

PARLIAMENTARY COUNSEL

Drafting Direction No. 1.1 Long and short titles of Bills and references to proposed Acts

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Part 1—Long titles

Material in Bill must be within scope of long title

General rule

1 The title of a Bill must encompass all the matters included in the Bill. For example, the title “An Act to amend the *Income Tax Assessment Act 1997*” would not cover transitional provisions. In such a case, the title should have additional words such as “and for related purposes”. Alternatively, the problem could be avoided by having a more general title such as “An Act to amend the law in relation to taxation”.

Amendments

2 House Standing Order 150(a) requires an amendment of a Bill to be within the title or relevant to the subject matter of the Bill. In practice, these two elements are not regarded as completely distinct and separate. Therefore, the standing order would not allow an amendment bearing no relationship to the subject matter of the Bill. In theory, the House could agree to suspend the standing orders, but there is no record of this having been done.

3 A few years ago, a Department wished to amend a Bill whose title was “A Bill to amend the XX Act, and for related purposes”. The proposed amendments were not related to the subject matter of the Bill, but would have amended an Act administered by the relevant Minister. The Deputy Clerk advised that if proposed amendments fall a long way outside the subject matter of the Bill, it could be considered a misuse of the House’s powers for a motion to be moved to suspend the standing orders. Accordingly, the amendments were not able to be included in the Bill.

4 For information on this topic, see the House of Representatives Practice and Standing Orders 150(a) and 150(d).

Use of “and for related purposes” and “and for other purposes”

5 The standard Bill templates currently in use include the words “and for related purposes” in the long title of the Bill. You should think very carefully before removing these words, or replacing them with something narrower. In some cases (for instance, in a portfolio Bill combining a significant set of amendments of one or several Acts with minor miscellaneous amendments of other Acts) you may need to use a phrase with even wider application, such as “and for other purposes”.

6 In advice provided to OPC, the Clerk of the House of Representatives has expressed the view that, while “and for other purposes” is wider than “and for related purposes”, neither could be relied upon to allow an amendment bearing no relation to the subject matter of the Bill. This is because, in practice, the two limbs of Standing Order 150(a) are not seen as completely distinct and sufficient authority for amendments. The Clerk also considered that an objection would be taken to any very broad form of words as this would be seen as circumventing the framework set out in the Standing Orders.

Bills in a package should not have same long title

7 Recently several related Bills were introduced into the House of Representatives, each with the same long title. While this may be logical, it has the potential to cause difficulties during the parliamentary processes (and has done so in the past). The Clerk of the House has asked that drafters avoid giving 2 or more Bills in a package the same long title.

8 There does not seem to be any problem with “unpackaged” Bills (that are introduced and progress through the Parliament separately) having identical long titles.

Long title must accord with notice

9 If a change is made to the title of a Bill after it has been lodged for the Legislation Approval Process, the drafter must advise OPC’s Bills Officer of the change. The Legislation section needs to know the exact title of the Bill to ensure that the notice of intention to introduce the Bill is correct.

10 A difference between the language of a notice and the title of the Bill to which the notice relates causes serious embarrassment to the Minister concerned, who must obtain leave to withdraw the Bill, re-introduce the Bill and make a further second reading speech.

Long titles generally not to include multiple Act names

11 Drafters should think carefully before including multiple Act names in the long title of a Bill.

12 A problem arose in 1997 when parliamentary amendments of a Bill removed all amendments of a particular Act. The Act (along with several others) was mentioned in the Bill’s long title, but the parliamentary amendments did not include an amendment of the long title and the Clerk was unwilling to remove the reference from the Assent version of the Bill.

13 It would usually be appropriate (though not necessary) for the long title of a Bill to refer to the main Act that is amended by the Bill. However, where a Bill makes consequential amendments of a number of Acts, or simply contains a number of miscellaneous amendments, I do not see any need to list the Acts amended in the long title. Apart from potentially giving rise to problems of the kind mentioned above, listing the Acts amended could result in an unwieldy long title.

Long titles of taxing Bills

14 In 1982, during debate on what became the *Radiocommunications Licence Fees Act 1982*, there was some confusion in the Senate about whether or not the Bill imposed tax and accordingly about the Senate’s power to amend the Bill.

15 The confusion arose because the tax was “dressed up” as a fee, in both the short and long titles of the Bill. However, in the Bill, “fee” was defined as meaning “a fee that is by way of or in the nature of a tax”. It is not clear now why such elaborate steps were taken to make the Bill look like a Bill imposing fees while ensuring that it would be interpreted as imposing a tax.

