosecurity (National Livestock Identification System) Regulation 2023

camelids means members of the family Camelidae other than vicuna or guanacos.

Note Camelids include camels, alpacas and llamas.

cattle means the following—

- members of the genus *Bos*;
- American bison or buffalo (*Bison bison*);
- Domestic water buffalo (*Bubalus bubalis*).

equines means members of the family Equidae.

Further reading

Spelling, Abbreviations and Symbols Guide: p 95

Australian Govt Style Manual, entry for 'Plants and Animals': <https://www.stylemanual.gov.au/grammar-punctuation-and-conventions/names-and-terms/plants-and-animals>

¹⁴⁴ Part added in Version 2023-1 – see Standards decisions 21/2/23.

16.13 Compound word capitalisation in titles¹⁴⁵

- 1 Always capitalise the first element.
- 2 Capitalise any subsequent elements unless they are articles, prepositions, coordinating conjunctions (and, but, for, or, nor), or such modifiers.

Examples – capitalised

- Third-Party
- Hot-Water
- Out-of-Home
- Smoke-Free
- Supported Decision-Making

Examples – not capitalised

- Feed-in
- Check-in
- Loose-fill
- Call-in

Further reading

Chicago Manual of Style

¹⁴⁵ Part added in Version 2023-2 – see Standards decisions 26/4/23.

17 Transitional provisions

17.1 General¹⁴⁶

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.

¹⁴⁶ Chapter updated in Version 2015-1 – see Standards decisions 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.

¹⁴⁷It 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, except if the provision directly before the expiry is the 'Transitional regulations' provision because it also includes a note about LA, section 88.¹⁴⁸

Example

Expiry—ch/pt/div

This chapter/part/division expires ## months/years after the day it commences.

Note A transitional provision is repealed on its expiry but continues to have effect after its repeal (see Legislation Act, s 88).¹⁴⁹

17.4 Use of 'commencement day' definition¹⁵⁰

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 section # commences.¹⁵¹

¹⁴⁷ Sentence added and example updated in Version 2015-4.

¹⁴⁸ Sentence updated in Version 2024-1 because the inclusion of the LA, s 88 in 2 provisions next to each other is unnecessarily repetitive.

¹⁴⁹ Note updated in line with Standards Decisions of 16/12/20

¹⁵⁰ Added in 2017-1

¹⁵¹ Example amended in Version 2024-1 to remove the Act reference as it is not necessary.

17.5 Saving instruments under repealed legislation¹⁵²

If certain instruments under repealed legislation need to be saved (remain effective) it is better to provide for these instruments **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 *Amending Guide*, part 12.3 (Some instruments saved)** and example 3 for the related repeal provision.¹⁵³

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

Work Safety Legislation Amendment Act 2009, section 4 and amendment 1.23

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 ##.

Example 2

Recommended precedent

Planning Bill 2022 (see also s 640, pt 20.6 and s 647)

603 Planning strategy

- (1) The planning strategy in schedule 1 of the *Planning and Development (Planning Strategy) Notice 2018* (NI2018 665) is taken to be the planning strategy under this Act, section 36.
- (2) The *Planning and Development (Planning Strategy) Notice 2018* (NI2018 665) is taken to be a notifiable instrument made under this Act, section 36 (4).

Example 3

Not recommended

Planning and Development Act 2007, sections 428 and 467.
Nature Conservation Act 2014, chapter 20.

¹⁵² Part updated in Version 2015-4.

¹⁵³ Sentence added in Version 2023-1 – see Standards decisions 21/2/23.

Example 4¹⁵⁴**Repeal provision***Urban Forest Bill 2022***146 Legislation repealed**

- (1) The following legislation is repealed:
 - *Tree Protection Act 2005* (A2005-51)
 - *Magistrates Court (Tree Protection Infringement Notices) Regulation 2006* (SL2006-6).
- (2) All other statutory instruments, other than the following instruments, made under the *Tree Protection Act 2005* are repealed:
 - (a) a determination under section 21, section 31, section 45 or section 75;
 - (b) an appointment under section 69 or section 85.

Note The transitional provisions in this Act provide that certain statutory instruments made under the *Tree Protection Act 2005* are taken to be made under this Act (see s 315).

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
----------------	---------------------

¹⁵⁴ Example added in Version 2023-1 – see Standards decisions 21/2/23.

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

17.7.1 Principal legislation

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.

There is no need to leave any space in the chapter/part/section numbering as it is very unlikely that new provisions would be inserted after a Miscellaneous part.¹⁵⁵

17.7.2 Amending legislation

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)¹⁵⁶ 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.

