



Australian Government

Office of Parliamentary Counsel

Plain English Manual

Note 1: The Plain English Manual was released in 1993.

Note 2: This Manual has the status of a Drafting Direction, although there are some practices suggested in the Manual that the Office of Parliamentary Counsel does not follow. If another Drafting Direction or Word Note is inconsistent with this Manual, the Drafting Direction or Word Note prevails (see Drafting Direction 2.1.).

CONTENTS

Plain English Manual	1
Chapter 1 - Introduction	5
Background	5
What this Manual is about	5
Why draft simply?.....	5
Commonwealth precedents	5
What is plain English drafting?.....	6
HOW TO DRAFT SIMPLY	6
Skills, habits and determination	6
Techniques of simple drafting	6
GENERAL PRINCIPLES DRAFTING OR “FUZZY LAW”	7
Background	7
When to use this style	7
The drafter’s role.....	7
Chapter 2 - Planning the draft.....	9
WHAT THIS CHAPTER IS ABOUT	9
THE BENEFITS OF PLANNING	9
Better planning results in a better Bill	9
Avoid “band-aid fixes”	9
Concentrate on substance instead of form	9
“Fine-tune” terminology and ways to present information.....	10
Improve your understanding of your instructors’ goals.....	10
PRODUCING A GOOD PLAN	10
Identify the goals.....	10
Reduce the number and complexity of the concepts	10
Concentrate on the important principles	10
Make sure your instructors understand the plan	11
Record things that will not be included in the Bill	11
AIDS TO PLANNING	11
Introduction.....	11
Tables.....	11
Notes in normal text form	11
Diagrams	11
White board.....	12
CONSULTATION.....	12
Chapter 3 - Language: good writing habits.....	13
WHO ARE OUR READERS?	13
SENTENCES.....	13
Well constructed sentences	13
If ... then.....	14
Short sentences.....	15
Use definitions	16
WORDS	16
Short words	16
Acronyms.....	16
Jargon and technical terms.....	17
Chapter 4 - Language: traditional practices to avoid.....	18
WORDS AND PHRASES	18

Lists of traditional words and simpler equivalents	18
“And/or”: why not use it?	18
“Anything to the contrary contained in”	18
“Called in question”	18
“Cases”	18
“Contravene or fail to comply”	19
“He, she or it”, “who” and “that”	19
Ordinal numbers (1st, 2nd, etc).....	19
“Period”.....	19
Possessives.....	20
Pronouns (it, them, they, etc)	20
“Provisions of”	20
“Shall”, “must” and “is to”	20
“Subject to this Act” and “subject to this section”	21
“Where”, “if” and “when”	21
SENTENCE STRUCTURES	21
Age 65 limit on appointments.....	21
Back-references in associated provisions	21
“Body, etc to which this section applies”	22
Classes.....	22
Duplicated adjectives	23
Duplicated nouns	23
Duplicated verbs	23
Participles and relative clauses	23
Proportions.....	23
Unnecessary repetition - negatives	24
Unnecessary repetition - noun phrases	24
Chapter 5 - Aids to understanding	25
STRUCTURE	25
Arranging the provisions.....	25
Grouped amendments	25
Specifying the topics.....	25
Avoid slabs of unbroken text	26
Limiting the number of subsections in a section	26
Subsection headings.....	26
Paragraphing	27
Tables.....	28
“And” or “or” at ends of paragraphs, etc	29
LAYOUT AND DOCUMENT DESIGN	29
CALCULATIONS AND PROCEDURES	29
User-friendly algebraic formulae	29
Calculations in steps	30
Procedures in steps.....	30
DEFINITIONS	31
Where to put them.....	31
Sign-posts.....	31
Identifying defined terms.....	31
Section headings: “Definitions” or “Interpretation”?	32
Definitions within the sentence.....	32
Referential definitions.....	32

READABILITY AIDS	32
Objects clauses.....	32
Road maps and summaries.....	33
Examples.....	33
Graphics	33
Notes	34
Section headings in question form.....	34
Readers' guides.....	34
Alphabetical indexes.....	34
Appendix 1 - Examples of planning tables	35
Appendix 2 - Examples of planning diagrams	36
Diagram 1.....	36
Diagram 2.....	37
Diagram 3.....	38
Appendix 3 - Words and phrases	39

Chapter 1 - Introduction

Background

What this Manual is about

1. This isn't a manual on the whole subject of drafting. The subject covers a very wide field and there are already books and courses on it. This is about only one aspect of drafting: making drafts easier to understand.
2. This Manual doesn't deal with questions of format or with methods of numbering. Both these matters are still being considered by this Office.
3. Nor does it deal with traditional practices that this Office abandoned many years ago, eg: the expressions "section 5 of this Act", "subsection (3) of this section", etc; or provisos; or expressions like "hereinbefore", "hereinafter", etc. These were removed from our statute book many years ago.

Why draft simply?

4. Our first duty is to draft laws that do all the things the policy instructors want, and don't do anything else. This means our laws must be precise, except when we deliberately use "general principles" statements (see further below).
5. We also have a very important duty to do what we can to make laws easy to understand. If laws are hard to understand, they lead to administrative and legal costs, contempt of the law and criticism of our Office. Users of our laws are becoming increasingly impatient with their complexity. Further, if we put unnecessary difficulties in the way of our readers, we do them a gross discourtesy. Finally, it's hard to take pride in our work if many people can't understand it.
6. Complex policy, lack of time, changes of policy and other factors will always make it hard for us to draft simple laws. However, we can usually do a lot to reduce their complexity, and we can always avoid creating unnecessary difficulties caused by bad drafting habits.

Commonwealth precedents

7. Australia inherited the traditional style of drafting used in the United Kingdom in the 19th century. It has many examples of bad writing - long, badly constructed sentences, archaic words and phrases and strings of unnecessary words. The Commonwealth added to these faults in the 1960s and 1970s by putting too much emphasis on precision and not enough on simplicity.
8. Since 1986 this Office has been moving away from the traditional style. We look for ways to make laws easier to understand, and drop conventions that have led to bad writing in the past. In this Office, the ability to draft simply is now regarded as one of the essential qualities of a good drafter.
9. This historical background means that you have to use your discretion with precedents from Commonwealth Acts. Since 1986 there have been many developments, but they have happened in stages, and more in some Acts than in others. When using a precedent, you have to be alert to the fact that it may not use all the techniques mentioned in this Manual. Even if

it does, you may be able to improve it further. We must always be open to ways of improving our style.

What is plain English drafting?

10. The expression “plain English” has been adopted by movements in the USA, the UK, Canada and Australia. In Canada they call it “plain language” because their laws are bilingual. There are different approaches, but the aim is the same: to simplify all official writing by removing unnecessary obscurity and complexity.

11. The Office policy is to draft in plain English, but to do more than that. It is to develop a whole art of making laws easy to understand. However, to avoid confusion, it’s convenient to call this policy “plain English” drafting.

HOW TO DRAFT SIMPLY

Skills, habits and determination

12. To draft simply you need the skills, the right habits and a lot of determination. Complex policy, lack of time and the need for precision conspire against you. If you’re to succeed, you must:

- Know how to draft simply.
- Cultivate good habits in all your writing, not just Bills.
- Always try to draft simply, even when the difficulties mentioned above are working against you.
- Always ask yourself “How will this look to my readers?”.
- Always remember that your readers don’t know your thought processes. Your draft is easy for you to understand because you wrote it, but it might be a complete mystery to someone else.

Techniques of simple drafting

13. The most important rule of simple drafting is that no rule is absolute, so this Manual uses the word “technique”. You should know all the techniques, but you will judge which to use in each case. If you use them too rigidly, you can make your drafts less easy to understand.

14. The techniques can be divided into 4 broad classes:

- Planning your draft properly. This is dealt with in Chapter 2.
- Developing good writing habits by following rules that have been developed by good writers of all kinds of documents, including literature, textbooks and technical manuals. This is dealt with in Chapter 3.
- Avoiding bad writing habits by rejecting traditional forms of legal expression that are unnecessarily obscure or long-winded. This is dealt with in Chapter 4.

- Using various aids to understanding the text. They're not based on language, but on the way you present your material, eg graphics, examples, document design, etc. These are dealt with in Chapter 5.

GENERAL PRINCIPLES DRAFTING OR "FUZZY LAW"

Background

15. This is the style used when you deliberately state the law in general principles and leave the details to be filled in by the courts, by delegated legislation or in some other way. It has one big advantage: it's very easy to read, and the general purpose of the law is easy to understand. But it has a big disadvantage: the precise meaning is uncertain.

16. Drafters trained in common law countries have traditionally avoided this style on principle, assuming that the users of the legislation don't like it (or wouldn't like it if they knew about it). However, if you use this style properly, it can be an important technique to simplify the law.

When to use this style

17. The most obvious time to consider using it is when you have to cover a wide range of alternatives in minute detail, or when your instructors can't be sure of covering every possible alternative. If you can use a simple general statement that will certainly cover most of the alternatives, but might not cover all of them, your Bill will be a lot simpler.

