

# PARLIAMENTARY COUNSEL

## Drafting Direction No. 1.5 Definitions

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Note: Before the issue of the current series of Drafting Directions, this Drafting Direction was known as Drafting Direction No. 5 of 2005.

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Drafting Direction No. 1.5  
Definitions

## Part 1—Introduction

1 This Drafting Direction deals with the form of definitions.

2 Other matters relating to definitions are dealt with in other Drafting Directions and office documents, as noted in the table.

<b>Other matters relating to definitions dealt with in other Drafting Directions</b>		
<b>Item</b>	<b>Matter</b>	<b>Office document(s)</b>
1	Location of definitions	Plain English Manual, paras 139 to 142
2	Signposts to definitions	Plain English Manual, para. 143
3	Headings to definition sections	Plain English Manual, paras 148 and 149
4	Referential definitions	Plain English Manual, paras 151 to 153 Drafting Direction 1.8
5	Power not to be conferred by definition	Drafting Direction 3.4
6	Asterisking defined terms	Drafting Direction 1.6
7	Asterisking defined terms in the Tax Code	Drafting Direction 1.8
8	Lists of defined terms (Dictionaries)	Word Note 4
9	Format of definitions and cross-references to definitions	Word Notes 3, 4 and 30
10	Order of definitions starting with numbers	Word Note 4
11	Tax Code rules about use of definitions	Drafting Direction 1.8
12	Commencement tables using defined terms	Drafting Direction 1.3
13	Use of various expressions in Bills	Drafting Direction 2.2
14	Definitions of <i>Australia</i> (in geographical sense)	Drafting Direction 3.10
15	Definition of <i>borrowing</i> (by statutory authorities)	Drafting Direction 3.6
16	Definition of <i>contiguous zone</i>	Drafting Direction 3.3
17	Definition of <i>continental shelf</i>	Drafting Direction 3.3
18	Definition of <i>exclusive economic zone</i>	Drafting Direction 3.3
19	Definition of <i>insolvent under administration</i>	Drafting Direction 2.2
20	Definition of <i>member</i> (of statutory authority)	Drafting Direction 3.6
21	Definition of <i>minerals</i>	Drafting Direction 2.2
22	Definition of <i>modifications</i> (of an Act by subordinate legislation)	Drafting Direction 3.8
23	Definition of <i>oath</i> (to include affirmation)	Drafting Direction 3.9
24	Definition of <i>offence against this</i> [Act/Part/Division/section etc.]	Drafting Direction 3.5
25	Definition of <i>swear</i> (to include affirm)	Drafting Direction 3.9
26	Definition of <i>territorial sea</i>	Drafting Direction 3.3
27	Use of definition of <i>fringe benefit</i> from the <i>Fringe Benefits Tax Assessment Act 1986</i>	Drafting Direction 2.2
28	Amendment of definitions, defined terms and lists of defined terms	Word Notes 4 and 30 Amending Forms Manual
29	Statute law revision amendments of duplicate definitions	Drafting Direction 4.4

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**Other matters relating to definitions dealt with in other Drafting Directions**

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Item	Matter	Office document(s)
30	Effect of amending definitions in Acts on subordinate instruments	Drafting Direction 3.8

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3 Note that the Plain English Manual is given the status of a Drafting Direction by Drafting Direction 2.1.

## Part 2—One expression, one meaning

### *The principles*

4 The possibility of a reader being confused or misled is increased if the same expression has a different meaning according to which Part, Division or section of an Act the expression is used in. For this reason, drafters should avoid:

- (a) defining an expression to have different meanings in different parts of an Act; or
- (b) defining, in one part of an Act, an expression that is used in its ordinary meaning in another part of the Act.

5 The same expression may still be given different meanings in relation to different things.

6 An implication of the principles in paragraph 4 is that it should generally not be necessary to indicate the scope of a definition (along the lines of “In this Part/Division/Subdivision/section”). This is because the scope of each definition should ordinarily be the whole of the Act.

7 Paragraph 6 does not stop drafters using “just in time” definitions. An expression may still be defined in the section to which it is most relevant. However, the definition should be one that applies throughout the Act (even if the expression is not currently used elsewhere). If an expression is defined in the section to which it is most relevant, rather than in a general “definitions” section at the start or end of an Act, a signpost definition should be included in the general “definitions” section.