¹⁵⁵ Guidance updated in Version 2024-1 – there was no basis for the previous guidance of leaving a space in the provision numbering.

¹⁵⁶ Sentence updated in Version 2014-2.

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***Part 10 Transitional—Human Rights Commission Legislation Amendment Act 2006****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 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

→ INSERT TRANSITIONAL PART

Transitional—Human Rights Commission Legislation Amendment Act 2006

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 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.¹⁵⁷

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.

Note A transitional provision under s (1) continues to have effect after its repeal, however, a modification under s (2) has no ongoing effect after its repeal (see Legislation Act, s 88).

Advice for instructors:

Advise instructors to 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.

¹⁵⁷ Added in 2018-1—see Standards Decisions 27/6/18.

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 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 regulations¹⁵⁸

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.

¹⁵⁸ Part added in Version 2015-5.

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*
- *Health Practitioner Regulation National Law (ACT) Act 2010.*

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.¹⁵⁹

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.

¹⁵⁹ 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*¹⁶⁰

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.

...

¹⁶⁰ 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*¹⁶¹

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.’

...

¹⁶¹ 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,¹⁶² s 451**

The Act, chapter 17 applies as if the following section were inserted:

‘451A Modification—Payroll Tax Act 1987

- (1) The *Payroll Tax Act 1987* is modified as set out in the *Duties (Transitional Provisions) Regulation 2008*, schedule 1.
- (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***.

¹⁶² Example updated in Version 2014-2.

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 14 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 Consequential amendments to rules¹⁶³

Consequential amendments to the *Court Procedures Rules 2006* arising from other legislative amendments should not be made in the amending legislation but made by the rule-making committee. The drafter should discuss the required amendments with the Parliamentary Counsel who will discuss the required changes with the committee.

¹⁶³ Added in Version 2021-1 as part of the DPG review.

19.3 Schedule 6 (Corporations Rules)

The *Court Procedures Rules 2006*, schedule 6 is model legislation of the *Federal Court (Corporations) Rules 2000* (Cwth). Because of this some aspects of the schedule, for example, rule numbering and language, do not comply with current drafting practice.

19.4 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)).

19.4.1 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. Please discuss with the Republications team in advance, as they will prepare the approval statement to send out when they send out the final approved form.

Example¹⁶⁴

Australian Capital Territory

Court Procedures Act 2004—approved form

approval statement for

Approved forms AF2021–

made under the

Court Procedures Act 2004, section 8 (Approved forms)

- (1) We, members of the rule-making committee, approve form 6.24A for the *Court Procedures Rules 2006*:
- (2) To commence on 1 January 2021.

Dated: 2021

Chief Justice

Chief Magistrate

Judge

Magistrate

19.4.2 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).

¹⁶⁴ Example updated in Version 2021-1 as part of the DPG review.

19.4.3 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.

19.5 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)*.¹⁶⁵

¹⁶⁵ 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 Infringement penalty increases

Schedule 1 is regularly updated to increase the infringement penalties. When drafting these amendments it is best to substitute the whole schedule.

Copy the schedule from the latest version on the register website into the draft regulation.

20.4.3 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]

column 1 item	column 2 offence provision and, if relevant, case	column 3 short description	column 4 offence penalty (pu)	column 5 infringement penalty (\$)	column 6 demerit points
17	231	hinder/obstruct police officer/authorised person/other person	50 pu/6 months prison/both		

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)]

column 1 item	column 2 offence provision and, if relevant, case	column 3 short description	column 4 offence penalty (pu)	column 5 infringement penalty (\$)	column 6 demerit points
15	32 (3) (a)				
15.1	<ul style="list-style-type: none"> • first offender 	drive while licence cancelled/after licence refused—first offender	50 pu/6 months prison/both		
15.2	<ul style="list-style-type: none"> • repeat offender 	drive while licence cancelled/after licence refused—repeat offender	100 pu/12 months prison/both		
16	32 (3) (b)				
16.1	<ul style="list-style-type: none"> • first offender 	apply for licence after refusal/cancellation state name falsely/ incorrectly/not mention refusal/ cancellation— first offender	50 pu/6 months prison/both		

20.4.4 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.

20.4.5 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.¹⁶⁶

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).¹⁶⁷

Consequential amendments¹⁶⁸

If amendments to a regulation requires consequential amendments to an infringement notices regulation, a separate instrument for the amendments to the infringement notices regulation needs to be prepared because it is likely that the responsible Minister and Directorate for making the regulation will be different. For consistency, even if the regulation being amended is administered by JACS we still prepare a separate regulation for the infringement notices regulation amendments.

