PARLIAMENTARY COUNSEL

Drafting Direction No. 2.2
Use of various expressions in Bills

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Note: Before the issue of the current series of Drafting Directions, this Drafting Direction was known as Drafting Direction No. 25 of 2005.

Contents

Part 1—Matters to be aware of in choosing expressions to be used in Bills

Introduction

1 This Part deals with various matters that you should be aware of in choosing expressions to be used in Bills.

Borrowing from legislation of other jurisdictions

2 Drafters looking to legislation from other jurisdictions as inspiration or precedent should be careful to ensure that they do not borrow from that legislation expressions which either have no legal significance in Commonwealth legislation or have a different legal significance in Commonwealth legislation.

Use of abbreviations authorised by National Measurement Regulations

3 Where an abbreviation authorised by the National Measurement Regulations is used in a Bill, the form of the abbreviation should be that authorised by those regulations. Note that none of the abbreviations finishes with a full stop.

Use of words that are registered trade marks

4 Drafters should be aware that many words in common usage that describe relatively new products or processes may in fact be registered trade marks. In 1967, words such as "hovercraft" and "photostat" were registered trade marks. I understand that "rollerblade" and "windsurfer" are currently registered trade marks.

5 Ideally, registered trade marks should not be used in legislation. This is because the registered proprietor would be entitled to complain that the use of the trade mark in legislation tended to make the trade mark less distinctive of the goods in question. As well, a word that is in fact a registered trade mark might be interpreted as referring only to the goods properly described by that trade mark and not to the wider class of similar goods.

6 If you suspect that a word you have been asked to include in a Bill may be a registered trade mark, you should draw this to the attention of your instructors, pointing out the matters mentioned in paragraph 5 above, and suggest that they seek advice about the current status of the word from IP Australia (currently part of the Department of Industry, Tourism and Resources).

Use of the expression "fringe benefit"

7 A common approach to the drafting of a provision dealing with remuneration or benefits received in addition to salary or wages is to adopt the definition of ***fringe benefit*** in subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986* (the ***FBTAA definition***).

8 However, the FBTAA definition is designed to define the tax base for fringe benefits tax. So there are many differences between the FBTAA definition and the ordinary meaning of "fringe benefit", including the following:

(a) the FBTAA definition does not apply to benefits provided in respect of the employment of Commonwealth employees. (Commonwealth employees are covered by the *Fringe Benefits Tax (Application to the Commonwealth) Act 1986*);

(b) many benefits (which are classified by the FBTAA as “exempt benefits”) are excluded from the FBTAA definition;

(c) the FBTAA definition does not apply to an employee whose salary or wages are exempt income for income tax purposes eg foreign source income of non-residents, certain foreign service income of residents etc.

9 Therefore drafters should consider whether the FBTAA definition can be adopted without modification.

Part 2—Words and expressions to be used in Bills

“Christian name” and “given name”

10 The expression “given name” should be used in draft Bills, except where the expression “Christian or given name” is already used elsewhere in a Principal Act being amended by the Bill. In such cases, you should maintain consistency with the Principal Act. However, whether this is achieved by amending the existing provisions, or by using “Christian or given names” in the new provisions, is a matter for your instructors, who may wish to consult the Department of the Prime Minister and Cabinet before making a final decision.

“Servant” and “employee”

11 The Attorney-General’s Department has advised (OGC reference OGC95055149) that the word “servant” in legislation could be replaced with the word “employee” without any undesirable consequences.

12 The word “servant” should not be used in Bills for new Principal Acts. “Employee” should be used instead.

13 “Servant” should also be avoided, in favour of “employee”, in Bills amending Acts that do not already use the word “servant”.

14 Where a Bill amends an Act that already contains the word “servant”, the Bill should ideally amend all the existing references to “servant”. If this is not feasible, you should make a judgment whether “employee” can satisfactorily be included in the Act without amending existing uses of “servant”; in making such a judgment, you should favour the use of “employee” unless there are particular reasons against it.