18. However, the policy instructors must decide whether you use the simple form or the detailed one. They have to weigh up the political and practical results of having a law that might not cover some of the alternatives.

The drafter's role

19. You need to be on the lookout for cases where this style might be used, because you, to a greater extent than your instructors, have the expertise to recognise them. Then explain the options to your instructors and get them to decide.

20. Before using this style in a provision, follow these principles:

- Tell the instructors how complex the detailed form is likely to be and how you could draft it in a simpler form.
- Tell them about the areas of uncertainty with the simpler form.
- Make sure they fully understand the likely effect of the uncertainty.
- Discuss with them the degree of generality to be used. There is a huge range of levels of generality. For example, the whole of the liability provisions of the Income Tax Assessment Act could be reduced to 2 subsections, but the result would be enormous uncertainty as to their effect.
- Discuss with them whether the details should be filled in by delegated legislation or administrative rulings, or whether the provision should just be left to be interpreted by the courts.

- Remind them that just relying on the courts may be unacceptable in some cases. For example, people should not have to go to court to find out their pension entitlements.

Example section 69 of the Income Tax Assessment Act, as amended in 1990, in essence, allows a deduction for expenditure in respect of “the management or administration of the income tax affairs of the taxpayer”

section 25 of that Act uses the expression “gross income” (without definition)

section 52 of the *Trade Practices Act 1974* says:

“A corporation shall not ... engage in conduct that is misleading or deceptive ...”.

Chapter 2 - Planning the draft

WHAT THIS CHAPTER IS ABOUT

21. Much of this Manual concentrates on the ways to present ideas clearly in a draft Bill. This chapter deals with the equally important topic of planning a drafting project before starting to draft the Bill.
22. The ideas in this chapter are suggestions only. If you have a different approach that works better for you, stick to it.

THE BENEFITS OF PLANNING

Better planning results in a better Bill

23. There's a close connection between the clarity of thought that goes into designing a legislative scheme and the clarity of the text that embodies it. A well thought-out, clear and simple scheme is much easier to put into clear and well-arranged text. Also, clear, simple concepts are easier to use than vague or intricate ones. You can do a lot in the early stages of the drafting process to avoid complexities that could arise later.
24. Drafting is like designing and building a machine. Just as a machine is designed to perform a particular function, an Act is also designed to perform a particular function. For example, an Act might be designed to regulate the sale of dangerous goods; to raise money; or to protect the environment.
25. A machine built without a plan isn't usually very successful. Similarly a draft Bill prepared without previous planning may be more complicated and less clear than a Bill prepared with the benefit of a detailed plan. By settling a detailed plan before starting to draft, you can select the drafting structure, terminology and approach that best suit the function of the draft.

Avoid "band-aid fixes"

26. If you make fundamental changes to the design of a machine during construction, you're likely to run into serious problems. You may have to choose between starting again (and losing time) or ending up with a poorly designed machine. Imagine how you would feel if you had almost finished building a vehicle that was to run on petrol, and you were told at the last moment that it should also be able to run on electricity.
27. You can have similar problems if you start to prepare a draft without having first agreed with the instructors on the basic aims and critical building blocks of the Bill. For example, if you've prepared a detailed Bill to regulate the payment of dividends by companies, it'll be very difficult to give effect to a last minute policy decision that the rules should also apply "in a similar way" to distributions by trusts. The more you plan the Bill with your instructors before drafting it, the less likely it is that they will ask for fundamental changes at an advanced stage of the drafting.

Concentrate on substance instead of form

28. If you begin drafting before settling a plan, you risk getting unduly distracted by thinking about drafting points instead of concentrating on what the draft is meant to do. Also,

drafting points might distract your instructors from their important job of first considering and settling all the policy issues.

“Fine-tune” terminology and ways to present information

29. Discussing the plan with your instructors can be a useful way to test the suitability of terms that you might use in the Bill. If a term causes misunderstanding during discussions, try to choose a better one.

30. While planning a draft, you have an opportunity to try different ways of recording the rules (eg tables and diagrams). You have the added benefit of getting comments from your instructors about the clarity (or otherwise) of a particular way to present information.

Improve your understanding of your instructors’ goals

31. In a plan, you can write in a less technical way than in a draft (eg without the constraints of subsections, paragraphs etc). You can also put extra explanations in the plan that wouldn’t normally be included in a Bill (eg explanations of matters that are dealt with in the Acts Interpretation Act, Crimes Act etc). As a result, it’s likely that your instructors will better understand the effect of the plan, and you will better understand what your instructors want.

PRODUCING A GOOD PLAN

Identify the goals

32. It’s a great help to planning if you can establish the main goals and principles at an early stage. These can then be used as a benchmark for testing the more detailed rules needed to achieve the goals.

Reduce the number and complexity of the concepts

33. Complicated ideas lead to a complicated Bill. Your final Bill will be simpler (and probably shorter) if your plan is based on the smallest number of pieces (concepts) that are needed to perform the function of the Bill. An important part of the planning process is to work towards identifying this ideal minimum.

34. A concept must earn its place. Identify the role of a particular concept before accepting that it’ll be included in the Bill.

35. Look out for variations on the same theme. For example, you may be asked to set up systems of regulations, Ministerial determinations and Ministerial orders, each with the goal of identifying prohibited imports. Before starting to design the 3 systems, find out whether a single system would achieve your instructors’ goals.

Concentrate on the important principles

36. Some matters are so fundamental that any late changes will cause serious drafting problems. Identify and emphasise these matters. Other matters aren’t likely to have much impact on the general structure and concepts of the Bill. Don’t waste too much of the early planning time in trying to settle the fine details of the matters that don’t affect the structure or main principles of the draft.

Make sure your instructors understand the plan

37. One of the most important functions of the plan is to settle important policy issues before you start to draft. It's therefore crucial that your instructors are involved in formulating the plan and fully understand it.

38. The more you help your instructors understand the plan, the less likely it is that they'll want fundamental changes after you start drafting. Don't be content merely to state the rules. Go on to explain and emphasise their effects, which may be obvious to you but not so obvious to your instructors. Examples are a useful way to do this.

39. Make the plan easy to understand and easy to navigate (eg by including cross-references and a table of contents). The easier it is for your instructors to use, the more likely it is that they'll read it and understand it. Making special efforts to produce a user-friendly plan is also good practice for making the Bill more user-friendly.

Record things that will not be included in the Bill

40. From time to time during the planning stage, you'll agree with your instructors that particular matters will not be included in the Bill, eg because they'll be dealt with administratively or by regulations. Record these agreements in the plan so that you don't have to reopen discussions later when the agreement may have been forgotten. Of course, Government policy may change later, but it's still useful to have a record of the original agreement.

AIDS TO PLANNING

Introduction

41. If you choose to prepare a detailed plan before starting to draft the Bill, you have to develop a method of recording the current state of the plan. This section discusses some of the methods you can use to develop and record your plan.

Tables

42. Tables are a useful way to record some aspects of a drafting plan. Appendix 1 has examples of tables that could be used in the planning process.

Notes in normal text form

43. If some of the plan can't be usefully presented in the form of tables, you can use normal text layout (preferably prepared with a word processing program or similar program that allows easy revision).

Diagrams

44. Diagrams can be an excellent planning tool. A functional diagram of the important rules in the plan can be a useful focus or testing ground in discussions with instructors. Decision diagrams can help to clarify rules and identify errors of logic. Also, if you've found them very useful in discussions, you might include them in the Bill.

45. Appendix 2 has examples of diagrams that could be used in the planning process.

White board

46. A white board can be an excellent aid to discussions with instructors during the planning phase. You can use it to draw diagrams to illustrate a particular problem or proposal, or to sketch out in words the important elements of a particular rule. It's often much easier for your instructors to analyse a proposal on the white board than to comment on a purely oral description. Recording an agreed diagram can also be a quick way of recording policy decisions.

CONSULTATION

47. If you use the "plan before you draft" system, the first draft Bill won't be ready until near the end of the project. You might therefore have to have consultations with Departments, etc on the basis of the plan rather than on the basis of the draft Bill. In effect, you have to find alternatives to the standard Office procedures by which the draft Bill is the vehicle for consultation.

Chapter 3 - Language: good writing habits

WHO ARE OUR READERS?

48. You have to strike a balance between precision and simplicity. To do this, it helps to know who your readers are and why they read the law. For example, tax laws are scrutinised with infinite care by professional advisers looking for ways to minimise tax. They must be drafted very precisely to have the right effect. On the other hand, provisions defining the functions of an advisory body don't have to be nearly so precise.

49. This doesn't mean that tax laws needn't be drafted simply, or that laws establishing authorities needn't be precise. It's a question of balance. You have to decide how much emphasis to give to precision and how much to simplicity.

50. Sometimes you can decide who most of the users of a law will be, and then deliberately aim at them, as in the case of the *Social Security Act 1991*. However, we usually write for a variety of users, and all our laws are also read by administrators, members of Parliament, lawyers and the judiciary. Legislative drafters are possibly the only people who habitually write highly technical documents for such a wide range of readers.