Changed note wording¹⁶⁹

The wording 'various Acts' has changed to 'various territory laws'

5 Purpose of regulation

The purpose of this regulation is to provide for infringement notices under the *Magistrates Court Act 1930*, part 3.8 for certain offences against the *XYZ Act*.

Note The *Magistrates Court Act 1930*, pt 3.8 provides a system of infringement notices for offences against various territory laws. The infringement notice system is intended to provide an alternative to prosecution.

¹⁶⁶ Sentence amended in Version 2012-3 to clarify that the full citation is also used in the schedule heading.

¹⁶⁷ Sentence added in Version 2012-3 to clarify that the dot points shown should always be used.

¹⁶⁸ Added in Version 2021-1 to clarify that a separate regulation is required.

¹⁶⁹ Added in Version 2023-1.

3 Ministers on signing page¹⁷⁰

It is only a requirement for the Chief Minister and the Attorney-General (administering the Magistrates Court Act) to sign the regulation, however there is provision on the signing page if the Minister administering the subject matter wants to also sign the regulation.

Magistrates Court (Planning Infringement Notices) Regulation 2023

Subordinate Law SL2023-22

The Australian Capital Territory Executive makes the following regulation under the *Magistrates Court Act 1930*.

Dated 14 September 2023.

ANDREW BARR

Chief Minister

SHANE RATTENBURY

Minister

MICK GENTLEMAN

Minister

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 penalties¹⁷¹**

¹⁷⁰ Added in Version 2024-1 – see Standards Committee decisions 30/1/24.

¹⁷¹ 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 relevant to this regulation. For example:

- commissioner for fair trading
- corporation
- Corporations Act
- individual.

Note 2 Terms used in this regulation have the same meaning that they have in the *Magistrates Court Act 1930*. For example, the following terms are defined in the Act, dict:

- administering authority
- authorised person
- infringement notice
- infringement notice offence
- reminder notice

22 Legislative instruments¹⁷²

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.

¹⁷² 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.



ACT legislation register Automated document lodgment system

Ann Moxon [ACTGOV\Ann Moxon] - PCO

My profile | Notification requests

- **Disallowable instrument**

[Request notification number](#)

[Request notification \(not prepared by PCO\)](#)

[Request notification \(prepared by PCO\)](#)

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/drafting-and-publishing) 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 national laws¹⁷³

23.1 Amending national laws

Applied national laws CANNOT be amended.

Any changes that are necessary for application in the ACT must be done by modification.

23.2 PCO publication practice¹⁷⁴

The following 3 national laws are republished on the register website:

- Electronic Conveyancing National Law (ACT)
- Health Practitioner Regulation National Law (ACT)
- Heavy Vehicle National Law (ACT)

A copy of the national law is taken from the schedule of the jurisdictions legislation and formatted to ACT styles. If a provision of the Law is affected by a modification, the provision appears as modified and the text of the modification is shaded. Point-in-time versions are republished as amendments occur, however because PCO is not always aware of the amendments prior to their commencement, the republications are not always published on the day the amendments commence. Republications of national laws do not form part of our performance measures reporting.

PCO does not automatically republish national laws. If there is a particular need, usually as requested by a Directorate or line area related to the subject matter, then the Parliamentary Counsel will consider if republication of the law is appropriate.

23.3 References to national laws¹⁷⁵

A reference to a national law should be in italics.

References will not be hyperlinked unless the national law is available on the register ie, Health Practitioner Regulation National Law (ACT), Heavy Vehicle National Law (ACT) and Electronic Conveyancing National Law (ACT).

A note should be included for references to national laws that will not be hyperlinked. The ACT application Act and the law that includes the national law will be hyperlinked to help the reader locate the national law.

¹⁷³ Chapter added in 2017-1

¹⁷⁴ Part added in 2021-1—see Standards decisions 11/3/21.

¹⁷⁵ Part added in 2021-1—see Standards decisions 11/3/21.

Example**Long Service Leave (Portable Schemes) Act 2009, sch 3, s 3.1 (2)**

(2) In this section:

education and care service means an approved education and care service under the *Education and Care Services National Law (ACT)*, section 5 (1).

Note The *Education and Care Services National Law (ACT) Act 2011*, s 6 applies the Education and Care Services National Law set out in the *Education and Care Services National Law Act 2010* (Vic), schedule as if it were an ACT law called the *Education and Care Services National Law (ACT)*.