15 A problem may arise if an existing Act uses both “servant” and “employee”, and gives one of those expressions a particular meaning that is broader or narrower than its ordinary meaning (see, for instance, the *Patents Act 1990*). In such cases the most sensible course may be to maintain the structure, and the distinction between the two expressions, that is relied on in the existing Act, even if this involves using “servant” in new provisions.

16 In general, arguments against using the new expression may be overcome by accompanying the provisions using the new expression with a note that recognises the inconsistency of expression and refers to section 15AC of the Acts Interpretation Act (changes to style not to affect meaning).

"Fax"

17 The word "fax" should be used in Bills, in preference to the word "facsimile", to describe the relevant form of communication.

18 If you are inserting a provision including the word "fax" into an Act that already uses "facsimile" to describe a communication method, you should, if possible, bring the existing provisions into line with the new provisions. You must do so if there is any chance that the introduction of "fax" could cast doubt on the meaning of "facsimile" as used in the existing provisions of the Act.

"Email"

19 The word "email" (without a hyphen) should be used in Bills, in preference to the word "electronic mail", to describe the relevant form of communication.

20 If you are inserting a provision including the word "email" into an Act that already uses "electronic mail" to describe a communication method, you should, if possible, bring the existing provisions into line with the new provisions.

Standards Association of Australia—change of name

21 On 1 July 1999, the Standards Association of Australia (trading as Standards Australia) was registered as a company limited by guarantee. At that time, its name was changed to Standards Australia International Limited.

22 You should not use the name "Standards Association of Australia" or "Standards Australia" in Bills. You should use the name "Standards Australia International Limited" in Bills.

23 If you are amending an Act which has a reference to "Standards Association of Australia" or "Standards Australia", you should amend the reference (subject to your instructors' views). I am prepared to approve such amendments as statute law revision amendments.

"Notice published in the Gazette"

24 The expression "notice published in the *Gazette*" should be used (instead of "notice published in writing in the *Gazette*").

"Day"

25 Use "day" instead of "date" whenever "day" can be appropriately used.

"Oral"

26 Use "oral" (and "orally") instead of "verbal" to mean "spoken".

"Money"

27 Use "money" instead of "moneys".

Part 3—Definitions of specific expressions

Definition of "minerals"

28 The word "minerals" is defined in Commonwealth legislation in a variety of ways. Many definitions put an emphasis (perhaps an undue emphasis) on the inclusion of petroleum. The following definition should generally be adopted:

> ***minerals*** means minerals in any form, whether solid, liquid or gaseous and whether organic or inorganic.

29 However, it should not be assumed that this definition will be appropriate in all cases, and the definition should be looked at carefully in each instance to make certain that it gives effect to what is intended by the instructing Department.

Definition of "insolvent under administration"

Definition of "insolvent under administration"

30 The following definition of ***insolvent under administration*** in the *ACIS Administration Act 1999* should generally be adopted:

> ***insolvent under administration*** means a person who:
> (a) under the *Bankruptcy Act 1966* or the law of an external Territory, is a bankrupt in respect of a bankruptcy from which the person has not been discharged; or
> (b) under the law of an external Territory or the law of a foreign country, has the status of an undischarged bankrupt;
>
> and includes:
> (c) a person any of whose property is subject to control under:
> (i) section 50 or Division 2 of Part X of the *Bankruptcy Act 1966*; or
> (ii) a corresponding provision of the law of an external Territory or the law of a foreign country; or
> (d) a person who has, at any time during the preceding 3 years, executed a personal insolvency agreement under:
> (i) Part X of the *Bankruptcy Act 1966*; or
> (ii) the corresponding provisions of the law of an external Territory or the law of a foreign country.