16 As a result of this confusion, the then President of the Senate suggested that, in future Bills of this kind, it should be made clear by specific words in the long title that the Bill is a taxing measure.

17 Good drafting practice would in any case seem to require a long title to help, rather than to obstruct, understanding of the Bill in question. Usually, therefore, this kind of problem should not arise.

18 However, from time to time there are political pressures to describe certain imposts as something other than a tax, combined with a requirement that the relevant legislation be supported by the taxation power. In such circumstances, you may wish to draw the 1982 case to your instructors' attention as part of your efforts to be allowed to draft the legislation as clearly and effectively as possible. However, I don't think that the 1982 suggestion from the President of the Senate can be put forward as a Senate requirement about the form of long titles for taxing Bills.

Part 2—Short titles

General

19 As a general rule, you should take particular care when naming Bills to ensure that the names you choose are as informative as possible (within reason) and do not cause unnecessary confusion to the Parliament or to any other users of legislation. In particular, this involves avoiding names that could easily be confused with the names of other current Bills. For instance, Bills whose titles differ only in the inclusion of a "noise word" like "Legislation" or "Laws" may well confuse some users.

Location of "Amendment" in titles of Bills

20 The simplest Bill title for an amending Bill is created by adding "Amendment" to the title of the Principal Act (eg Public Service Amendment Bill).

21 Less obvious titles for amending Bills are created in several other ways.

22 In some cases, we add "Amendment" to a title describing the kind of legislation being amended (eg Taxation Laws Amendment Bill, Social Security Legislation Amendment Bill). In these cases, the title gives a clue, at least to those familiar with Commonwealth Acts, that the Bill amends a number of Acts, since it would be rare for a Commonwealth Principal Act to contain "Laws" or "Legislation" in its title.

23 In other cases, we have added explanatory words in parentheses to the title of the Principal Act, usually accompanied by "Amendment" (eg Student Assistance (Budget Matters) Amendment).

24 The practice of creating Bill titles as described in paragraph 23 could confuse readers, because it may be difficult to tell whether the words in parentheses are part of the name of the Principal Act or only an explanation of what is in the amending Bill. For instance:

- the Higher Education Funding (Student Organisations) Amendment Bill 1994 was an amendment of the *Higher Education Funding Act 1988*;

- the Aboriginal Education (Supplementary Assistance) Amendment Bill 1993 was an amendment of the *Aboriginal Education (Supplementary Assistance) Act 1989*.

25 The problem is particularly acute in areas in which there are a number of Acts whose titles refer to specific subject matters in parentheses. For anyone familiar with the *Crimes (Hostages) Act 1989*, the *Crimes (Foreign Incursions and Recruitment) Act 1978*, the *Crimes (Aviation) Act 1991* and the host of other Crimes Acts with equivalent titles, the Crimes (Child Sex Tourism) Amendment Bill and the Crimes (Search Warrants and Powers of Arrest) Amendment Bills, which in fact amended the *Crimes Act 1914*, could easily have been amending a Crimes (Child Sex Tourism) Act and a Crimes (Search Warrants and Powers of Arrest) Act.

26 Accordingly, expressions in parentheses which indicate the subject matter of the amending Bill should appear after “Amendment” rather than before it, for instance:

- Higher Education Funding Amendment (Student Organisations) Bill
- Crimes Amendment (Child Sex Tourism) Bill.

27 Where an Act whose name includes words in parentheses is amended by a Bill which is felt to need a subject matter reference in the short title, we will finish up with a long short title (so to speak), for instance:

- Crimes (Aviation) Amendment (Freight Carriage) Bill.

28 However this is no longer, and arguably no less elegant, than the result we would achieve under the alternative approach described in paragraph 23, so I think we can live with this.

Numbering of Bills

Avoiding numbered titles in favour of titles with subject matter references

Generally, numbered titles to be avoided

29 The Senate Standing Committee for the Scrutiny of Bills raised with the Attorney-General in 2003 the potential for confusion when Bills that include an identifying number do not pass in the calendar year in which they are introduced, and instead roll over into a new calendar year.