### *The exceptions*

8 Sometimes an expression must be given a particular meaning for a particular section, including in circumstances where the expression is also used elsewhere in the Act (whether in its ordinary meaning or with another defined meaning). Most commonly, this has to be done when an expression in a particular section must have the same meaning as in another Act, or in the Constitution.

Example: In an “Historic Shipwrecks” clause, the expression *acquisition of property* is given the same meaning as in paragraph 51(xxxi) of the Constitution. When used elsewhere in the same Act in relation to a statutory authority’s powers, *acquire property* has its ordinary meaning.

9 In other cases, where a defined term is so particular to the single section in which it is used, it may be less confusing for readers if the term is defined in that section, exclusively for

the purposes of that section (and consequently not signposted in the general “Definitions” section). Drafters should use their judgment in deciding whether an exception to the principles in paragraphs 4 and 6 on this basis is warranted.

### ***Applying the principles***

10 Drafters should apply the principles in paragraphs 4 and 6 (subject to the exceptions) in drafting new Acts.

11 In drafting provisions for existing Acts, drafters should apply the principles if doing so is consistent with the existing structure of the Act. If the Act already contains separate “definition” sections for particular Parts etc., drafters should continue to observe that structure. However, drafters should still avoid defining an expression that is already defined elsewhere in the Act if it is possible to come up with another reasonably appropriate expression.

### **Part 3—Qualifying definitions (“unless the contrary intention appears”)**

#### ***No qualifying***

12 In the past, drafters have often qualified the opening words of a definition section or subsection with a phrase along the lines of “unless the contrary intention appears” or “except so far as the contrary intention appears”.

13 This qualification is not to be used in drafting new principal Acts.

14 This applies to all kinds of definitions (including referential definitions—“A reference to X is taken to be a reference to Y”—which for some reason were rarely qualified in this way in any case).

15 It is a matter for the drafter’s discretion whether an unqualified definition can be incorporated into an existing Act, or whether amending provisions should be drafted in a manner consistent with the existing provisions of the Act. Generally, drafters should try to avoid qualifying new definitions if possible.

#### ***Reasons to avoid qualifying***

16 The qualification should be avoided:

- (a) because it is unnecessary; and
- (b) because it is unhelpful.

17 Express qualification is unnecessary because both case law and AGS advice indicate that the qualification is implied in any case.

18 Pearce and Geddes: *Statutory Interpretation in Australia* (6th ed) includes the following comments:

All definitions of the meaning of words or phrases used in legislation are to be read either expressly or impliedly as subject to the qualification “unless the contrary intention appears” *Hall v Jones* (1942) 42 SR (NSW) 203; *Transport Accident Commn v Treloar* [1992] 1 VR 447 at 449.

.....

As with the interpretation of any statutory words, the context in which they are used will dictate their meaning. So it can be that the context in which a defined term is used will indicate that the definition is not intended to apply: *Gidaro v Secretary, Department of Social Security* (1998) 154 ALR 550 at 561; *Repatriation Commn v Vietnam Veterans’ Association of Australia NSW Branch Inc* (2000) 171 ALR 523 at 548.  
(page 245-246)

19 In addition, AGS has advised:

It would be a mistake to place too much emphasis on the phrase “unless a contrary intention appears” because, as was pointed out by the Supreme Court of New South Wales, all definitions of the meaning of words or phrases used in legislation are, in any event, to be read either expressly or impliedly as subject to that qualification: *Hall v Jones* (1942) 42 SR (NSW) 203.  
#Date 16:11:1987 #Vol.90 #P.1186

20 The qualification is unhelpful because it does not tell the reader *where* a contrary intention exists. It may instead sow doubt in the reader’s mind as to whether he or she can ordinarily rely on defined terms having their defined meaning.

## Part 4—Defining acronyms and initialisms

### ***Avoid using acronyms***

21 This Part deals with definitions for terms that are expressed as acronyms or initialisms (e.g. “PPO” for “Private Postal Officer”). In this Part, ***acronym*** includes initialism.