Difficulties with the definition

31 This provision applies an arbitrary 3-year cut-off (see paragraph (d)) to establish when certain forms of administration have ceased. Technically, under this provision a person could be free of the "insolvency under administration" label, and the accompanying disqualifications or incapacities, at a point when an insolvency administration was proceeding.

32 The provision set out above should generally be adopted as the precedent for definitions of "insolvent under administration". The matter mentioned in paragraph 31 should

be mentioned to instructors. If appropriate, you could refer them to the Insolvency and Trustee Service Australia for a more detailed explanation of the issues.

33 If your instructors are unhappy with the risk identified in paragraph 31, you may modify the precedent by replacing paragraph (d) with the following paragraph:

> (d) a person who has executed a personal insolvency agreement under:
>
> (i) Part X of the *Bankruptcy Act 1966*; or
>
> (ii) the corresponding provisions of the law of an external Territory or the law of a foreign country;
>
> where the terms of the agreement have not been fully complied with.

Definitions relating to Indigenous persons

34 The following definitions in the *Aboriginal and Torres Strait Islander Act 2005* should generally be adopted:

> ***Aboriginal person*** means a person of the Aboriginal race of Australia.
>
> ***Torres Strait Islander*** means a descendant of an Indigenous inhabitant of the Torres Strait Islands.

35 The following definition of ***Indigenous person*** should generally be adopted:

> ***Indigenous person*** means a person who is:
>
> (a) a member of the Aboriginal race of Australia; or
>
> (b) a descendant of an Indigenous inhabitant of the Torres Strait Islands.

36 If you wish to use a different definition of any of these terms, you should discuss the proposal with First Parliamentary Counsel.

Definitions relating to same-sex relationships

Background

37 Government policy is that Commonwealth laws should not discriminate against same-sex couples or their children. In 2008 the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008* and the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008* (the ***Same-Sex Acts***) were passed by Parliament. The Same-Sex Acts amended a large number of Commonwealth laws to remove discrimination against same-sex couples and their families. They did this by inserting standard definitions for terms like de facto partner, child, stepchild and parent that cover same-sex couples and their children. For laws that contained terms like grandchild, grandparent, sibling, aunt, uncle, relative or family, a “tracing rule” was also inserted to ensure that these terms do not exclude same-sex families.

38 If you are including new concepts in a Bill that will cover de facto partners or their children, you should generally also include the standard definitions set out in paragraphs 40 to 50 below. If you are including new concepts in a Bill that will cover other family relationships, you should generally include a tracing rule in one of the forms set out in paragraphs 52 to 54 below.

39 In the Same-Sex Acts, a different approach to removing discrimination was used for some laws (for example, the *Migration Act* 1958, the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986*). This was done for policy reasons specific to those laws. If, when drafting a Bill, it becomes apparent that there are policy reasons why the standard definitions or tracing rules are not appropriate, you should discuss the matter with First Parliamentary Counsel.

Definition of "de facto partner"

40 The Same-Sex Acts included a new section 22A in the *Acts Interpretation Act 1901* defining a ***de facto partner***. The definition recognises relationships registered under prescribed State or Territory laws (called ***registered relationships)***, as well as "genuine domestic relationships" (called ***de facto relationships***). The definition indicates that same-sex couples can be de facto partners.

41 The *Acts Interpretation Act 1901* definition does not operate automatically. If your Bill will use the concept of a de facto partner of a person, you should pick up the *Acts Interpretation Act 1901* meaning by including the following definition in your Bill:

> ***de facto partner*** of a person has the meaning given by the *Acts Interpretation Act 1901*.

Definition of "child"

42 If your Bill will use the concept of a child of a person, the following definition should be included:

> ***child***: without limiting who is a child of a person for the purposes of this Act, someone is the ***child*** of a person if he or she is a child of the person within the meaning of the *Family Law Act 1975*.