51. There isn't a complete solution to this problem. The best you can do is avoid all unnecessary complexity. If you use the various techniques of simple drafting, you can reduce complexity to the minimum that is forced on you by the subject-matter.

SENTENCES

Well constructed sentences

52. Construct your sentences simply and logically. Some ways of doing this are:

- Use the positive rather than the negative.

Example say "a form is valid only if the taxpayer has signed it"
 don't say "a form is not valid unless the taxpayer has signed it".

- Avoid double and triple negatives. But remember that sometimes a double negative doesn't equal a positive.

Example "the Secretary has not certified that the grantee has not made an application" is not the same as "the Secretary has certified that the grantee has made an application".

- Avoid complicated or unusual grammatical constructions.

Example don't put long phrases in parentheses in the middle of sentences.

- Use the active voice rather than the passive voice.

Example say "the Authority serves a notice"
 don't say "a notice is served by the Authority".

- Put adverbial phrases after the verb when there's no ambiguity.

Example say "the Minister may issue the licence within 30 days after receiving the application"
 don't say "the Minister may, within 30 days after receiving the application, issue the licence".

- Use paragraphs to separate lists of alternative or cumulative matter from the main structure of the sentence.
- Avoid excessive shortness if adding some words would make a phrase or sentence easier to understand.
- Keep related words as close together as possible.
 - Example keep the subject close to the verb
 - keep auxiliary verbs (is, are, must, has, etc) close to the main verbs
 - keep modifiers close to the words they modify.
- Use parallel structures to express similar ideas.
 - Example don't mix conditions and exceptions, or "if" and "unless" clauses, in the same sentence.
- Avoid noun strings (nouns strung together to act as adjectives).
 - Example say "grants for programs for providing child care"
 - don't say "child care delivery program grants".
- Avoid the false subject "there is", "there are", etc. It adds extra words, and usually creates an unnecessary relative.
 - Example don't say "if there are any conditions that do not comply with this section"
 - say "if any conditions do not comply with this section".
- Don't use the "such ... as" form when it's not necessary.
 - Example say "take appropriate steps", not "take such steps as are appropriate"
 - say "conditions determined by the Minister", not "such conditions as are determined by the Minister".
- Don't use demonstrative adjectives if you don't have to.
 - Example say "the company" or "the notice", not "that company" or "that notice" (but "that time" is usually less ambiguous than "the time").
- Apart from being more logical, this avoids the occasional occurrence of the expression "that that" as in the phrase "has the result that that company ...".
- When you use "other than", make it clear which words are qualified by the phrase.
 - Example say "a person (other than a policeman) who is under 60", not "a person other than a policeman who is under 60".
- Don't use "being" and "not being" to join relative clauses.
 - Example don't say "a person who is 70 or over, being a person who has a driving licence"
 - say "a person who is 70 or over and has a driving licence".

If ... then

53. Some writers on plain English say that you shouldn't put a conditional clause before the main verb. Some even say that Turkish and Japanese are the only languages that do this. On the contrary, it's perfectly natural in English as well as in many other languages.

54. In drafting, you often need to put the conditional clauses first because they spell out all the facts, and the main clause would be meaningless without them. However, if the main clause is very simple and the conditional clauses are long and/or numerous, put the main clause first. This way, the reader knows what it's about before ploughing through the paragraphs.

Example say:
 “A contract is void if it:
 (a) ...; or
 (b) ...; or
 (c) ...; or (etc)”
 don't say:
 “If a contract:
 (a) ...; or
 (b) ...; or
 (c) ...; or (etc)
 the contract is void.”.

Short sentences

55. Usually a sentence has a beginning, a middle and an end. The reader can't be sure of its structure until reaching the end, so a long sentence forces the reader to hold a number of ideas in suspense. The relationship of those ideas isn't clear until the structure of the sentence is finally known.

56. Also, the more suspended ideas there are in a sentence, the more difficult it is to see its structure. Further, a long sentence presents a large number of ideas all at once. Research has shown that the average reader can hold only a few ideas at a time in the memory, before needing to pause and put them together.

57. These are some ways of keeping sentences short:

- Be ruthless in eliminating unnecessary words.
- Keep lengthy qualifying clauses (eg exceptions, conditions, etc) out of the main proposition and deal with them in separate subsections or even separate sentences in the same provision.
- Avoid strings of alternative words, especially if they appear more than once in the sentence. Use a short generic word to cover the alternatives, and define it separately if necessary.
- Don't obscure the structure of an “operative provision” by filling it with descriptions of complicated concepts. Use short terms in the operative provision and define them separately.
- Don't make verbs into nouns. Using the verb form results in fewer words and the words are usually shorter.

Example say “a person may apply”, not “a person may make application”
 say “in determining the question”, not “in the determination of the question”

say “giving advice”, not “the giving of advice”

say “acquiring “, not “the acquisition of”.

Use definitions

58. You can use definitions not only to give precision to a term or phrase but also to shorten your text. If you need to use a phrase of 2 or more words many times, consider giving it a short “label” and defining it.

59. You can also reduce complicated concepts to definitions and use the defined terms in the operative provision. This dramatically shortens the operative provision and makes its structure easier to understand. Some advocates of plain English argue against this, particularly if you create what they call “artificial concepts”. However, the gain in simplicity of the operative provision outweighs the possible disadvantages of using definitions.

60. If possible, choose distinctive “labels” that give a clue to the meaning of defined terms. The traditional style often uses colourless terms like “the prescribed amount” or “the relevant person”. These make a provision harder to understand, especially if there are 2 or more terms of this kind in a complicated provision. It’s usually possible to find a key word that helps the reader keep the meaning of the term in mind.

61. Try to keep defined terms short. The “label” can be short because the details are set out in the definition.

62. Don’t overuse definitions. Don’t define a phrase if it’s brief and isn’t used very often. Don’t define a subsidiary concept solely for use in another definition unless spelling it out would make the main definition too complicated.

WORDS

Short words

63. It’s a general rule of good style to use short words instead of long ones. This is particularly important in legislative drafting, because inevitably some sentences are long and/or complex. Long words make sentences harder to understand.

64. Of course it can be argued that using a short word rather than a long one in a particular sentence may make only a small improvement in readability. However, if you try to use short words whenever you can, you develop the habit in all your drafting, and the overall effect is a simpler style.

Acronyms

65. Sometimes you can avoid repeating lengthy expressions by using acronyms, eg “CFCs” for “chlorofluorocarbons”, or “AFP” for “Australian Federal Police”. It’s best if the acronyms are used in common speech, but there’s nothing wrong with inventing new ones if the full expressions are long and are repeated many times in the text. Make sure you define all your acronyms, even familiar ones.

Example “**AFP**” means the Australian Federal Police;

“**PDF**” (pooled development fund) means a company in relation to which a registration declaration is in force.

Jargon and technical terms

66. Avoid jargon, legalisms and foreign language if you can use familiar words or expressions instead. On the other hand, use technical words and phrases if they're generally understood by most of the users of the law or you can't find simple alternatives that are precise enough.

67. If a wide range of people use the law, define the technical terms for the benefit of those who may not know them (if you can define them briefly and accurately). But if only specialists are likely to read it, eg an Act dealing with admiralty jurisdiction, there's no need to define terms of art like "action in rem" and "action in personam". Similarly, in a general law, sections on evidence don't need to define "prima facie", because those sections are mainly relevant to lawyers.

Chapter 4 - Language: traditional practices to avoid

WORDS AND PHRASES

Lists of traditional words and simpler equivalents

68. Appendix 3 sets out some traditional words and phrases with suggested simpler equivalents. Use your discretion with these: some of the equivalents may not be appropriate in every case.

“And/or”: why not use it?

69. The traditional style avoids “and/or”. The usual argument is that it’s ambiguous and/or inelegant. However, it can be useful at times. Don’t use it at the ends of paragraphs, subparagraphs or sub-subparagraphs. Make sure it’s not ambiguous.

Example say “horses and/or sheep”
 don’t say “horses and/or sheep or goats”.

“Anything to the contrary contained in”

70. When the traditional style makes a provision override another provision of the same Act, or override another Act, it uses the form “notwithstanding anything to the contrary contained in this Act/the XYZ Act”. This is unnecessarily elaborate, because if a provision isn’t to the contrary, there’s no need to deal with it.

Example say “despite anything else in this Act”, or “despite the XYZ Act”.

“Called in question”

71. A standard provision in traditional legislation says that an appointment, etc, “shall not be called in question on the ground that ...”. This is silly, because we can’t prevent a point from being argued in court. However, we can ensure that the argument fails.

Example say “is not invalid because ...”.

“Cases”

72. When a provision is broken into paragraphs that refer to a series of alternatives, the traditional style often refers to “cases” unnecessarily or in a cumbersome way.

Example don’t say:
 “(a) in a case to which section 5 applies-...”
 say:
 “(a) if section 5 applies-...”
 or say:
 “(a) in a section 5 case-...”.

You can do this even if the last paragraph starts with “in any other case - ...”. Each situation is a case even if you don’t call it a case. Another way of dealing with the last paragraph is to start it with “otherwise - ...”.