23.4 Electronic Conveyancing National Law (ACT) – commencement of amendments¹⁷⁶

Under the *Electronic Conveyancing National Law (ACT) Act 2020*, section 6 (2) amendments made to the national law commence 90 days after the commencement of the amending law.

- (2) A law that amends the Electronic Conveyancing National Law set out in the appendix to the *Electronic Conveyancing (Adoption of National Law) Act 2012* (NSW), and is passed by the New South Wales Parliament after this Act’s notification day, commences on—
- (a) the 90th day after the day the law commences in NSW (the *default commencement day*); or
 - (b) if a different day is declared by the Minister before the default commencement day—that day.

23.5 National laws applied in the ACT¹⁷⁷

- **Co-operatives National Law (ACT)**

The *Co-operatives National Law (ACT) Act 2017* (A2017-8), s 7 applies the Co-operatives National Law set out in the appendix of the *Co-operatives (Adoption of National Law) Act 2012* (NSW). The law is modified by the ACT Act, see schedule 1 but is not republished.

¹⁷⁶ Part added in 2023-1.

¹⁷⁷ Part added in 2021-1—see Standards decisions 11/3/21.

- **Community Housing Providers National Law (ACT)**

The *Community Housing Providers National Law (ACT) Act 2013* (2013-18), s 7 applies the Community Housing Providers National Law set out in the appendix of the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW). It is modified by the ACT Act but is not republished.

- **Education and Care Services National Law (ACT)**

The *Education and Care Services National Law (ACT) Act 2011* (A2011-42), s 6 applies the Education and Care Services National Law set out in the schedule of the *Education and Care Services National Law Act 2010* (Vic). It is not modified and not republished.

- **Electronic Conveyancing National Law (ACT)**

The *Electronic Conveyancing National Law (ACT) Act 2020* (A2020-15), s 6 applies the Electronic Conveyancing National Law set out in the appendix to the *Electronic Conveyancing (Adoption of National Law) Act 2012* (NSW). It is modified by the ACT Act and republished on the register website.

- **Australian Consumer Law (ACT)**

The *Fair Trading (Australian Consumer Law) Act 1992* (A1992-72), s 7 applies the Australian Consumer Law set out in the *Competition and Consumer Act 2010* (Cwlth), schedule 2 (including any regulation under that Act, s 139G).

- **National Electricity (ACT) Law
National Electricity (ACT) Regulation**

The *Electricity (National Scheme) Act 1997* (A1997-79), s 5 applies the National Electricity Law set out in the schedule of the *National Electricity (South Australia) Act 1996* (SA). Section 6 of the ACT Act also applies the regulations under part 4 of the SA Act. They are not modified and not republished.

- **Health Practitioner Regulation National Law (ACT)**

The *Health Practitioner Regulation National Law (ACT) Act 2010* (A2010-10), s 6 applies the Health Practitioner Regulation National Law set out in the schedule of the *Health Practitioner Regulation National Law Act 2009* (Qld). It is modified by the ACT Act and republished on the register website.

- **Heavy Vehicle National Law (ACT)**

The *Heavy Vehicle National Law (ACT) Act 2013* (A2013-51), s 7 applies the Heavy Vehicle National Law set out in the schedule of the *Heavy Vehicle National Law Act 2012* (Qld). It is modified by the ACT Act and republished on the register website.

- **National Energy Retail Law (ACT)**
National Energy Retail Regulation (ACT)
National Energy Retail Rules

The *National Energy Retail Law (ACT) Act 2012* (A2012-31), s 6 applies the National Energy Retail Law set out in the schedule of the *National Energy Retail Law (South Australia) Act 2011* (SA). Section 7 of the ACT Act also applies the regulations under the SA Act. They are not modified and not republished.

Schedule 1 of the *National Energy Retail Law (ACT) Regulation 2012* (SL2012-29) made under the ACT Act modify the National Energy Retail Rules made under the National Law. They are not republished.

- **National Gas (ACT) Law**
National Gas (ACT) Regulation
National Gas Rules

The *National Gas (ACT) Act 2008* (2008-15), s 8 applies the National Gas Law set out in the schedule of the *National Gas (South Australia) Act 2008* (SA). Section 9 of the ACT Act applies the regulations under part 3 of the SA Act. The ACT Law and Rules are modified by A2011-10 but they are not republished.

- **Rail Safety National Law (ACT)**

The *Rail Safety National Law (ACT) Act 2014* (A2014-14), s 6 applies the Rail Safety National Law set out in the schedule of the *Rail Safety National Law (South Australia) Act 2012* (SA).