43 This definition picks up the rules about the parentage of children contained in the *Family Law Act 1975*. In particular, it covers children of same-sex couples by picking up:

(a) children born as a result of an artificial conception procedure (see section 60H of the *Family Law Act 1975*); and

(b) children born under a surrogacy arrangement (see section 60HB of the *Family Law Act 1975*).

44 The definition may need to be adapted if other types of children are to be expressly covered (for example, stepchildren, foster children or wards).

Definition of "parent"

45 If your Bill will use the concept of a parent of a person, as well as the concept of a child of a person, the following definition should be included:

> ***parent***: without limiting who is a parent of a person for the purposes of this Act, someone is the ***parent*** of a person if the person is his or her child because of the definition of ***child*** in [*relevant section*].

46 The definition relies on the standard definition of ***child*** also being included in the Bill. Sometimes, a Bill may use the concept of a parent of a person without also using the concept of a child of a person. In this case, the following definition of parent should be included:

> ***parent***: without limiting who is a parent of anyone for the purposes of this Act, a person is the ***parent*** of another person if the other person is a child of the person within the meaning of the *Family Law Act 1975*.

Definition of "stepchild" and "step-parent"

47 If your Bill will use the concept of a stepchild of a person, the following definition should be included:

> ***stepchild***: without limiting who is a stepchild of a person for the purposes of this Act, someone who is a child of a de facto partner of the person is the ***stepchild*** of the person if he or she would be the person's stepchild except that the person is not legally married to the partner.

48 If your Bill will use the concept of a step-parent of a person, the following definition should be included:

> ***step-parent***: without limiting who is a step-parent of a person for the purposes of this Act, someone who is a de facto partner of a parent of the person is the ***step-parent*** of the person if he or she would be the person's step-parent except that he or she is not legally married to the person's parent.

49 Both of these definitions rely on the concept of de facto partner being defined in the Bill to cover same-sex couples.

50 Note that "step-parent" is hyphenated and "stepchild" is not. This reflects how these terms appear in the Macquarie Dictionary.

Tracing rule for terms that describe other family relationships

51 If your Bill will use concepts to describe other family relationships (for example, grandchild, grandparent, sibling, aunt, uncle, relative or family), you will need to ensure that the concepts cover same-sex couples and their families. This can be done by including a "tracing rule". There is no standard tracing rule but, generally, one of the forms set out below should be followed. The form will need to be adapted depending on the concepts it will apply to and whether the standard definitions of ***de facto partner***, ***child*** and ***parent*** will also be included in the Bill.

52 The following form should be used if only concepts that describe relationships traceable through a parent-child relationship (for example, grandchild, grandparent, sibling, aunt or uncle) will be included in a Bill. For examples of the use of this form, see subsection 29(5) of the *Age Discrimination Act 2004*; subsection 6(3) of the *Broadcasting Services Act 1992*; subsection 23DZZID(3) of the *Health Insurance Act 1973*; subsection 44-11(5) of the *Aged Care Act 1997*; and subsections 10(5) and 17A(9) of the *Superannuation Industry (Supervision) Act 1993*.

> (#) For the purposes of [*this Act*], if one person is the child of another person because of the definition of ***child*** in [*relevant section*], relationships traced to or through that person are to be determined on the basis that the person is the child of the other person.

53 The following form should be used if concepts that describe family relationships more generally (for example, relative or family) are included in a Bill. For examples of the use of this form, see subsection 42F(3) of the *Australian Federal Police Act 1979*; subsection 4(2)

of the *Safety, Rehabilitation and Compensation Act 1988*; and section 9AA of the *Corporations Act 2001*.

(#) For the purposes of [*this Act*], relationships (including the relationship of being family or being relatives) are taken to include (without limitation):
   (a) relationships between de facto partners [*(within the meaning of the Acts Interpretation Act 1901)*];
   (b) relationships of child and parent that arise if someone is the child of a person because of the definition of ***child*** in [*relevant section*];
   (c) relationships traced through relationships mentioned in paragraphs (a) and (b).