22 The usual argument for using an acronym is to reduce the length of provisions. However, an acronym can often be meaningless to those who have not been involved in the development of the provisions. For this reason, acronyms should generally be avoided.

### ***Acceptable acronyms***

23 However, there are a number of acronyms that are used in multiple places across the statute book. These kinds of acronyms are usually the name of a body having functions under a range of legislation. Examples include AAT, ACCC and ASIC. Use of acronyms of this kind is acceptable, and the acronym should be defined along the lines of:

***AAT*** means the Administrative Appeals Tribunal.

***ASIC*** means the Australian Securities and Investments Commission.

24 Note that it is not necessary, when using an acronym of this kind, to go on and say “...established under section 6 of the *Administrative Appeals Tribunal Act 1975*”.

## **Using Act-specific acronyms: 2 approaches to defining**

25 You may use an acronym that is specific to a particular Act (rather than an acronym of the kind mentioned in paragraph 23), if you consider that:

- (a) there is a strong case for using the acronym (e.g. there was a strong case for using the acronym “GST” rather than the full term “goods and services tax” when drafting the GST Bill because, at the time of drafting, GST was a commonly used and understood term); and
- (b) there is no effective, alternative drafting approach that could be used to avoid using the acronym (e.g. drafting the provisions in the narrative style).

26 If you decide to use an acronym that is specific to a particular Act, there are 2 approaches to use when defining it. Which of the 2 approaches is to be used depends on whether only the acronym is used (outside the definition of the acronym), or whether both the acronym and the full term are used outside the definition of the acronym.

### **First approach—only the acronym is used**

27 If only the acronym is used (i.e. there are no references to the full term, except for the initial reference to the full term for the purpose of setting up the acronym), then only the acronym is to be defined in the definition section, with a reference to the full term of that acronym included in that definition. For example:

*PPO* (short for Private Postal Operator) means an entity (other than Australia Post) that provides a postal or similar service, whether or not that entity also provides other services.

### **Second approach—both the acronym and full term are used**

28 If both the acronym and the full term are used outside the definition of the acronym, then both the full term and the acronym should be defined in the definition section as one definition (with the full term placed before the acronym), and the acronym should also be listed in the definition section with a signpost to the full term. For example:

*PPO*: see *Private Postal Officer*.

*Private Postal Officer* or *PPO* means an entity (other than Australia Post) that provides a postal or similar service, whether or not that entity also provides other services.

### **Defined terms that include an acronym**

29 If a defined term includes an acronym (for example, *AFP member* or *APRA member*), the definition may refer only to the acronym if the acronym is not an Act-specific one, or only the acronym is used in the provisions. For example:

*APRA member* means a member of APRA, including the Chair and Deputy Chair [where “APRA” is defined in the Act].

30 However, if the acronym is not used in the provisions, or the full term is also used, the definition should refer to the full term. For example:

*AFP member* means a member or special member of the Australian Federal Police [where “AFP” is not used in the Act].

## Part 5—Using definitions instead of incorporating another Act

### **Background**

31 In the past, we have used a technique of providing that an Act is taken to be “incorporated” with another Act. The main purpose of the incorporation provision was to ensure that definitions included in one Act would apply in the other Act as well. The technique was commonly used in tax legislation which had to be split into several separate Bills to satisfy section 55 of the Constitution. For instance, section 4 of the *Medicare Levy Act 1986*, which imposes medicare levy, provides for the incorporation of the *Income Tax Assessment Act 1936*.

### **Problems with “incorporation” approach**

32 However, incorporation provisions have been found to “muddy the waters” in the section 55 context (see paragraph 11(f) of the Chief General Counsel’s opinion dated 30 August 1993, volume 95 at page 4484). As well, of course, they are a fairly indirect and obscure way of achieving the relevant aim, and are therefore unlikely to be helpful for readers.

### **Using definitions instead of incorporation**

33 For these reasons, you should not use incorporation provisions in the future. Instead, you should include, in the Act that does not contain the definitions, a provision to the effect that expressions used in a specified Act have the same meaning in the first-mentioned Act as they do in the specified Act. For instance:

An expression used in this Act [an Act imposing long service leave payroll levy] has the same meaning as it has in the *Coal Mining Industry (Long Service Leave) Levy Collection Act 1992*.