30 The use of identifying numbers generates confusion in several ways. Confusion arises, for instance, in a case in which the first in a series of Bills introduced in a year is called “No. 4”, and the preceding Bills, presumably numbered 1 to 3, are nowhere to be found on the public record. Members of Parliament have also found it confusing if a Bill that has been circulated with one title is referred to in other material using the new title that will be assigned to the Bill when it is passed by the Parliament (eg the Taxation Laws Amendment Bill (No. 7) 2002 was passed at the end of March 2003 and re-titled *Taxation Laws Amendment Act (No. 2) 2003* but before that, while the Bill was still identified as a

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2002 Bill, a further TLAB had been introduced containing a reference to the *Taxation Laws Amendment Act (No. 2) 2003*).

31 The Committee has asked that consideration be given to extending the use of explanatory words in Bill titles (as an alternative to numbering Bills), with a view to avoiding such confusion.

32 Accordingly, if you receive drafting instructions for a Bill identified by a generic title plus a number, you should draw the Committee's views to the attention of your instructors and encourage them to consider using instead a subject matter reference (with or without the words "and Other Measures" as appropriate) in their Bill title.

33 This is particularly important in the case of a Bill that is unlikely to pass in the calendar year of introduction, or a case in which two or more Bills in the series are likely to be before the Parliament at the same time.

Acceptable numbered titles

34 It is recognised that some omnibus Bills do not lend themselves to a meaningful descriptive title. All measures in the Bill may be of similar weight; or the Bill may be one that measures drop in and out of during drafting. Tax Bills often present both of these problems.

35 To deal with these problems, while at the same time avoiding some (but not all) of the confusion described in paragraph 30, a practice has developed of giving tax Bills a name along the lines of "Tax Laws Amendment (2005 Measures No. 3) Bill 2005".

36 This method has also been used for some superannuation Bills, and there may be other contexts in which it is also suitable. However, it should not be used so as to avoid searching for an appropriate descriptive title. If uncertain about whether it is appropriate to use the method for a particular Bill, discuss it with FPC.

Use of "(No. 1)" in Bill titles

37 Until the mid-1990s, the practice of this Office was not to include "(No. 1)" in the short titles of Bills even if it was clear that the Bill was the first in a series of Bills with similar short titles for that year. For example, the first taxation portfolio Bill in 1994 was called Taxation Laws Amendment Bill 1994, even though drafting had commenced on a Bill called Taxation Laws Amendment Bill (No. 2) 1994.

38 The current practice is as follows. Where it is reasonably likely that more than one Bill will have the same short title (apart from the number) in a year, the first Bill is to have "(No. 1)" included in the short title (eg Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 1) 2004).

39 If you are unsure whether it is reasonably likely that there will be more than one Bill with the same short title, please consult FPC.

40 Of course, if paragraphs 29 to 33 above are effective in reducing the use of titles relying on numbers, there should in future be few cases in which this issue arises.

Part 3—References to proposed Acts

Acts whose titles may change

41 If you are asked to include in a Bill a reference to an Act that will bear a different title from the Bill for that Act as originally introduced, you should consider including a note referring to the title of the Bill as introduced, along the following lines:

Note: The Bill for the *Broadcasting Legislation Amendment Act (No. 1) 2003* originated as the Broadcasting Legislation Amendment Bill (No. 3) 2002.

42 Such notes are probably most useful in relation to Bills that include numbers in their titles where the numbers are likely to change, as in the example set out in paragraph 41. It would not usually be worthwhile to include such a note where the only change to the Bill's title is to the year.

43 If such a note is to be included in an amending Bill, it should be part of the amending Bill, not part of the text being inserted into a Principal Act.

44 It would also generally be undesirable to include such a note in a Bill for a new Principal Act, because this would leave a note of transitory significance cluttering up the new Act. In such a case it might be better for the information provided by the note to be included in the Explanatory Memorandum.

Acts to result from Bills not yet introduced

45 You should not refer in your Bill to an Act proposed to result from another Bill that is to be introduced after your Bill unless:

- (a) the other Bill is listed on the website of the Department of Prime Minister and Cabinet (www.dpmc.gov.au) as legislation proposed for introduction in the sittings in which your Bill is to be introduced and the other Bill is likely to be introduced in that sittings; or
- (b) First Parliamentary Counsel agrees to you making the reference.

46 If you omit provisions that may be required depending on the progress of the other Bill, you should keep a record of this and give a copy of your record to your instructors. You should also give a copy of your record to the drafter who is drafting the other Bill or to First Parliamentary Counsel if the other Bill is yet to be allocated to a drafter.

Peter Quiggin
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