54 The following form should be used if a concept like "member of a family" is included in a Bill. For examples of the use of this form, see subsection 5(6) of the *Bankruptcy Act 1966*; subsection 16A(4) of the *Crimes Act 1914*; section 4AAA of the *Customs Act 1901*; subsection 6(8) of the *Navigation Act 1912*; and subsection 6(10) of the *Privacy Act 1988*.

(#) For the purposes of [*this Act*], the members of a family, in relation to any person, are taken to include the following (without limitation):
   (a) a de facto partner of the person [*(within the meaning of the Acts Interpretation Act 1901)*];
   (b) someone who is the child of the person, or of whom the person is the child, because of the definition of ***child*** in [*relevant section*];
   (c) anyone else who would be a member of the person's family if someone mentioned in paragraph (a) or (b) is taken to be a member of the person's family.

Part 4—Scoping provisions

Background

55 A common drafting technique is to include a provision at the start of a Part, Division, Subdivision or section worded along the lines "This Part/Division/Subdivision/section applies to/if....".

56 Some of the reasons for this technique are:

(a) to assist a user of the legislation to work out if a case the user is interested in is covered by the further provisions and therefore whether the user needs to read the further provisions;

(b) to simplify the drafting of the later provisions through the use of a narrative drafting style;

(c) to break up lengthy sentences.

57 Some drafters have been using the expression "only applies" or "applies only" in scoping provisions.

Approach

58 If you are drafting a scoping provision worded along the lines "This Part/Division/Subdivision/section applies to/if....", you should use the expression "applies".

You should not use the expression “only applies” or “applies only” except with the approval of First Parliamentary Counsel.

59 There is an implicit “only” in the “applies” wording as the scoping provision is intended as a statement of the entire scope of the Part/Division/Subdivision/section and is not intended merely as an expression of an instance of the operation of the Part/Division/Subdivision/section.

60 The adoption of a consistent approach to this issue will avoid any undesirable arguments based on some scoping provisions using “only” and others not.

Part 5—Government terminology

Public employment—terminology and other matters

61 This Part deals with terminology relating to public service. The terminology is derived from the *Public Service Act 1999* (the ***Public Service Act***) and the *Public Employment (Consequential and Transitional) Act 1999* (the ***Consequentials Act***).

62 The terminology should be used when drafters draft provisions dealing with public employment.

Terminology

63 There are 3 types of “Agency” covered by the Public Service Act:

(a) Departments (approximately the same as departments of State under section 64 of the Constitution);

(b) Statutory Agencies (like OPC);

(c) Executive Agencies.

64 Apart from the heads of Departments and other agencies, all members of the Australian Public Service are called “employees” (the expression “officer” is not used). The Senior Executive Service consists of “SES employees”.

65 APS employees do not “hold” or “occupy” offices. Instead, they occupy “positions”. Note, however, that Secretaries, and Heads of the new “Executive Agencies”, are appointed to “offices”.

66 The title of Secretary of a Department is “Secretary of [*specified Department*]”.

67 Parliamentary Departments are covered by their own legislation, the *Parliamentary Service Act 1999*.

General definitions in section 13 of the Consequentials Act

68 Section 13 of the Consequentials Act should be noted. Among other things, section 13 provides that specified types of references to “office”, “officer” etc are to include references to APS employees etc.

Acts Interpretation Act

69 The *Acts Interpretation Act 1901* has been amended as follows:

(a) Section 17AA includes definitions of ***APS employee***, ***SES employee*** and ***acting SES employee***.

(b) Sections 19C, 21, 25B, 33 and 33A have been amended by the insertion of definitions extending “officer” to cover APS employees and extending “office” to cover a position occupied by an APS employee.

