

Legislative drafting in Australia, New Zealand and Ontario: Notes on an informal survey

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Introduction²

In 2002, I was seconded from my home office in the Australian Capital Territory to the Ontario Office of Legislative Counsel in Toronto. I had a great time there with my family, met lots of wonderful people (some of them legislative counsel), got wet at Niagara Falls just down the road, enjoyed fine music and opera courtesy of Tafelmusik and Opera Atelier and winced watching the Maple Leafs slug it out in the play-offs on Hockey Night in Canada. (I do not know which was more exciting: the fighting on the ice or Dapper Don Cherry's surreal commentaries in "coach's corner".) But life is not all about fun (or hockey fights). One of my reasons for going was to get a broader sense of the role of the legislative counsel and the legislative drafting office.

To give myself a baseline from which to make comparisons, before leaving I conducted an informal survey of nine Australian legislative drafting offices, the New Zealand Office of Parliamentary Counsel and the Ontario Office of Legislative Counsel, covering their institutional roles, management structures, arrangements for legislative publishing and drafting styles.

The first thing the survey shows is that within Australia, and between Australia, NZ and Ontario, there is only a small range of variation in institutional, management and publication arrangements, and professional standards and practices, for the drafting and publication of legislation. A survey of Canadian legislative drafting offices by the Canadian Department of Justice indicates that these similarities of operation extend across Canada to a large extent (though things are significantly different in Quebec).³ This is anything but a revolutionary finding; however, perhaps it is worth emphasising just how much those legislative drafting offices have in common due to their shared heritage of the English common law and the Westminster system of government.

These survey results were strongly corroborated by my personal experience working in Don Revell's office in Toronto. Of course, when I arrived I was struck by many stylistic and environmental differences—ten-yearly revisions of the statute book (probably now at an end in Ontario due to developments in electronic publication), different drafting forms and style, a much larger office and government organisation (the ACT PCO drafts laws for 300,000 people; OLC drafts for 11 million). The major systematic difference is the requirement for legislation to be

¹ Australian Capital Territory Parliamentary Counsel's Office.

² The survey and these notes were first presented at the conference of the Canadian Institute for the Administration of Justice in Ottawa in September 2002. For presentation at the conference of the Commonwealth Association of Legislative Counsel in May 2003, the survey was updated in March/April 2003 and these notes were significantly revised. The survey and the notes are further updated for publication in this issue of *The Loophole*.

Abbreviations in these notes: ACT=Australian Capital Territory; NT=Northern Territory; NSW=New South Wales; NZ=New Zealand; OLC = Ontario Legislative Counsel Office; SA=South Australia; WA=Western Australia.

³ International Co-operation Group, Department of Justice, Canada. "National Survey of Legislative Drafting Services 2002". Ottawa, 2002; compiled by Christine Landry.

translated into French; this affects not only office process, but reflects back on drafting practice. And there are obvious substantial differences between Canadian and Australian law, with a different version of the common law (not to mention the influence of French civil law), a different federal/provincial distribution of powers, and a Charter of Rights and Freedoms incorporated in the Canadian constitution, the like of which human rights lawyers in Australia can only dream of (though in the Australian Capital Territory, the first move has been taken to realise their dream, in the form of the *Human Rights Act 2004* (ACT)).

But I felt from my first lawyers' meeting in Ontario that, despite such differences, I was on the same wavelength as my colleagues. All the issues discussed were issues where I came from, and I was able to play a part in the sometimes vigorous debates that ensued, even if my starting point in terms of legislative drafting practice might be somewhat different. The ACT Public Access to Laws project, which has, since September 2001, provided free internet access to official versions of the law, was very similar to the slightly older Ontario e-laws system. (I might add that e-laws was partly inspired by good old Aussie know-how—the Tasmanian EnAct system). As the year progressed, it became still clearer that my experience and skills as a legislative counsel trained and working in Australia—such as they are—were sufficient for me to make a contribution to the bread-and-butter legislative drafting work for the province of Ontario, half way across the world.

None of this was startling. No survey was necessary to find out that most legislative drafting offices in Australia and New Zealand share similar basic functions, operations and legislative drafting practices. But where the survey is useful is to demonstrate the spectrum of difference—the possible alternatives—within which the same functions are carried out, and the current range of opinions and practice on some aspects of legislative drafting style. I now turn to the survey and draw attention to some of the results.

Commentary on the legislative drafting survey⁴

3 Drafting management

3.1 Drafting strength

Effective office legislative drafting strength ranges between 6+ (Northern Territory, with the lowest population of any Territory or State) and 7 for Tasmania (also with a low population) at one end, and 26 (New Zealand) and 27 (Commonwealth Office of Parliamentary Counsel).

There is no simple correlation between legislative counsel and the population of the jurisdictions for which legislation is drafted. In Ontario's case, for example, there are just 14 legislative counsel for a population of 11 million or so (only the Commonwealth of Australia has a higher population among the jurisdictions surveyed). Compare the ACT situation, with 12+ legislative counsel for a population of 300,000. One possible explanation for this particular disparity is that in Ontario, all instructors are legal counsel themselves. This does not guarantee the quality of instructions, but it provides for a significant degree of sharing of the workload, in terms of pre-processing of instructions and continuing expert legal checks.