73. A legitimate use of the word “case” is to show that one paragraph applies, whether or not one or more others do too.

- Example “(a) if ... - ABC;
(b) if ... - CDE;
(c) in any case - XYZ.”.

“Contravene or fail to comply”

74. In the traditional style, “contravene” is treated as not covering omissions. This was probably never right (see *R v Commonwealth Court of Conciliation and Arbitration* 89 C.L.R. 636 at 649), but the position has been put beyond doubt by paragraph 22(1)(j) of the Acts Interpretation Act.

- Example don’t say “contravene or fail to comply with”
say “contravene”.

75. Some traditional provisions say “fails to comply with a condition with which it is (his) duty to comply”. However, you can’t fail to comply with something if it doesn’t apply to you.

- Example say “fails to comply with a condition”.

“He, she or it”, “who” and “that”

76. It’s Office policy to use gender-inclusive language. However, this can sometimes lead to cumbersome expressions like “he, she or it”, “him, her or it” and “his, her or its”. Try to avoid these by rearranging the sentence so as to do without the pronouns altogether.

If you can’t solve the problem any other way, consider just saying “it” and “its”, and adding a note at the end of the definitions section setting out paragraph 23(a) of the Acts Interpretation Act.

Whether or not you do this, remember you can use “that” instead of “who” even when referring to individuals (Fowler, 2nd ed., p.625). Try at all costs to avoid saying “who or that”.

Ordinal numbers (1st, 2nd, etc)

77. The traditional style used to express all numbers in words. Even after cardinal numbers were expressed in figures, ordinal numbers (1st, 2nd, etc) were not, because it was thought that abbreviations were improper.

Express these numbers as follows:

- up to and including “tenth” - spell them out
- above “tenth” - say “11th”, “12th”, etc.

“Period”

78. The traditional style often unnecessarily adds the word “period” when the period is specified.

- Example don’t say “within the period of 12 months beginning on 1 July 1999”
say “within 12 months beginning on 1 July 1999”.

If you have to refer back to the 12 months later in the section, you can still say “that period”. 12 months is a period of time, whether or not you call it a period.

Possessives

79. The traditional style always uses the long form of possessive, but the contracted form is shorter.

Example don't say “of the Minister”, “of the Commissioner”, “of the Corporation”
 say “the Minister's”, “the Commissioner's”, “the Corporation's”.

80. In the traditional style, the word “whose” is not used with inanimate objects, so “of which” is used instead. This often leads to the cumbersome structure called the “delayed relative”.

Example don't say “a body corporate the assets, rights, liabilities and obligations of which ...”
 say “a body corporate whose assets, rights, liabilities and obligations ...”.

Pronouns (it, them, they, etc)

81. The traditional style doesn't use these words often enough. Possibly for fear of ambiguity, it repeats the noun instead of using the appropriate pronoun. However, this has become habitual even when there's no risk of ambiguity. The result is longer sentences, especially when the noun consists of two or more words.

Say “it”, “them”, “they”, etc whenever there's no ambiguity.

“Provisions of”

82. The traditional style commonly uses expressions like “under the provisions of section 5”, etc. The expression “the provisions of” is usually unnecessary unless it is used as a convenient “label” to describe a list of different provisions, so that it can be used again later when referring back to the same list of provisions.

Example don't say “Subject to the provisions of section 5 ...”
 say “Subject to section 5 ...”.

“Shall”, “must” and “is to”

83. The traditional style uses “shall” for the imperative. However, the word is ambiguous, as it can also be used to make a statement about the future. Moreover, in common usage it's not understood as imposing an obligation.

Say “must” or “must not” when imposing an obligation, not “shall” or “shall not”.

If you feel the need to use a gentler form, say “is to” or “is not to”, but these are less direct and use more words.

We shouldn't feel any compunction in using “must” and “must not” when imposing obligations on the Governor-General or Ministers, because “shall” and “shall not” were acceptable in the past.

84. The traditional style sometimes uses “shall” in declaratory provisions.

Example “This Act shall cease to have effect ...”

“An authority shall be established ...”
“The Authority shall consist of 10 members.”.

These are neither imperatives nor statements about the future, they are declarations of the law.

Example say:
“This Act ceases to have effect ...”
“An authority is established ...”
“The Authority consists of 10 members.”.

Even if the event is yet to happen, the law speaks in the present because an Act is “always speaking”.

“Subject to this Act” and “subject to this section”

85. These expressions are very unhelpful to readers. Try to avoid them if possible. It’s far better to specify the provisions you have in mind.

“Where”, “if” and “when”

86. The traditional style uses “where” to introduce a set of facts, but in common usage the word conveys the idea of place. Say “if” to introduce a set of facts. But if the event is so certain that “if” is inappropriate, use “when”.

Example don’t say “Where a person is granted a licence”
say “If a person is granted a licence”.
If the Act provides that it ceases to have effect on 1 July 1999, don’t say “Where this Act ceases to have effect”
say “When this Act ceases to have effect”.

SENTENCE STRUCTURES

Age 65 limit on appointments

87. The standard provision limiting statutory appointments to age 65 is cumbersome, because it spells out the cases of a person who is 65 before appointment and a person who becomes 65 after appointment. It can be shortened without changing its effect.

Example say “A person who is 65 or over cannot hold office as Chairperson of the XYZ Authority.”.

Back-references in associated provisions

88. In a section with several subsections, the traditional style binds the later subsections to the earlier ones by back-references. This is often unnecessary.

Example don’t say:
“(1) A person may apply to the Minister under this section for a licence.
“(2) An application under subsection (1) must be accompanied by the prescribed fee.
“(3) On receiving an application made by a person under subsection (1), the Minister may issue a licence to the person.
“(4) A licence issued under subsection (3) must be in the prescribed form.
“(5) A licence issued under this section authorises the holder to ...”

say:

- “(1) A person may apply to the Minister for a licence.
- “(2) The application must be accompanied by the prescribed fee.
- “(3) The Minister may issue a licence to the applicant.
- “(4) The licence must be in the prescribed form.
- “(5) The licence authorises the holder to ...”

or say:

- “(1) A person may apply to the Minister for a licence.
- “(2) An application must be accompanied by the prescribed fee.
- “(3) The Minister may issue a licence to an applicant.
- “(4) A licence must be in the prescribed form.
- “(5) A licence authorises the holder to ...”.

89. If you have to identify a number of concepts and then refer to them repeatedly in later subsections, use an introductory subsection to set the scene.

Example “(1) This section applies to an applicant who, under an agreement under section 5, is granted an amount to be spent on erecting a building.”

Later subsections can then refer simply to “the agreement”, “the amount”, “the applicant”, etc.

90. Sometimes you can use the same approach to link successive clauses, but this requires more caution because there is a greater risk of misunderstanding.

“Body, etc to which this section applies”

91. If a section states that it applies to an entity, etc and there are later references to the entity, the traditional style often uses clumsy definitions for the references.

Example “A body is a body to which this section applies where ...”,

or:

“body to which this section applies’ means ...”.

Later references are to the phrase “a body to which this section applies”. This is unnecessarily elaborate.

Example say “This section applies if ...”

or say: “This section applies to a body if ...”,

or say: “In this section, ‘body’ means ...”

then in later references, you can just say “the body”.

Classes

92. Traditional (Commonwealth) style takes great pains to distinguish between a class and its members. Let’s hope this piece of pedantry has been finally laid to rest by subsection 46(2) of the Acts Interpretation Act.

Example don’t say “a specified person or a person included in a specified class of persons”

say “a specified person”.

Duplicated adjectives

93. In the traditional style, adjectives are repeated unnecessarily when the noun is expressed in the singular and the plural.

Example don't say "another application or other applications", or "a prescribed company or prescribed companies".
 say "any other application or applications", or "any prescribed company or companies ...".

Duplicated nouns

94. In the traditional style words are sometimes repeated unnecessarily, perhaps through a desire to repeat the exact words of a phrase set out in another section of the Act.

Example if section 5 states "This section applies to a person who ...",
 don't say "a person who is a person to whom section 5 applies"
 say "a person to whom section 5 applies".

Duplicated verbs

95. If a sentence has singular and plural subjects, the traditional style uses the verb in both the singular and the plural. Fowler states that we can make the verb agree with the nearer of its subjects (2nd ed., p. 402, para 3).

Example don't say "the corporation has, or corporations have, entered into an agreement"
 say "the corporation or corporations have entered into an agreement", or
 use the passive and say "an agreement has been entered into by the corporation or corporations".

Participles and relative clauses

96. Relative clauses (that has, that was issued, etc) are longer than participles (having, issued, etc).

Example don't say: "a corporation that has been prescribed for the purposes of this section"
 say: "a corporation prescribed for the purposes of this section".

97. The participle also avoids difficulties when both the present and past tenses are used in the same sentence.

Example don't say "a licence that is or was issued"
 say "a licence issued".

98. When a provision refers to the beginning (or end) of a period, the traditional style doesn't use the present participle if the period began (or ended) before the commencement of the provision.