How to refer to Ministers and Departments

Background

70 References to Ministers or Departments in Bills generally fall into one of 3 categories:

(a) **category 1**: when you want to refer to the Minister who administers (or will administer) the provision containing the reference, or to the Department administered by that Minister;

(b) **category 2**: when you want to refer to some other Minister or Department, and it is not a category 3 situation;

(c) **category 3**: when you want to refer to a Minister or Department who or that, traditionally, has policy responsibility for a particular kind of matter.

71 Referring to Ministers or Departments by name (eg the “Minister for Finance and Administration” or the “Department of Immigration and Multicultural Affairs”) can cause considerable administrative difficulties, and reader confusion, each time Ministerial arrangements are changed, whether because of a Ministerial reorganisation or because of a one-off decision about the responsibilities of a particular Minister. Sections 19B and 19BA of the *Acts Interpretation Act 1901* provide some help in this situation, but they do not cover every problem situation and, even in situations that they do cover, their “notional amendment” effect may well be unknown to many users of the legislation.

72 Concerns about this matter have led to the inclusion of a paragraph (paragraph 6.36) in the Legislation Handbook, on which this Part of the Drafting Direction is based.

Category 1 references—refer to “the Minister” or “the Department” and rely on section 19A of the Acts Interpretation Act

73 If you want to refer to the Minister who administers (or will administer) the provision containing the reference, or to the Department administered by that Minister, you should simply refer to “the Minister”, or to “the Department”, and rely on section 19A of the *Acts Interpretation Act 1901* to give meaning to the reference.

74 This rule applies even for Ministers (eg the Treasurer or the Attorney-General) or Departments (eg the Treasury), that have longstanding traditional names that are unlikely to be changed. It would however be permissible to refer to a named Minister in legislation administered by that Minister if the reference would be within the special cases covered by category 3.

Category 2 references—refer to other Ministers and Departments in a way that avoids naming them

75 There will also be situations in which you need to refer to a Minister or Department:

(a) who or that does not (or will not) administer the provision containing the reference; and

(b) in a situation that is outside the limited special cases covered by category 3.

76 In these situations, you should try to avoid referring to the Minister or Department by name.

77 An approach that will often provide a convenient solution is to identify a key piece of legislation administered by that Minister, and to refer to the Minister who administers that legislation (or to the Department administered by the Minister who administers that legislation). If you have to make several references to the Minister or Department, you could do this by giving the Minister or Department a generic title (eg "the Health Minister"), and defining that generic title by reference to the administration of the identified legislation.

78 If the above approach is not a viable option in a particular situation, you should explore whether there might be other ways of avoiding referring to the Minister or Department by name. Referring to the Minister or Department by name should be regarded as an option of last resort.

Category 3 references—limited situations in which it is appropriate to refer to a Minister by name

79 In a few limited situations, it is appropriate to refer to a particular Minister by name because that Minister (regardless of what legislation he or she administers) has traditionally had a role in relation to particular kinds of matters.

80 The only situations currently in this category are:

(a) the Prime Minister's role as the head of Government; and

(b) the Attorney-General's role in relation to legal proceedings.

81 The Legislation Handbook also mentions the Treasurer's role in relation to borrowings as being in this category. However, while the Treasurer has, for a long time, had a role in relation to borrowings, it is a role that could conceivably be transferred to another Minister (eg the Minister for Finance and Administration). If you are instructed to include a specific reference to the Treasurer in a provision about borrowing, you should consult the Parliamentary and Government Branch of the Department of the Prime Minister and Cabinet about whether a specific reference is appropriate, or whether the reference should be expressed in some other way that will still work, even if responsibility for borrowings is transferred to another Minister.

82 If you are instructed to refer to some other Minister, or to a Department, by name, and your instructors assert that it is appropriate to do so because that Minister or Department has a traditional role in relation to a particular kind of matter, you should consult the

Parliamentary and Government Branch of the Department of the Prime Minister and Cabinet about the proposed reference.