⁴ The numbering is keyed to that used in the survey. I do not comment in this paper on every section of the survey, so these numbers are discontinuous.

By contrast, in the ACT, few instructors outside the Department of Justice and Community Safety are legally qualified, and all instructors are policy officers rather than legal counsel in terms of function. In Ontario, too, unlike the ACT (or any Australasian jurisdiction, to my knowledge) there is an established practice of accepting instructions for regulations in the form of preliminary drafts from Government Ministries. This (again) is a mixed blessing, but, if these preliminary drafts are prepared by experienced legal counsel, the legislative drafting process can be significantly expedited.

The Canadian survey noted above⁵ found that throughout Canada there is anything but a fixed relationship between population and legislative drafting strength. Although I have not done the sums, generally speaking Australian legislative counsel seem to be proportionately thicker on the ground, except at the federal level.

3.2 Settling

In 7 out of 11 of the surveyed offices, drafts are routinely read by another legislative counsel (either a senior or a peer). This works not only as a training device, but as a quality control mechanism. In particular, the internal review provides a mechanism for ensuring consistency in office practice. This is still more important in those offices undertaking significant legislative drafting reforms.

4 Publications

4.1 Electronic access to law

All jurisdictions surveyed have up-to-date consolidations available to the public free on the internet. Access to source law is patchier, though in most jurisdictions this is available as well, sometimes through parliamentary websites which post final-reading versions of Bills (e.g. Ontario). The AUSTLII website given is a secondary source (they post law available from other sites), but useful for its search engine and cross-jurisdiction searches.

4.2 Official status of electronic law

The ACT and the Australian Commonwealth (for legislative instruments only) are the only surveyed jurisdictions to have given official status to an electronic form of the law (though the Office of Queensland Parliamentary Counsel has done so *de facto* in the Evidence Act amendment noted in the survey results). Proposals for authorised electronic laws in Ontario, New Zealand and the Australian Commonwealth (for Acts) have been under consideration since the first edition of this survey (2002), but for various reasons have either not yet proceeded or been finalised.

5 Drafting style

Having regard to some of the comments of the respondents and my general impression from discussion with Australian, NZ and Ontario legislative counsel, it is tempting to make the assertion

⁵ At pp 9-18.

that there is a consensus of opinion among legislative counsel that, from a stylistic point of view, Australasian and Ontario legislative drafting is—

- better than United Kingdom legislative drafting;
- better than the normal run of United States legislative drafting; and
- light years ahead of drafting in private legal practice.

There is a perception that, as a general rule, UK and US legislative drafting, and private legal drafting, are still under the influence of the traditional *black-letter* common law school of legal writing, with an attendant obscurity of language and structure. All the respondents, by contrast, agree on the need for clarity and the desirability for the use of ordinary language in legislative drafting. On the other hand, there is not the same degree of consensus in attitudes to using plain language.

It can be seen from survey item 5.6 that almost all legislative drafting offices have adopted an express *plain language* (or *plain English*) policy, although some express scepticism about the *plain language* label, questioning whether the object of improved comprehension is actually achieved by the means proposed.

Moreover, in some cases, even those jurisdictions that have gone the furthest in the adoption of plain language style disagree with the advocates of the style. For example, no legislative drafting office has adopted as standard practice the highlighting of defined terms in the text (a practice recommended, for example, by Michèle Asprey⁶). Nor has any legislative drafting office countenanced a systematic breach of the single *sentence/single provision* rule. (This is despite Asprey's judgment, representative of that of other writers on plain legal language, that this is "far too restrictive to follow as a general rule".⁷)

It would take much more than this survey, or a superficial examination of the legislative examples offered, to draw conclusions about the actual success of the adoption of a *plain language* approach in making legislation more comprehensible.⁸ My questions had a rather more limited aim. The most concrete outcome of the movement towards plain language in legal drafting has been the adoption of a certain new *style* of drafting, the most visible signs of which are the adoption of innovative devices recommended by plain language reformers. The questions in this section of the survey were framed to gain some more information about the acceptance and development of this *plain language style* in Australia, marked most visibly by the indicators surveyed by survey item

⁶ Michèle Asprey, *Plain Language for Lawyers*, 3rd ed, 2003, pp 133-135. She acknowledges the distracting nature of such devices, and discusses an alternative (marking the first occurrence of the defined term in some way (e.g. italics) and listing defined terms used on any page in the margin), which has been adopted or experimented with in some legislative drafting offices (Tas, WA, Vic).

⁷ *Ibid*, at p. 108.

⁸ In other words, the question of whether plain language style = plain language is not addressed here. No claim is made or implied by the survey or this paper for the success (or otherwise) of *plain language* devices in legislation. For convenience, *plain language style* is referred to in this paper without quotation marks around the phrase (or around *plain language*). But the reader may wish to mentally (or actually) annotate the term or the phrase to indicate that these claims are held in suspension.

5.7 (though as you can see from some of the responses, e.g. from Victoria, not all of these are accepted as being genuinely in the spirit of plain language).

In terms of legislative drafting style, the responses may be located on a spectrum between what might be called a *traditional* drafting style and the *plain language* style.