Example don't say "the grant year that began/ended on 1 July 1930"
 say "the grant year beginning/ending on 1 July 1930".

Proportions

99. The traditional form "an amount that bears to ... the same proportion as ... bears to ..." is often very cumbersome, especially when the factors themselves are long. Don't use it. Use a formula instead.

Example an amount worked out using the formula:

$$\text{Amount received} \times \frac{\text{The partner's share}}{\text{The shares of all the partners}}$$

Unnecessary repetition - negatives

100. The traditional style sometimes repeats too much when expressing the negative. In the following example, subsection (2) has to negate the effect of subsection (1).

Example “(1) A tertiary education institution that has complied with section 5 must do X.”
don't say:
“(2) A tertiary education institution that has complied with section 5 is not required to do X, if ...”
or:
“(2) Subsection (1) does not apply to a tertiary education institution that has complied with section 5, if ...”
say:
“(2) Subsection (1) does not apply if ...”.

Subsection (1) has spelt out the whole case, so you don't need to spell it out again when expressing the negative.

Unnecessary repetition - noun phrases

101. In the traditional style, if a provision introduces an entity described by several words, it repeats the whole phrase every time the entity is later referred to in the provision.

Example if the section introduces the concept “tertiary education institution”, just say “the institution” in later references (in the same section).

Chapter 5 - Aids to understanding

STRUCTURE

Arranging the provisions

102. Even when the words and sentences in a Bill are clear, it's more difficult to understand if the provisions aren't properly arranged. Arrange your Bill so that the relationship between provisions is as clear as possible. If the reader can see a pattern in the provisions, the details are easier to understand.

103. These are some ways of improving the arrangement of a Bill:

- Group together provisions with a common subject-matter (see also "Grouped Amendments", paragraph 104).
- Group related concepts in a way that makes the relationships easy to understand.
- Arrange provisions in a time sequence.

Example deal first with the application for a licence, then the issue of the licence, then the conditions of the licence, then renewal and finally revocation.

- Express similar ideas in provisions with similar structure.

Example sections 18-21A of the *Foreign Acquisitions and Takeovers Act 1975* and sections 27-33 of the *Sales Tax Assessment Act 1992*.

- Put general or important propositions first, then particular or less important propositions, then exceptions, then administrative provisions, then offences, etc.

Grouped amendments

104. An amending Bill can be made easier to understand by grouping the amendments according to subject-matter, instead of just following the order of the sections in the *Principal Act*.

Example *Social Security Legislation Amendment Act (No. 3) 1991* or *Corporate Law Reform Act 1992*.

If the same provision is being amended for different purposes and the amendments commence on the same day, make them commence in sequence, one immediately after the other.

Specifying the topics

105. Research has shown that text is easier to understand if the overall topic is specified at the beginning. If the reader has a mental picture of the whole proposition, it's easier to see the significance of the parts and the way they relate to each other, and it's easier to concentrate on the details.

106. On the other hand, without a topic specifier, the reader has to construct a mental picture by absorbing details one at a time and fitting them together. This makes it much harder to understand the significance of the details before the whole picture is in mind. It's like doing a jigsaw puzzle when you don't have the picture on the box.

107. Headings are excellent topic specifiers. You can increase the number of headings in several ways:

- Multiply Part, Division and Subdivision headings by gathering together provisions with a common subject matter and placing them in a separate Part, Division or Subdivision.
- Multiply section headings by limiting the number of subsections in each section.
- If you can't avoid having a very long section, you can use subsection headings (see "Subsection Headings", paragraphs 114-116).

Avoid slabs of unbroken text

108. Large slabs of unbroken text are particularly daunting to the reader. A rough guide is the "5 line rule"¹: don't have a slab of unbroken text more than 5 lines long, unless you feel you can't avoid it.

109. The traditional style allowed only one sentence in each subsection or undivided section. This often resulted in very long sentences. Consider using 2 or even 3 sentences when appropriate, but don't use more than 3 unless you have a very good reason. Multiple sentences can raise problems with cross-references.

110. It's usually better to break a slab of text into separate subsections, each containing only one sentence. This results in short subsections, each expressing a single idea. It also helps in cross-referencing. If you use the "narrative" style (see "Back-references in Associated Provisions", paragraphs 88-91), separate subsections don't add much to the total number of words.

111. On the other hand, a single complex proposition expressed in a string of short sentences or subsections can sometimes be more difficult to understand if the reader has to reconstruct the whole proposition before it makes sense. If the reader must carry several ideas in mind at once in order to grasp a single proposition, consider saying it in a single sentence, with appropriate paragraphing to make the structure clear.

Limiting the number of subsections in a section

112. A page full of subsections without headings to break them up is very daunting to the reader. On the other hand, a page broken up into several sections, each with a heading, is more friendly and reassuring to the reader. The sections are easier to find, and the headings help to show what they're about.

113. It's impracticable to lay down a rule as to the maximum number of subsections for a section. As a rough guide, try to have at least 2 section headings on each page.

Subsection headings

114. If you keep sections short, you shouldn't need subsection headings. However, consider using them when you're amending a very long section or when the structure of an existing Act forces you to insert a very long section.

¹ This was started by the Parliamentary Counsel of New South Wales.

115. Subsection headings should be in italics (not bolded) so that they look different from section headings, and they shouldn't be enclosed in brackets.

116. If you use subsection headings, keep to these rules:

- If you insert a new subsection in an existing section and decide that it should have a heading, insert headings in appropriate places above the other subsections by a note at the end of the Bill.
- If you're inserting new subsections in a section that already has subsection headings, make sure you put headings above the new subsections unless they naturally come below appropriate headings already in the section.

Paragraphing

117. Dividing a long provision into paragraphs (or subparagraphs, in the case of a paragraph) is a useful way to make the grammatical structure of the provision easy to see at first glance. The reader can concentrate on its meaning without having to decipher its grammatical structure at the same time.

118. Paragraphing is a particularly useful way of dealing with a long list of conditions, exceptions, etc qualifying the main proposition.

119. However, don't overdo it. Often a provision is divided into a long or complex series of paragraphs just to be able to avoid repeating a few common words that apply to each case. If the paragraphing is too elaborate, consider dividing the provision into separate subsections and repeating the common words in each subsection. The result will be longer, but easier to understand.

120. If a provision with paragraphs is long and complicated, consider moving some of the introductory words into each paragraph, to help the reader see how the paragraphs fit into the structure of the provision.

121. Don't let your paragraphs result in "shredding", ie unnecessarily interrupting the normal flow of the sentence.

Example don't say:
 "If a person:
 (a) is injured; or
 (b) falls ill;
 and there is nobody to:
 (c) care for; or
 (d) feed;
 the person, then ... etc".

This is a logical way to express the idea "if a or b, and c or d, then e ...". But it's bad in the example because the paragraphs are so short that they're not really necessary.

On the other hand, a structure like this with long paragraphs is very hard to understand. Try to avoid it, or at least reduce its length, by putting each group of paragraphs in a separate section or subsection.

122. Try to avoid subparagraphs. Try extra hard to avoid sub-subparagraphs. Use another subsection and start again.

123. When paragraphing, try to treat all the elements of the sentence in the same way.

Example don't say:
 “If a person is the holder of a licence and:
 (a) the licence is due to expire within 3 months; and
 (b) the person wishes to renew the licence;
 the person may ... etc”.

This is bad because the introductory words have the same role in the sentence as the paragraphs. Again, the same idea is sometimes expressed by using “who”.

Example don't say:
 “A person who:
 (a) is the holder of a licence that is due to expire within 3 months; and
 (b) wishes to renew the licence;
 may ... etc”.

This is bad because paragraph (a) mixes a relative clause applying to the person with another applying to the licence.

Both versions would be improved by treating all the elements as “if” clauses.

Example say:
 “If:
 (a) a person is the holder of a licence; and
 (b) the licence is due to expire within 3 months; and
 (c) the person wishes to renew the licence;
 the person may ... etc”.

(Note: These examples are deliberately very short, to save space. In fact, a provision as short as this would probably be better not paragraphed at all.)

124. Try to ensure that all the paragraphs in a provision have similar grammatical construction.

Example don't draft a provision with one paragraph beginning with “if” and another beginning with “unless”
don't say:
 “A person must not give away anything:
 (a) that the person does not own; or
 (b) to a relative; or
 (c) without a good reason.”.

Tables

125. If you're drafting a provision that has a lot of alternatives in it, consider doing it in the form of a table.

Example table 2 in Appendix 1. This was used in the *Taxation Laws Amendment Bill (No. 2) 1993*.

“And” or “or” at ends of paragraphs, etc

(“Paragraph” here includes subparagraph, sub-subparagraph and any other similar unit, but not a definition.)

126. The traditional way of showing whether paragraphs are cumulative or alternative is to put “and” or “or” at the end of the second last paragraph. However, this means that, with very long provisions, the reader has to turn one or more pages to find out whether the paragraphs are cumulative or alternative. Also, untrained readers don’t always know that the “and” or “or” at the end of the second last paragraph applies to all the earlier paragraphs.