Part 6—Financial sector terminology

References to banks, building societies and credit unions

83 This Part deals with financial sector terminology.

84 Banks, building societies and credit unions are regulated by the Commonwealth under the *Banking Act 1959* (the ***Banking Act***) under an umbrella concept of ***ADI*** (short for authorised deposit-taking institution).

85 The regime in the Banking Act covers the whole of Australia (though there is an as yet unused capacity to cease its extension to an external Territory by notice published under section 6A of the Act). The Act does not cover the operations of institutions outside Australia, and so the regime does not affect how to refer to institutions as so operating.

86 There are two main implications for drafters.

Rely on the general concept of an ADI

87 If you want to refer in general terms to an Australian institution within the range of institutions traditionally known as banks, building societies and credit unions, you should refer to an ADI (as defined in the Banking Act). For an example of a reference like this, see the definition of ***ADI*** in section 7 of the *Defence Reserve Service (Protection) Act 2001*.

Distinguishing between different kinds of ADIs

88 Generally, Treasury consider that it should not be necessary, and indeed that it is not desirable, to distinguish between different kinds of ADI. However, if there is a need to do so, one way of making a distinction is on the basis of section 66 of the Banking Act, which controls the use of certain expressions. For example:

(a) a reference to an ADI that, under that section, is allowed to assume or use the word “bank”, “banker” or “banking” should equate (approximately) to the traditional concept of a “bank”. For an example of a reference like this, see the definition of ***Australian bank*** in section 9 of the *Corporations Act 2001*;

(b) a reference to an ADI that, under that section, is allowed to assume or use the expression “building society”, “credit union” or “credit society” should equate (approximately) to the traditional concept of a “building society” or “credit union”. For an example of a reference like this, see paragraph 38(1)(b) of Schedule 4 to the *Corporations Act 2001*.

89 In the past, the expressions “bank”, “building society” and “credit union” were sometimes used undefined, presumably on the assumption that the expressions have well understood meanings. It would be safer in future to ensure that there is a definition to cover institutions so operating.

Friendly societies

90 Bodies that conduct life insurance (or similar) business through benefit funds are regulated under the *Life Insurance Act 1995* (the ***Life Insurance Act***) as a class of life companies known as “friendly societies”.

91 There is currently no other legislation (Commonwealth, State or Territory) purporting to regulate other kinds of bodies as “friendly societies”. Other bodies that were previously known as friendly societies are now either incorporated associations or ordinary Corporations Act companies.

92 It is possible that there may be a need to refer to friendly societies (the *Financial Sector Reform (Amendments and Transitional Provision) Act (No. 1) 1999,* for example, provides for friendly societies to retain their favourable tax treatment). If there is such a need, it will be possible to refer to a company that is a “friendly society” for the purposes of the Life Insurance Act. For an example of a reference like this, see paragraph 38(1)(c) of Schedule 4 to the *Corporations Act 2001*.

Kinds of institutions regulated by the States and Territories

93 Some institutions, such as cooperative societies (including cooperative housing societies), incorporated associations, or other odd kinds of institutions, continue to be established, referred to or regulated by the States and Territories.

References to cheques and payment orders

94 Under the *Cheques Act 1986*, cheques can be drawn on a wide range of financial institutions—not just on banks as was once the case. In particular, cheques can be drawn on anything that is an ADI under the Banking Act. The concept of an ADI covers bodies that have traditionally been known as banks, building societies and credit unions.

95 The main implications for drafters wanting to refer to cheques are as follows:

(a) if you simply want to refer to a cheque then, subject to the next 2 points, you may simply use that expression undefined;

(b) if you want to refer to a cheque, and go on to refer to the body on which the cheque is drawn, you should refer to the financial institution (rather than the bank) on which the cheque is drawn;

(c) if you want to refer to a bank cheque, you should now refer to a cheque that a financial institution draws on itself. The expression “bank cheque” is outdated, having regard to the range of financial institutions that are now permitted to draw cheques on themselves.

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