The traditional style is essentially that advocated by Thornton and Driedger, emphasising consistency and economy rather than readability for its own sake.⁹ Plain language style is aimed at making changes to legislative language with the aim of communicating the law more effectively, and to a broader public, than before.¹⁰ Ruth Sullivan¹¹ argues that if this objective is taken seriously, it involves a reconsideration of traditional legislative drafting principles. For example, traditional legislative drafting eschews redundancy, while redundancy, in the form of repetition (for example, restatement of the main ideas of legislation in summaries, readers' guides, or examples) is one of the elements of effective communication promoted by plain language style advocates.

So how do the various legislative drafting offices line up?

5.1 Traditional style or plain language style?

Traditional style: WA, NT, SA and Tasmania—The approach in the WA Parliamentary Counsel Office is to prescribe the law rather than to include what are considered to be extraneous devices for explaining the law. Similarly, the NT, SA and Tasmania legislative drafting offices have not taken up many of the aspects of plain language style.

In flux: NSW, NZ, Victoria—The New Zealand Parliamentary Counsel's Office has adopted some plain language style approaches (e.g. greater use of examples), and is currently considering suggestions for further change by one of the principal advocates of plain language style (Michèle Asprey) (see survey item 5.8). The NSW Parliamentary Counsel Office (for example, see the comments at survey item 5.8) appears to be backing off from the more extroverted features of plain language style a little, after an initial period of enthusiastic experiment.¹² Victoria, where

⁹ Driedger, Elmer A. *The Composition of Legislation*. 2nd ed. 1976. Thornton, G.C. *Legislative Drafting*. 4th ed. 1996.

¹⁰ For a pithy summary of what is generally understood by 'plain language drafting', see the comments of Ruth Sullivan quoted on the Australian Commonwealth Office of Parliamentary Counsel website as the essence of that office's plain language policy: <http://www.opc.gov.au/plain/index.htm> (as accessed 11/10/04). Professor Sullivan expands on these observations in comparing traditional and plain language legislative drafting styles in 'Some Implications of Plain Language Drafting,' *Statute Law Review* 22.3 (2001) pp 145-180. For a reflection on some inherent limits to plain language legislative drafting, see Horn, 'A Dainty Dish to Set before the King' at <http://www.nald.ca/PROVINCE/ont/PLAIN/dish/dainty.PDF> (presented at the conference of PLAIN International, Toronto, 2002; as accessed 05/11/04).

¹¹ *Ibid.* See note 10.

¹² The NSW PCO comments at survey item 5.8 that its focus has become more on the publication of the law in force and its accessibility on-line than on the hard copy versions. This indicates a change of emphasis in the age of electronic documents that I consider important. Increasingly, access to the law is by means of electronic consolidations accessed through the internet. Fewer users access the law in print versions, particularly printed source law (Acts as made or

plain language style was mandated in the 1980s, is less enthusiastic about the style than its proponents mentioned below, though it seems that there is a degree of variation within the Victorian office. It is interesting, too, that the Victorian respondent noted in April 2003 that “recently use of ‘shall’ for creating an obligation is re-emerging”.

Plain language style: ACT, Commonwealth Office of Parliamentary Counsel, Commonwealth Office of Legislative Drafting, Queensland—All of these legislative drafting offices have enthusiastically implemented plain language style and continue to pursue it more vigorously than other offices. Of course, practice varies from office to office (though the ACT, Commonwealth Office of Legislative Drafting¹³ and Queensland have adopted a somewhat similar approach due to the leadership at different times of the same head of office, John Leahy). Elements of plain language style are pervasive in Australasia (not just in these offices). For example, “shall” is rarely, if ever, used, and “must” or some other alternative is used instead. The Australian Commonwealth Office of Parliamentary Counsel’s *Plain Language Guide* is the most detailed practical legislative counsel manual currently available.¹⁴ The federal legislative drafting office in Canada seems to be looking closely at contemporary practice in its Australian counterpart.¹⁵

Ontario Legislative Counsel Office—Here there is a certain difference due to historical and legal context. The Ontario Legislative Counsel’s Office reference to the influence of the civil law tradition of drafting indicates a level of comfort with general statements that are not circumscribed by the prevarications of the English common law school of legislative drafting. For example, I believe that it underlies a tendency I observed in my time with the Ontario Legislative Counsel office to draft with distinctly less reliance on definitions and cross-references than in either the traditional or plain language styles as practised in Australia, using words of ordinary meaning (as the Ontario respondent notes elsewhere, no *law Latin* and no *law French*, etc.). However, I also observed a distinct lack of enthusiasm for the adoption of many of the plain language style markers mentioned in survey item 5.7 (as the survey tends to confirm).

amending Acts). Legislative counsel will increasingly have to come to terms with the challenges of electronic access, e.g. access to fragments of statutes, retrieved by search engines, rather than to statutes as complete printed documents. For fascinating discussions of the legislative drafting challenges presented by these and related questions, see the papers presented by David Howes and Ruth Sullivan to the national conference of the Canadian Institute for the Administration of Justice, 12-13 September 2002, Ottawa.