127. If you need to show whether paragraphs are cumulative or alternative, put “and” or “or” at the end of each one (but don’t mix “ands” and “ors” in the same string of paragraphs).

128. If there are a lot of short paragraphs, the “ands” or “ors” can look awkward. You can avoid using them altogether by dealing with the matter in the introductory words.

Example say “each of the following:”, “any one of the following:”, or “any or all of the following:”.

129. Sometimes it’s unnecessary to show whether the paragraphs are alternative or cumulative. The sense makes it clear, or it doesn’t matter which way they’re read. However if there’s any chance of confusion, make the meaning clear as described above.

130. Definitions are obviously independent, so there’s no need to include “ands” or “ors” at the ends.

LAYOUT AND DOCUMENT DESIGN

131. Text is harder to understand if it’s hard to read. The printed format developed by the Office and the Government Printer is intended to make text easy to read by using different fonts, spacing between provisions, etc. Suggestions for improvement are welcome, but for reasons of uniformity, make your suggestions to First Parliamentary Counsel so that they can be adopted by the whole Office.

CALCULATIONS AND PROCEDURES

User-friendly algebraic formulae

132. If a formula is relatively simple, it’s usually better to express the variables in words rather than symbols. The variables should be in bold type, with the first letter of the first word of each variable capitalised.

Example ... worked out using the formula:

$$\text{Received amount} \times \frac{\text{Commonwealth element}}{\text{Total charge}}$$

where:

“**Received amount**” means ...

“**Commonwealth element**” means ...

“**Total charge**” means ...

133. By using words this way you may not need to define the variables. If you have to define them, put the definitions in quotes, and use the word “means” rather than “is”. This gives greater consistency with the form for ordinary definitions, and also tells the Government Printer which words should be in bold type.

134. If the formula is so long or complicated that the variables (or some of them) can’t be expressed in words, use letters as symbols for the variables, but choose the initial letters of key words in the variables. This makes them easier to remember than the traditional “a, b, c” symbols.

135. However, if you use letters, make their significance clear by including in the definition of each variable, immediately after the letters concerned, the relevant words in parentheses.

Example ... worked out using the formula:

$$\frac{VP - VC}{VP}$$

where:

“**VP**” (value of the property) means ... ;

“**VC**” (value of the consideration) means

136. When you insert new definitions of variables in a formula provision of an existing Act:

- Don’t put the “label” in quotes unless the labels of the existing definitions of variables are already in quotes.
- Only use the “means” form if it’s already used for the existing definitions of variables (the existing definitions might use “is”).

Calculations in steps

137. The traditional style expressed a calculation by describing it as a single proposition, eg “the sum of ... and ... less the amount by which so much of ... as exceeds ... is less than ...”. In more recent legislation it’s often expressed in an algebraic formula. However, you can sometimes express a complicated calculation more clearly by telling the reader to take a series of steps. The text is longer, but it’s usually easier to follow than the traditional method.

Example section 146H of the *Social Security Act 1991*.

Procedures in steps

138. Sometimes it’s clearer to describe a procedure in narrative form.

Example section 5 of the *Distillation Act 1901* or Schedule 2 to the *Aboriginal and Torres Strait Islanders Commission Act 1989*.

DEFINITIONS

Where to put them

139. As a general rule, put all definitions in the early clauses. Don't put them in Parts unless you have a special reason to do so. Even when you amend an existing Part that contains definitions, use your discretion before adding further definitions to the Part.

140. If you have a lot of definitions, consider using an index of defined terms.

Example *Social Security Act 1991, Sales Tax Assessment Act 1992.*

141. Definitions for a single clause can go in that clause. As a general rule, put them at the end. However, if the clause uses concepts that are meaningless without the definitions, put them at the beginning.

142. Sometimes in traditional drafting a clause defines a term for 2 neighbouring clauses only, eg "in sections 22 and 23, 'X' means 'Y'.". Avoid this if you can.

Example if you must do it, define the term in clause 22 and include in clause 23 the following definition:

"(9) In this section:

'X' has the same meaning as in section 22."

Sign-posts

143. If you put definitions in separate sub-clauses of the definitions clause, or in separate provisions, put sign-posts in to show where they are.

Example "'royalty' has the meaning given by section 15."

"If the amount is more than the debt threshold (see subsection (5)), then ...".

Identifying defined terms

144. The "labels" of all defined terms should be printed in bold type when they're first defined. This draws attention to the fact that they exist and makes them easier to find.

145. A definition should not be bold if it is merely referred to by way of a cross-reference.

Example "as described in paragraph (a) of the definition of '**goods**' in section 3."

or

section 3 of the Principal Act is amended by omitting the definition of "goods" and substituting the following definition:

"'**goods**' means ...".

146. If a definition is bold, its quotes should also be bold. When you insert a new definition, the extra quotes at the beginning should not be bold.

Example "**'goods'** means ...".

147. It's helpful to the reader to draw attention to the fact that some terms have been defined. Various ways have been suggested, including marking the terms wherever they appear in the text. So far we haven't found a way of marking them without distracting the eye from the main text or causing other problems. Until we do, consider alerting the reader to the most important definitions by putting notes beneath the relevant provisions.

Example sections 20, 21 and 22 of the *Endangered Species Protection Act 1992*.

Section headings: “Definitions” or “Interpretation”?

148. In Commonwealth traditional drafting there was some curious learning about sections containing definitions. If they had only “quotes” definitions, we had to call them “Definitions”. If they also had referential definitions, we had to call them “Interpretation”. Later we struck a blow for simplicity by calling them all “Interpretation”. However, “Definitions” is easier to understand.

Call them “Definitions”, whether or not they consist of or include referential definitions.

149. If a whole section is devoted to defining a single term, it’s helpful to include the word “definition” in the section heading.

Example say “Definition of ‘offshore industry structure’”
 don’t say “Meaning of ‘offshore industry structure’”.

Definitions within the sentence

150. The traditional form of internal definition is “(in this section referred to as ‘X’)”. You can shorten this by just saying “(‘X’)”. However, if this is ambiguous (eg when you’re using the same word with different meanings in different subsections of the same section), say “(in this subsection called ‘X’)”.

Referential definitions

151. The traditional style expressed many definitions in the referential form eg (“a reference to X shall be read/construed as including a reference to Y”). This was done to catch grammatical variations of the defined word or phrase. Section 18A of the Acts Interpretation Act now makes this unnecessary in most cases. Where possible, use “quotes” definitions, because they’re much easier to find.

152. If you must use a referential definition, use the short form.

Example don’t say “A reference to X is to be read/construed as not including a reference to Y.”
 say “A reference to X does not include a reference to Y.”.

153. The traditional style of referential definition uses the introductory words “For the purposes of this (Act, section, etc)”. This is unnecessarily long.

Use the short form: “In this (Act, section, etc)”.

READABILITY AIDS

Objects clauses

154. An objects clause that covers a whole new (ie non-amending) Bill is usually too general to help in interpreting detailed provisions, but it’s still worth doing. It gives the reader a bird’s eye view of the Bill, and helps to show how the detailed provisions hang together. It therefore does more than the modern “long title”, which usually says as little as possible.

155. An objects clause for a whole amending Bill can do a valuable service for members of Parliament by giving them a general idea of what the Bill is trying to do. Textual

amendments on their own give very little clue to their purpose. Whenever practicable, include an objects clause at the beginning of an amending Bill unless it's divided into Parts.

156. An objects clause for a Part or Division is more useful than one for a whole Bill, because it can be more specific. Do this in new Bills whenever you can. Do it also in amending Bills divided into Parts.

Road maps and summaries

157. In a long or complicated Bill, it's useful to include one or more clauses telling the reader how the Bill works or where to find provisions, or outlining key provisions.

Example section 20 of the *Lands Acquisition Act 1989* or section 206AA of the Corporations Law.

158. Consider using these clauses at the start of the Bill and also at the *start of each Chapter or Part*.

Example *Endangered Species Protection Act 1992* or *Radiocommunications Act 1992*.

Examples

159. Examples are an excellent way of illustrating the meaning of complex provisions. With the picture of the example in mind, the reader can return to the text and better understand the details and how they hang together. Examples can take many forms.

Example for a graphic type of example - Schedule 2 to the *Australian Capital Territory (Electoral) Act 1988*
for a case-history type of example - section 1165 of the *Social Security Act 1991* or Appendix A to the *Sales Tax Assessment Act 1992*.

160. It's not practicable to make rules on the cases when you should or shouldn't use examples: use your discretion. However, remember that they're not a substitute for clear text. Even if you use them, try to make the text as simple and clear as if there were no examples. Examples don't define the rule, they merely illustrate it. Using examples to define the rule would result in a "wilderness of single instances".

161. Examples must have the same effect as the text they illustrate. Also, when you amend a provision that has an example, check whether the example should be altered.

162. Section 15AD of the Acts Interpretation Act provides:

"15AD. Where an Act includes an example of the operation of a provision:
(a) the example shall not be taken to be exhaustive; and
(b) if the example is inconsistent with the provision, the provision prevails."