24 Model laws

24.1 General

National uniform legislation is dealt with by the Parliamentary Counsel's Committee (PCC) and includes:

- (a) **national applied laws legislation** (or "template" legislation) - legislation enacted in one jurisdiction and applied (as in force from time to time) by other participating jurisdictions as a law of those other jurisdictions;
- (b) **national model legislation** - legislation that is drafted as model legislation and that is enacted in participating jurisdictions (with any local variations that are necessary to achieve the agreed uniform national policy when the legislation forms part of the local law);
- (c) legislation of the States referring legislative power to the Commonwealth;
- (d) legislation of a particular jurisdiction that is identified as legislation that will be followed in other jurisdictions (in this case, the matter is added to the PCC agenda for settling as model legislation or for informal comments from other PCC members to promote uniform legislation in appropriate cases).

In order to facilitate the adoption of uniform numbering:

- (a) Gaps in numbering of sections, parts and other components will generally be provided where a unique Commonwealth provision is required or where a significant number of the States/Territories require a provision not required by the Commonwealth or by the other States/Territories.
- (b) If there is a gap in numbering, local jurisdictions will ordinarily include a note relating to the reason for the gap.
- (c) As an alternative to leaving gaps in numbering, jurisdictions that decide to legislate for additional provisions at the outset (whether as a matter of local policy or in order to ensure that the legislation will operate uniformly in the local jurisdiction) can use the drafting protocol adopted in the local jurisdiction for additional provisions included by future amending legislation (usually the preceding section number followed by 'A', 'B' etc).

The PCC Secretariat has established and maintains the PCC website on which the agreed official version of national uniform legislation can be accessed - https://pcc.gov.au/uniform_legislation_official_versions.html.

Further reading

Parliamentary Counsel's Committee Protocol on Drafting National Uniform Legislation <https://pcc.gov.au/uniform/Uniform-drafting-protocol-4th-edition.pdf>, in particular section 6.1 (Uniform numbering of sections, parts and other components).

24.2 Model laws not to be renumbered

Model (or uniform) legislation can be amended however some laws are not to be renumbered or have specific numbering that must be maintained.

The following titles should NOT be renumbered (including ss, pars etc even if there are omissions etc):

Law	Notes
Civil Law (Wrongs) Act 2002	Ch 7A and 9 and sch 4
Crimes (Forensic Procedures) Act 2000	Whole Act
Electricity (National Scheme) Act 1997	Whole Act
Evidence Act 2011	Whole Act
Gene Technology Act 2003	Whole Act
Gene Technology (GM Crop Moratorium) Act 2004	Whole Act
Gene Technology Regulation 2004	Whole Act
Human Cloning and Embryo Research Act 2004	Whole Act
Magistrates Court Act 1930	Div 3.9.3 (s 166A 166E)
Road Transport (General) Act 1999	Section 96
Road Transport (Road Rules) Regulation 2017	Whole Reg However, s 300 substituted by SL2023-40 does not replicate the existing alphanumeric numbering
Work Health and Safety Act 2011	Whole Act
Work Health and Safety Regulation 2011	Whole Act
Workers Compensation Act 1951	Pt 4.2A (ss 36A 36F)

24.3 National laws not to be renumbered

The following titles should NOT be renumbered:

Law	Notes
Electronic Conveyancing National Law (ACT)	Do not renumber editorially
Health Practitioner Regulation National Law (ACT)	Do not renumber editorially
Heavy Vehicle National Law (ACT)	Do not renumber editorially

24.4 Other laws not to be renumbered

The following titles should NOT be renumbered:

Law	Notes
Building Act 2004	Do not renumber any provisions in the following sections: s 28 (1), (2), s 44, s 69 (see PC if unsure), certain certificates contain references to s 28 (1), (2), s 69). Also see email on file (J2017-357) with more info re renumbering.
Building (General) Regulation 2008	Check with PC before doing any renumbering
Civil Law (Sale of Residential Property) Regulation 2004	Schedules not to be renumbered
Crimes (Sentencing) Act 2005	Do not renumber pars in s 33 (1) – see PC
Environment Protection Act 1997	Do not renumber schedule of fees because item numbers are referred to in fees determination
Residential Tenancies Act 1997	Schedule (Standard Residential Tenancies Terms) not to be renumbered
Road Transport (Vehicle Registration) Regulation 2000	Schedules (including ss and pars) not to be renumbered
University of Canberra Act 1989	Do not renumber provisions (ss or pars) of mods in sch 1