¹³ The Commonwealth Office of Legislative Drafting is now called the Office of Legislative Drafting and Publication. It is referred to in this article by its name at the time of the survey.

¹⁴ Available via: <http://www.opc.gov.au/about/docs/PEM.PDF> (accessed 11/10/04).

¹⁵ Unpublished paper by Philip Hallé, PLAIN conference, Toronto 2002.

5.2 Markers of plain language

Drafting in most jurisdictions¹⁶ sanctions the use of many of these devices (examples, readers' guides etc., explanatory notes, in-text definitions,¹⁷ highlighting of defined terms, general preference for rewriting,¹⁸ short provisions and short sentences. But clearly in some jurisdictions use of these devices is encouraged more than in others.

Perhaps more to the point, the survey indicates that most jurisdictions will at least contemplate the introduction of such legislative drafting methods if particular legislative counsel wish to employ them, or if they become broadly enough accepted. The survey supports my personal observation that we are still in an age of transition and experimentation, although it has slowed in some places (e.g. NSW). Eventually, I am sure some experiments will fall by the wayside while there will be a convergence towards others as they are tested and found to be effective.

If plain language style is to improve the quality of legislative drafting, legislative counsel and, more particularly, legislative drafting offices should always keep under review the issue of whether drafting practices promoted as such assist users to access, read, understand and use legislation, while at the same time stating the law with economy and sufficient certainty.

¹⁶ I.e. with the exception of those that continue with the "traditional" approach.

¹⁷ The question about in-text definitions could have been better phrased. I intended to refer to new styles of definition which combine a definition of a term with its first use: we call them tagged term definitions in the ACT, and they can be of the form 'In a proceeding against a person (the retailer), it is a defence if the retailer establishes that the goods were bought in good faith.' or 'A definition is a provision (however expressed) of an Act that gives a meaning to a word or expression'. These may be drafted to have varying ranges of application, and are supported by 'signpost' definitions in the main list of definitions if the tagged term is used in more than one section.

¹⁸ In Ontario, an additional reason for doing this is for ease of translation.

Survey results—Introduction

This survey was originally conducted in November-December 2001. The results were first presented at the conference of the Canadian Institute for the Administration of Justice Drafting Conference held on 12-13 September 2002 in Ottawa, Canada. A second, updated, edition of the survey was presented at the Australian Commonwealth Association of Legislative Counsel meeting, 15-17 April 2003, Melbourne. For publication of this, the third edition of the survey, in *The Loophole*, the survey has been further updated.

I asked one legislative counsel from each of the surveyed offices to respond to the survey. The respondents have all had considerable experience in the legislative drafting office for which they responded. In some instances, the respondents are the heads of the office; in most others, the responses have been cleared by the head.

The survey results indicate the substance, but not always the exact form, of the responses as provided to me. I have edited them lightly to abbreviate or standardise the responses. I have generally reserved my blue pencil for the more straightforward factual responses, and if possible I have avoided changing the more technical or discursive responses, or any which offer a distinctive opinion or statement of general practice. In those parts of section 5 (Drafting style) which called for more subjective responses, I have selectively indicated some direct quotations from those surveyed. For stylistic effect, this is intended to give the flavour of the response.

Reported expressions of opinion and assertions of fact reflect the views and beliefs of the respondent concerned, and do not necessarily reflect an official office position. I take full responsibility, of course, for any misrepresentations of respondents' views, or any errors of reporting. Finally, I wish to express my continuing gratitude to the participants for their willing assistance both initially and in the preparation of subsequent editions of the survey.¹⁹

Key to tables

<i>ACT</i>	<i>Australian Capital Territory Parliamentary Counsel's Office</i>
<i>Asst PC</i>	<i>Assistant Parliamentary Counsel</i>
<i>Cwlth OLD</i>	<i>Commonwealth Office of Legislative Drafting²⁰ (drafts Cwlth legislative instruments)</i>
<i>Cwlth OPC</i>	<i>Commonwealth Office of Parliamentary Counsel (drafts Cwlth Bills)</i>
<i>LSA</i>	<i>Legislative Standards Act 1992 (Queensland)</i>
<i>NSW</i>	<i>New South Wales Parliamentary Counsel's Office</i>
<i>NT</i>	<i>Northern Territory Office of the Parliamentary Counsel</i>
<i>Qld/OQPC</i>	<i>Office of Queensland Parliamentary Counsel</i>
<i>SA</i>	<i>South Australia Office of Parliamentary Counsel</i>
<i>Tas</i>	<i>Tasmania Office of Parliamentary Counsel</i>
<i>Vic</i>	<i>Victoria Office of Chief Parliamentary Counsel</i>
<i>WA</i>	<i>Western Australia Parliamentary Counsel's Office</i>
<i>NZ</i>	<i>New Zealand Parliamentary Counsel Office</i>
<i>Ontario/OLC</i>	<i>Ontario Office of Legislative Counsel</i>

¹⁹ The responses for Cwlth OLD, Qld and Tas reflect the situation in these offices in April 2003. All other responses have been updated for this survey in October-November 2004.

²⁰ Now called the Office of Legislative Drafting and Publication.