163. When you use examples, try not to disrupt the text. In the Social Security Act, they were put in the body of the text for special reasons. These included the great length of the Act and the fact that it was designed in self-contained units, each to be read by people with particular needs in mind. As a general rule, put examples in a Schedule unless they're short enough to be unobtrusive. If they're in the Schedule, put a note in the text directing the reader to the Schedule.

Graphics

164. Consider using graphics to illustrate complex ideas, even when they're not examples in the strict sense. They can take many forms.

Example the picture of licence aggregation in the Schedule to the *Broadcasting Amendment Act 1988*
the flowchart in the *Patents Act 1990*
the flowcharts in Appendix B to the *Sales Tax Assessment Act 1992*
the outline of Capital Gains Tax in section 160AY of the Income Tax Assessment Act.

Notes

165. You can put notes in the text to help understanding, by drawing attention to other provisions, definitions, etc. Use small type, so that you don't disrupt the text.

Example sections 20, 21 and 22 of the *Endangered Species Protection Act 1992*.

166. Don't make statements of law in notes. They should only provide information or explanations. Statements of law should be made only in the ordinary provisions of a Bill.

Section headings in question form

167. It looks friendly to put the occasional section heading in the form of a question. However, it can be overdone. The question form can be irritating, because it narrows the scope of the headings. On the other hand, the non-question form can use a key word or phrase that is capable of answering a variety of questions.

Readers' guides

168. If you're drafting a very long or complex Bill, consider using a "Reader's Guide" as in the *Social Security Act 1991* or the *Sales Tax Assessment Act 1992*.

Alphabetical indexes

169. If you're drafting a long Bill, consider adding an alphabetical index at the end, identifying key concepts.

Example section 160AZA of the Income Tax Assessment Act.

(This was added to the Act years after the Capital Gains provisions were inserted. That's why it's not at the end of the Act.)

Appendix 1 - Examples of planning tables

Concept	Relevance	Meaning (* = definition in Bill)	Comments
Australia	The Bill applies to sales <i>only</i> if the goods are in Australia at time of sale. Power to search ships applies <i>only</i> to ships in Australia.	All the States and Territories (<i>including external Territories*</i>) + 12 mile territorial sea.	The Bill overrides paragraph 17(a) of the Acts Interpretation Act (which excludes external Territories). Section 15B of the Acts Interpretation Act extends "Australia" to 12 mile territorial sea.
goods	The Bill taxes sales of goods.	Any form of tangible personal property (*)	Goods (eg carpets) may cease to be goods when they become permanently fixed to land. Is this a problem?
company	Companies have different due dates for payment of tax.	Any body or association, whether or not it is incorporated, excluding partnerships.(*)	Is there a need for special rules for recovery of tax from unincorporated companies?

Class of taxpayer	Likely tax on first day of month 9	Instalment(s) due of first day of:	Instalment amount
Small	less than \$8,000	month 18	100% of assessed tax for current year
Medium	\$8,000 to \$300,000	month 12	25% of likely tax for current year
		month 15	25% of likely tax for current year
		month 18	25% of likely tax for current year
		month 21	assessed tax for current year, less previous instalments for current year
Large	more than \$300,000	month 9	25% of likely tax for current year
		month 12	25% of likely tax for current year
		month 15	25% of likely tax for current year
		month 18	assessed tax for current year, less previous instalments for current year