34 You should take care if you are using this form to adopt expressions used in the *Income Tax Assessment Act 1936*, or any other Act in which a single expression is given different meanings for different parts of the Act. In such cases you will need to ensure that the appropriate definition is adopted.

## Part 6—Referring to existing definitions or meanings

### **Background**

35 When drafting a provision that uses an expression that is intended to have the same meaning as it has in another provision, it is common not to include an expanded definition of that term for the new provision, but rather to include a signpost definition that refers to the other provision.

36 This part sets out a number of factors that drafters should consider before using this technique.

### ***Consider repeating the definition***

37 Generally, if a particular expression is defined in an existing provision and you want to use that same expression with that defined meaning in another provision, you should consider repeating the whole of that definition rather than referring to the existing provision (even if this involves repeating large amounts of text). This is because it avoids the need for the reader to access another provision in order to find out the meaning of that expression.

38 However, if you want to use an expression that is consistently used across the statute book with the same meaning, it may be preferable for the new provision to refer to the existing provision in which that expression is defined. This provides for greater consistency across the statute book by ensuring that the expression will always have the same meaning when used in various provisions. If the meaning of that expression needs to be changed across the statute book, it is easier to do so by amending a single definition to which all other provisions refer.

### ***Definitions that rely on the making of a decision, judgement or regulations***

39 Drafters should be careful when referring in a new provision to an existing definition that relies on the making of a decision, judgment or regulations. This is because there could be confusion about who the decision or judgment maker will be in the context of the new provision or because regulations made for the purposes of the existing definition may not make sense for the new provision.

40 Consider, for example, an existing definition that relies on “the Secretary” forming an opinion. If a new provision refers to that existing definition but is to be administered by a different Department then, for the purposes of the new provision, it could be unclear which Secretary is to form that opinion.

41 If the whole of the definition were repeated it would be clear that the Secretary of the Department that administers the new provision would need to form that opinion. However, if the expression is to be used consistently across the statute book it may be preferable to refer to the existing definition. If this approach is adopted, the new provision should make it clear which Secretary is to form the relevant opinion for the purposes of the new provision.

### ***Attracting a meaning that a term has in another provision or Act***

42 There are a variety of expressions that may be used to attract a meaning that a term has in another provision. You should be aware that these terms are not always interchangeable.

#### **“Within the meaning of” and “Has the same meaning as in”**

43 The expressions “within the meaning of” and “has the same meaning as in” may be used any time you want to attract the meaning that a term has in another provision.

Example 1:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

Example 2:

- (1) This Act is not a taxation law within the meaning of the *Taxation Administration Act 1953*.

**“As defined in” and “As defined by”**

44 The expressions “as defined in” and “as defined by” may be used to attract the meaning that a term has in another provision if that provision contains a definition of that term (including a definition that extends the ordinary meaning of that term or a definition that excludes something from the ordinary meaning of that term).

**“Has the meaning given by”**

45 The expression “has the meaning given by” may be used to attract the meaning that a term has in another provision if that provision gives that term a meaning other than by way of a definition that extends the ordinary meaning of that term or a definition that excludes something from the ordinary meaning of that term.

46 For example, it would be correct to say “*citrus* has the meaning given by the XYZ Act” if the XYZ Act contained a definition of “citrus” in the form “*citrus* means...”. However it would be incorrect to use the expression “has the meaning given by” if the XYZ Act contained a definition of “citrus” in the forms of “*citrus* includes an apple” or “*citrus* does not include an orange”.

**“Has a meaning affected by”**

47 The expression “has a meaning affected by” may be used in a signpost definition to refer to another provision that affects the meaning of a term in circumstances where it would be inappropriate to use the expression “has the meaning given by”. This might be because the provision:

- (a) defines the term by way of an inclusive or exclusive definition; or
- (b) provides that a reference to the term includes a reference to some other term; or
- (c) allows another instrument to affect the meaning of the term; or
- (d) contains a deeming rule and it would help to make readers aware of that rule by including a signpost definition.

**“Within the meaning given by”**

48 You should not use the expression “within the meaning given by”. This is because there are very few occurrences of this expression on the statute book and drafters should be able to achieve the same outcome using one of the other expressions mentioned above.

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