1 Vertical relationships

1.1 In which department is the legislative drafting office located? Or does it have an independent statutory status? (Give brief details)	
ACT	Department of Justice and Community Safety.
Cwlth OLD	Attorney-General's Department.
Cwlth OPC	Independent statutory office within Attorney-General's portfolio <i>Parliamentary Counsel Act 1970.</i>
NSW	PCO is a separate public service department.
NT	Department of the Chief Minister, but the OPC effectively operates as an independent office. Part of the Department for administrative purposes only (e.g. accounts, human resources).
Qld	Independent statutory office within Premier's portfolio, with administrative links to Department of Premier and Cabinet established under the <i>Legislative Standards Act 1992</i> , s. 5.
SA	Attorney-General's Department.
Tas	Department of Premier and Cabinet.
Vic	Independent office within Premier's portfolio, with administrative links to Department of Premier and Cabinet.
WA	Department of Justice.
NZ	Independent statutory office, established as Office of Parliament under the <i>Statutes Drafting and Compilation Act 1920</i> . Under control of Attorney-General.
Ontario	Ministry of the Attorney General.

1.2 Do you draft Bills or parliamentary amendments for private members (or senators etc)? Give brief details of any legislative drafting arrangements (e.g. has the government given a general undertaking, or is authority to draft given only on a case-by-case basis?)	
ACT	Yes for both. Successive Chief Ministers have given general authority. No specific authority needed. PCO strives to meet legislative drafting requests if possible, usually with success. Ultimately, government work takes priority.
Cwlth OLD	Drafts subordinate legislation only.
Cwlth OPC	Nothing in <i>Parliamentary Counsel Act 1970</i> to prevent it. But government work takes priority. Drafting on case-by-case basis authorised by government.
NSW	Yes for both. General undertaking. But maximum limit set on core drafting hours for each private member/party/group; also legislative drafting must not interfere with government program. See “Handbook for the Drafting of Non-government Legislation”.
NT	Yes for both. General undertaking subject to government work taking priority.
Qld	Yes for both. OQPS has the statutory function of legislative drafting for private members on request (LSA, s. 6). No government authority required.
SA	Yes for both. No government authority required.
Tas	Bills for private members on case-by-case basis authorised by Premier. General authority given for Upper House private members’ amendments.
Vic	Yes for Bills, with Premier’s specific approval (though requests for approval are rare). Yes for amendments, no specific authority is necessary.
WA	No. But occasional specific authority for amendments.
NZ	<p>Yes for both. Members’ Bills and amendments drafted if directed by Attorney-General in cases where it is likely the Bill will get majority support in the House. Advise on and draft local Bills (for local authorities—geographically confined). Advise on and draft private Bills (for individuals, trusts, corporations for private benefit).</p> <p>Generally, members draft their own Bills (often with assistance of legislative counsel in the Office of the Clerk of the House of Reps); Parliamentary Counsel’s Office usually drafts local and private Bills. PCO generally drafts amendments to all categories of non-government Bills. (See Mark Gobbi “Neglected Orphans or Trojan Horses?” Paper presented to Drafting Forum, Melbourne, 1-3 August 2001.)</p>
Ontario	Drafting for private members [including private Bills] is a separate OLC function as law clerk of the Legislative Assembly.

1.3 Is primary or subordinate legislation you draft subject to routine scrutiny by a parliamentary committee for encroachment on civil liberties, review of administrative decisions, etc? Are there any statutory constraints of this nature?²¹	
ACT	<p>Yes for Bills, subordinate laws and subordinate instruments designated as disallowable. The Legislative Assembly Standing Committee on Legal Affairs performs the duties of a scrutiny of Bills and subordinate legislation committee for both. The Assembly decides the committee's criteria. Regulations are disallowable, as are other disallowable instruments (e.g. fee determinations) (<i>Legislation Act 2001</i>, ch. 7).</p> <p>For all government Bills, a statement by the Attorney-General about their consistency with human rights must be presented to the Assembly, under the <i>Human Rights Act 2004</i>, s. 37. The statement is prepared in the human rights office of the Department of Justice and Community Safety.</p> <p>An Assembly standing committee (in practice, the standing committee mentioned above) must report to the Assembly about human rights issues raised by all Bills (including private members' Bills) presented to the Assembly, under the <i>Human Rights Act 2003</i>, s. 38.</p>
Cwlth OLD	Yes for legislative instruments (Senate Standing Committee on Regulations and Ordinances). Criteria decided by Senate. Legislative instruments are disallowable under <i>Legislative Instruments Act 2003</i> , Pt 5 (effective 1 January 2005).
Cwlth OPC	Yes for Bills (Senate Standing Committee for the Scrutiny of Bills). Criteria decided by Senate.
NSW	Yes. Bills and subordinate legislation (Legislation Review Committee under <i>Legislation Review Act 1989</i>) [Statutory rules disallowable— <i>Interpretation Act 1987</i> , s. 41].
NT	No for Bills. Yes for subordinate legislation. The Subordinate Legislation and Publications Committee of the Legislative Assembly scrutinises all subordinate legislation, but has a very low profile. Regulations, rules and by-laws are subject to disallowance under the <i>Interpretation Act</i> , s. 63.
Qld	Yes for Bills and subordinate legislation. Scrutiny of Legislation Committee under <i>Parliamentary Committees Act 1995</i> – “fundamental legislative principles” under LSA, s. 4. LSA also provides a function of OQPC to advise about application of principles, and requires that the explanatory note briefly comment on application of principles (also provides for issue of guidelines on application to drafting of “exempt instruments” (subordinate instruments other than subordinate laws). [Subordinate legislation disallowable— <i>Statutory Instruments Act</i> , s. 50.]
SA	No for Bills. Yes for regulations – Legislation Review Committee, under <i>Subordinate Legislation Act 1978</i> . Criteria decided by Committee. [Subordinate laws disallowable under <i>Subordinate Legislation Act 1989</i> , s. 6.]
Tas	No for Bills. Yes for only some subordinate legislation. Regulations disallowable by either house under <i>Acts Interpretation Act 1931</i> , s. 47. [<i>Subordinate Legislation Committee Act 1969</i> , s. 3 establishes joint Standing Committee on Subordinate Legislation. Section 8 sets out guidelines for committee to report to Parliament on subordinate legislation.]