Appendix 2 - Examples of planning diagrams

Diagram 1

Decision diagram for working out whether a transaction is taxable

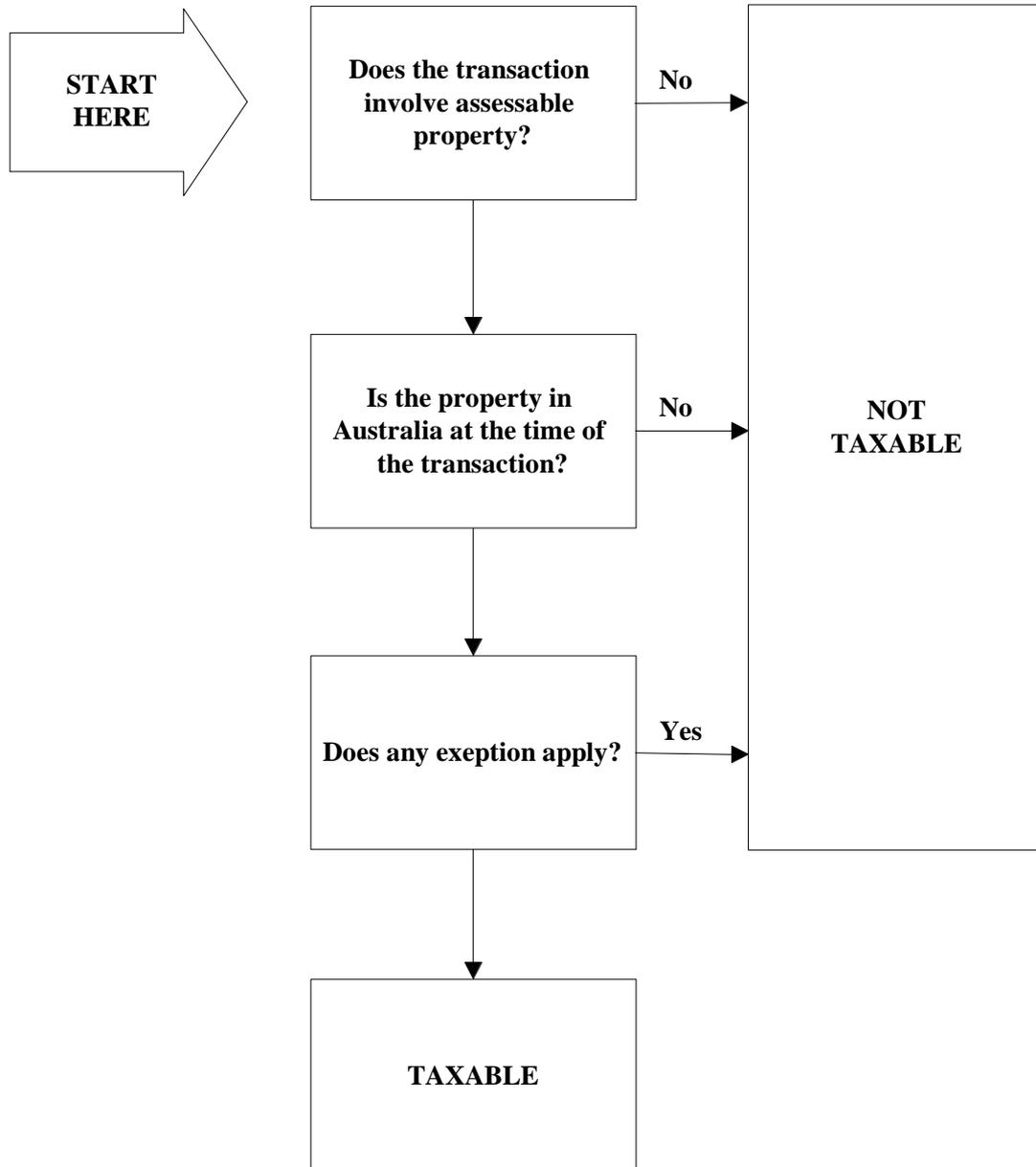


Diagram 2

Shows the relationship between Level 1, Level 2 and Level 3 activities

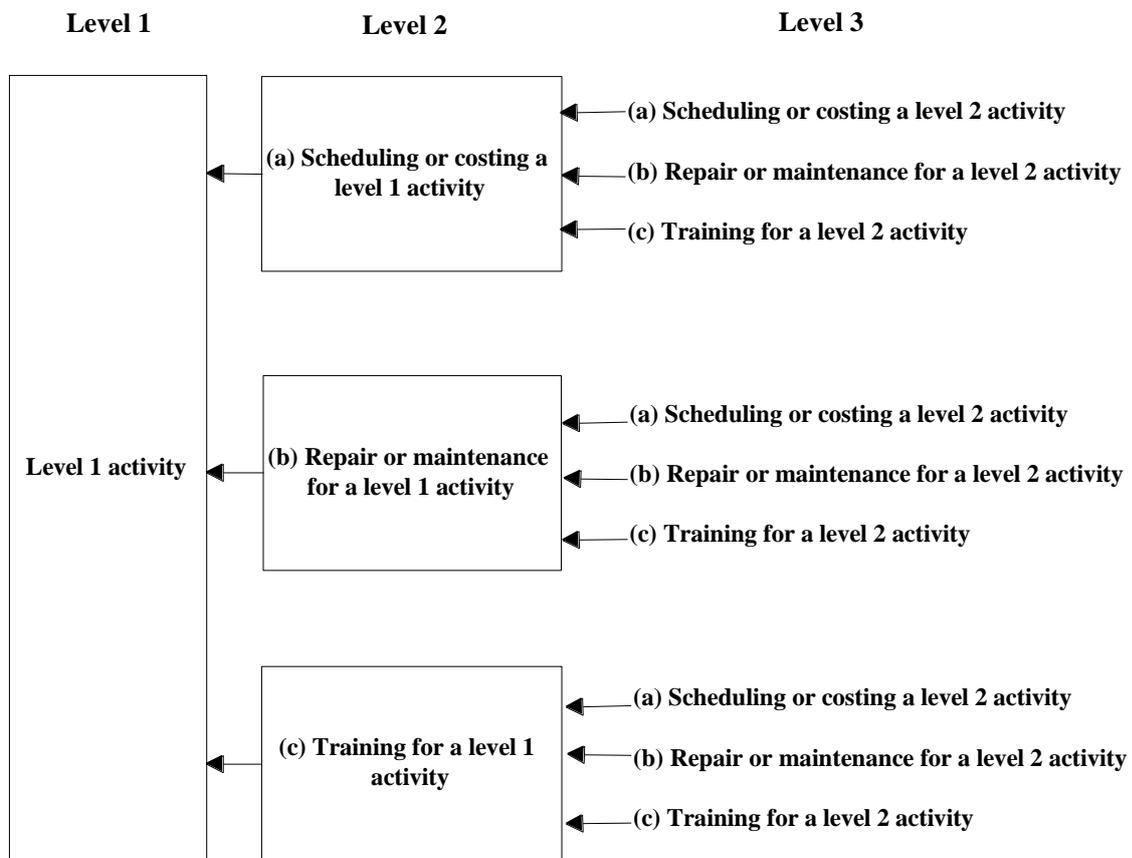
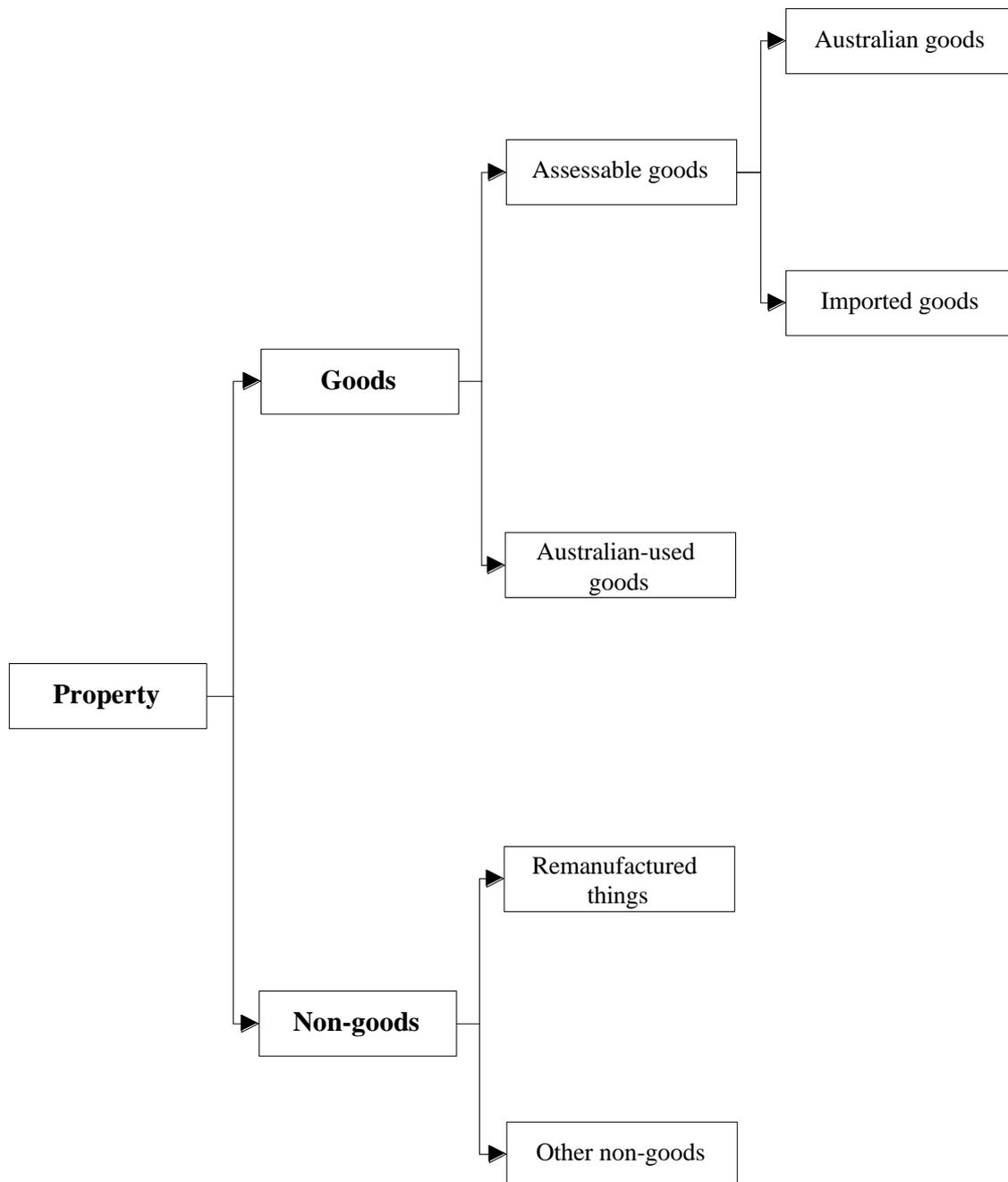


Diagram 3

Shows how property is classified for the purposes of the Bill



Appendix 3 - Words and phrases

Traditional	Simple
Time, age, etc	
6 o'clock in the morning/forenoon	6 am
6 o'clock in the afternoon	6 pm
the day preceding	the day before
at the time when, at the time that, at the time	when [unless it is necessary to refer later on in the provision to "that time"]
attained the age of 65 years	at least 65/65 or over/at least 65 years old
commence [not the commencement of an Act or provision]	begin/start
expiration, termination	end
for the duration of	during
not attained the age of 65 years	under 65/ under 65 years old
per annum, per month, etc	a year, a month, etc
prior to	before
subsequent to	after
subsequent, subsequently	later
the day next/immediately preceding	the day before
the day next/immediately succeeding	the day after
Amounts, calculations, etc	
aggregate	total/sum
amounts that in the aggregate amount to	amounts adding up to
ascertained in accordance with the formula	worked out/calculated/determined/using the formula
exceeds	is more than/is over
in excess of/exceeding	more than/over
not less than, not fewer than	at least
Actions	
afford [evidence, etc]	give/supply
allocate	give/divide
alter, amend	change
any act or thing done, step taken, or decision made	anything done
apprehend/apprehension	arrest
assist	help
attain	reach
cease	stop
determine	fix/work out
expend	spend
forward	send/give
indicate	show/state
initiate	begin/start
institute proceedings	begin/start/bring proceedings

Traditional	Simple
issue	give
maintain	keep/continue
of its own motion	on its own initiative
procure	get
provide, furnish	give/supply
reduced to writing	put in writing/written down
render	make/give
request, require	ask
reside	live [but “residence” is sometimes useful]
retain	keep
submit	send/give
terminate	end/finish
Persons	
any other person, another person	anyone else/someone else
legal practitioner	lawyer [defined if necessary]
medical practitioner	doctor [defined if necessary]
Powers, obligations, etc	
has no power to, is not entitled to	cannot
has power to, is empowered to, is entitled to, has the option of	may
is not required to	does not have to
is required to	has to/must
Relationships, conditions, effects, etc	
[<i>laws, discussions, etc</i>] in respect of, in relation to , in connection with, with respect to, as to, concerning	about
[payments, etc] in respect of [the year, etc]	[payments, etc] for [the year, etc]
applicable	that applies
but for this subsection	apart from this subsection
by, or in accordance with the provisions of, [<i>this Act, etc</i>]	by or under [<i>this Act, etc</i>]
does not have any force or effect	has no force/has no effect
effectuate, implement	carry out
has full force and effect	has effect
in accordance with	under
in the event that	if
in or in connection with, for or in connection with	in connection with/about
in like manner as	as/in the same way as
in consequence of, as a result of	because of
is void and of no effect	has no effect
is constituted by	consists of
like [circumstances, etc]	the same, similar [<i>circumstances, etc</i>]
notwithstanding the fact that	even if/although

Traditional	Simple
notwithstanding	despite/in spite of
on behalf of, for and on behalf of	for
otherwise than	except
pursuant to, in pursuance of, by virtue of	under/because of
shall be deemed to be	is taken to be/is treated as/is regarded as
sufficient, adequate	enough
to and in relation to, to or in relation to	to [in most cases]/in relation to [where very wide meaning needed]
without limiting the generality of the foregoing, ... include	include, but are not limited to/include, in particular
Miscellaneous	
any act, matter or thing	anything
bona fide	in good faith, genuine
exclusively	only
expenditure	spending
mutatis mutandis	with appropriate changes
necessitate	require
notice published in the <i>Gazette</i>	Gazette notice/notice in the Gazette
the provisions of this Act, the provisions of this section	this Act, this section