²¹ Some details of parliamentary powers to disallow subordinate legislation have been added by the author.

<p>1.3 Is primary or subordinate legislation you draft subject to routine scrutiny by a parliamentary committee for encroachment on civil liberties, review of administrative decisions, etc? Are there any statutory constraints of this nature?²¹</p>	
Vic	<p>Yes for Bills and regulations. Joint Scrutiny of Acts and Regulations Committee, under <i>Parliamentary Committees Act 1968</i>,s. 4D (criteria in Act). [Statutory rules disallowable under <i>Subordinate Legislation Act 1994</i>,s. 23.]</p>
WA	<p>No for Bills. Yes for subsidiary legislation – Joint Standing Committee on Delegated Legislation. [Subsidiary legislation disallowable under <i>Interpretation Act 1984</i>,s. 42.]</p>
NZ	<p>In the case of Bills, the <i>Bill of Rights Act 1990</i>,s. 7 requires the Attorney-General to bring to the attention of the House of Representatives any provision in a Bill that appears to be inconsistent with any of the rights and freedoms contained in the Bill of Rights. The Attorney-General now makes publicly available the advice she receives from the Ministry of Justice and the Crown Law Office on Bill of Rights compliance.</p> <p>In the case of regulations, the Regulations Review Committee (a select committee of Parliament) may consider any regulation-making power in a Bill that is before any select committee and report on it to that other committee. All Bills, except Appropriation and Impress Supply Bills, are referred to select committees for consideration. That consideration is not limited to any particular aspects of Bills and includes the policy and drafting of Bills.</p> <p>The Regulations Review Committee may also draw the attention of the House to regulations on a number of specific grounds. This scrutiny role is similar to that of similar committees in Australia and Canada.</p> <p>[Regulations disallowable—<i>Regulations (Disallowance) Act 1989</i>.]</p>
Ontario	<p>Standing committee under <i>Regulations Act</i>,s. 12. The Committee reports on scope and method of exercise of delegated legislative power but without reference to the merits (s. 3). No statutory provision for disallowance of regulations by Assembly. The committee has not issued a report for several years.</p>

2 Horizontal relationships

2.1 What do you draft? (Bills, regulations, other subordinate instruments, explanatory material for publication or tabling with Bills etc)	
ACT	Bills, Legislative Assembly amendments to Bills, regulations and court rules. No explanatory memoranda, but advise on content if requested. ACT PCO occasionally reviews or settles other instruments, but is not funded for this function.
Cwlth OLD	Commonwealth regulations and commencement proclamations. Other subordinate instruments for agencies on request, on a user-pays basis.
Cwlth OPC	Bills and parliamentary amendments of Bills
NSW	All the above, including environmental planning instruments and court rules. Draft Bills for Law Reform Commission reports.
NT	Bills, regulations, by-laws, court rules and instruments. No explanatory material.
Qld	Bills, subordinate legislation (other than exempt subordinate legislation, i.e. local government, etc.), other instruments on request. (LSAs. 7 (a) – (f))
SA	Bills, regulations, proclamations, some commissions and notices, comment on Governor's decisions under planning legislation. Draft Explanation of Clauses (attached to 2nd reading speech) for Bills.
Tas	Bills, parliamentary amendments to Bills, regulations, rules, by-laws, other subordinate legislation (statutory rules only), not municipal by-laws.
Vic	Vic OCPC drafts Bills and court rules and settles regulations (drafts some too), and settles explanatory memoranda and proclamations. The office occasionally drafts other instruments.
WA	Bills, parliamentary amendments to Bills and subsidiary legislation (including regulations, proclamations, orders in council, some by-laws and notices) and some other statutory instruments. Some subordinate legislation is not drafted by the PCO, e.g. local laws of local government.
NZ	Bills, including the clause by clause analysis of the explanatory note, select committee amendments to Bills, Supplementary Order Papers of amendments to Bills during the Committee stages, table amendments to Bills (usually typescripts but can be handwritten), statutory regulations, Orders in Council, rules (including court rules), notices, Royal Warrants, terms of reference for Royal Commissions and Commissions of Inquiry, and certain other instruments.
Ontario	Bills and all subordinate legislation, motions for amendments and proclamations proclaiming Bills in force, but not other instruments.

2.2 Who gives instructions? (e.g. legal areas of client agencies/legislation areas of client agencies/operational areas of client agencies/private contractors of client agencies)	
ACT	All of the above, as well as private members of the Legislative Assembly and their advisers, and the Supreme Court Rules Committee. Rarely take instructions from private law firms or contractors.
Cwlth OLD	All of the above. Private contractors very rare.
Cwlth OPC	All of the above. Occasional instructions from private consultants (e.g. law firms)
NSW	Government legislation – legislation and policy units of government departments. Non-government legislation – MP or member’s assistant.
NT	All of the above, but private contractors (e.g. law firms, consultants contracted by client departments) only occasionally.
Qld	All of the above. Private members – member or senior adviser for opposition shadow.
SA	Policy and sometimes operational officers from client agencies. Some legally qualified. All instructors from the public sector.
Tas	Legislation areas, policy areas and operation areas of client agencies. Very occasionally private contractors of client agencies.
Vic	All of the above, and Ministerial advisers too, sometimes. Very occasionally instructions are received from law firms working in tandem with a departmental instructor.
WA	Senior public servants (sometimes legal areas of clients). Sometimes from Ministers or their offices. Private contractors only if working in tandem with departmental instructor.
NZ	Administering agencies, mostly legal officers, sometimes policy advisers. Occasionally from Minister responsible.
Ontario	Legal branch of client Ministries (government drafting). Private members or their assistants (private members’ drafting).

2.3 Do you offer any training for instructors and legislation officers?	
ACT	In the past (until 1999) ACT PCO ran a series of courses for instructors, and will do so again in the future when resources permit. In 2001-2002 we ran briefing sessions on the reforms in the <i>Legislation Act 2001</i> establishing the ACT legislation register. The Office also runs training programs to familiarise agencies with procedures for electronic notification of subordinate laws and instruments on the legislation register.
Cwlth OLD	The Office gives seminars and workshops to agencies on request. It also refers people to the OPC course.
Cwlth OPC	1-day Legislation Process Course, covering the drafting process in detail.
NSW	“Handbook for the drafting of non-government legislation”, and “Handbook for the Drafting of Government Legislation”. Addresses to groups. No formal training.
NT	Ad hoc training sessions conducted at request of client departments. A paper describing the roles of legislative counsel and instructors is regularly sent out to individual, first-time instructors. The Legislation Handbook (published by the Cabinet Office) has a section on preparing legislative drafting instructions, which legislative counsel frequently refer instructors to.
Qld	None currently offered.
SA	Seminar for instructors every 6 months. In-house seminars for particular agencies etc. on request (about 4 per year). Prepare publications to assist instructors, in particular Handbook for instructors.
Tas	No.
Vic	We run 1-day legislation process courses several times each year. [See www.ocpc.vic.gov.au , via “other documents” to “training”.]
WA	IPAA (Institute of Public Affairs and Administration) course on legislation: A senior Parliamentary Counsel from the WA PCO presents a session. A document is available on the Web about how to go about getting legislation drafted.
NZ	No formal seminar or workshop programme, but have started training sessions for instructors in some agencies. Advice and information is available through the Guide to Working with PCO and regular PCO newsletters.
Ontario	When asked.

3 Management of legislative drafting

3.1 What is your current office structure (for legislative counsel)?²²	
ACT	12+ legislative counsel (f/t equivalent currently working) PC, 2 DPC, 2 Executive APC (1 p/t), 3 PAPC (LO2) (1 p/t), 6 APC (LO1) (2 p/t; 1 LWOP) legislative counsel =14 legislative counsel on staff
Cwlth OPC	27 legislative counsel (f/t equivalent currently working) FPC, 2 Second PC, 6 FAPC, 8 S Asst PC (1 on LWOP), 15 Asst PC (4 on LWOP) = 32 legislative counsel on staff
Cwlth OLD	22 legislative counsel (f/t equivalent currently working) 1 PLC, 3 SLC, 8 PLO, 7 SLC, 3 LO = 22 legislative counsel on staff
NSW	20 legislative counsel (f/t equivalent currently working) PC, 2 DPC, 2 SAPC, 2 APC, 3 SLDO, 1 SLO, 7 LO (IV-VI), 2 LO (I – III) = 20 legislative counsel on staff. One cadet legislative counsel.
NT	6+ legislative counsel (f/t equivalent currently working) PC, DPC, 2 SAPC (1 p/t), 2 APC (level 4; 1 on LWOP), 1 APC (level 3), 1 APC (level 2) = 8 legislative counsel on staff
Qld	25 legislative counsel (f/t equivalent currently working) PC, 3 DPC, 4 FAPC (1 p/t), 7 SAPC, 11 APC = 26 legislative counsel on staff
SA	12+ legislative counsel (f/t equivalent currently working) PC, DPC, 2 SAPC, 2 APC, 7 LO (6 f/t equivalent) = 13 legislative counsel on staff
Tas	7+ legislative counsel (f/t equivalent currently working) CPC, 2 DCPC, 1 Senior PC (p/t), 1 PC, 3 Asst PC (1 p/t) = 8 legislative counsel on staff
Vic	15 legislative counsel (f/t equivalent currently working) CPC, 2 DCPC, 1 Asst Principal PC, 7 Counsel (VPS-5), 1 Counsel (VPS-4), 4 Counsel (VPS-4) = 16 legislative counsel on staff [3 p/t]
WA	14 legislative counsel (f/t equivalent currently working). PC, 2 DPC, 12 APC= 15 legislative counsel on staff. Support staff = 15
NZ	26 legislative counsel (f/t equivalent currently working). CPC, 2 DCPC, 25 PC (including 3 team leaders), 3 APC, 1 Counsel = 32 legislative counsel on staff. Includes 1 DCPC, 1 PC f/t, 5 PC p/t, on Public Access to Law project. 29 support staff (f/t equivalent currently working), 3 p/t.
Ontario	14 legislative counsel + 2 translation counsel (f/t equivalent currently working). Chief Legislative Counsel, Deputy Legislative Counsel, Registrar of Regulations, 11 other counsel, 5 production assistants Director French Legislative Services, 4 translators, 4 linguistic advisers, 2 translation counsel, 3 production assistants. Manager Publishing Services, 2 supervising legislative editors, 10 legislative editors, 2 production assistants, 2 systems officers. = 14 legislative counsel + 2 translation counsel on staff

²² PC=Parliamentary Counsel; A =Assistant; P =Principal; C=Counsel; D=Deputy; F=First; S=Senior; LDO=Legislative Drafting Officer; LO=Legal Officer; LWOP=Leave without pay; PO=Professional Officer; CPC=Chief PC; VPS=Victorian Public Service [Grade]. Part-timers are counted as between half-time and full-time hours, so 2 p/t = 1+ f/t equivalent current working. This is intended to be indicative rather than absolutely precise.

3.2 Is legislative drafting split into groups (e.g. on the basis of client agencies, particular legislation or primary/subordinate legislation)? Are legislative counsel placed with client agencies for particular work, or for particular periods (e.g. the OPC taxation office placements)?	
ACT	No legislative drafting groups as such. Each DPC allocates work around the whole office for half of the PCO's client agencies, and has management (not necessarily settling) responsibilities for half of the legislative counsel. No out-posting, and none contemplated, but (as for SA) particular legislative counsel who develop expertise in a particular area (e.g. by drafting primary legislation) tend to attract further work in that area.
Cwlth OLD	3 legislative drafting units allocated to different agencies (some agencies split between units). Legislative counsel are rotated through the units. Occasionally place a legislative counsel with a client agency for a short term.
Cwlth OPC	Not generally, and not internally.
NSW	No.
NT	No.
Qld	3 legislative drafting groups, allocated to different departments. No out-posting.
SA	No legislative drafting groups, no out-posting and none contemplated. But legislative counsel who develop expertise in a particular area (e.g. by drafting primary legislation) tend to attract further work in that area.
Tas	No legislative drafting groups, no out-posting. But legislative counsel who develop expertise in a particular area tend to attract further work in that area.
Vic	No legislative drafting groups, no out-posting. But legislative counsel who develop expertise in a particular area (e.g. by drafting primary legislation) tend to attract further work in that area.
WA	No allocation by client agencies, no out-posting.
NZ	PCO has 3 legislative drafting teams organised on an agency basis. Rotation uncommon. Team structure is not rigid and teams share work on basis of interest/necessity. Tax legislation drafted in Inland Revenue Department.
Ontario	Each lawyer has a portfolio of clients (but these are reassessed from time to time). No out-posting.

3.3 At what level do you recruit, in general? Only at legal 1 equivalent (i.e. recent graduates, or lawyers with little or no legislative drafting experience)? Or horizontally into upper legal 1/legal 2 levels (lawyers with legislative drafting experience or equivalent)?	
ACT	There is a broad-banded Legal 1 classification for the APC level. Recruits may start at the bottom of the range, but with suitable experience a recruit can be started higher. We also sometimes recruit experienced legislative counsel from outside PAPC level (Legal 2), and may do so at executive level too (PC and DPC).
Cwlth OLD	Recruit at any level, but appropriate legislative drafting experience essential for senior positions. Most of the recent recruits have had several years legal experience, but no legislative drafting experience.
Cwlth OPC	Usually lawyers with no legislative drafting experience at APC1 [entry] level; top increment APC1 soon to be raised to attract lawyers with useful non-drafting experience. Higher level positions may be filled by experienced legislative counsel from outside, but in practice most promotion is internal.
NSW	LO (I-III) [entry level]. Typically honours graduates with 1 year or more experience in private practice, the public service or as a Judge's associate, with no legislative drafting experience.
NT	Have had recent success in recruiting experienced interstate legislative counsel for DPC and SAPC positions. Difficult to recruit interstate legislative counsel for APC levels. Generally rely on recruiting from local applicants at the entry level (preferably with 1 to 3 years other legal experience) and training up. Job evaluation system (which is available across the NT public service) allows legislative counsel to be promoted through the APC levels without having to wait for a vacancy.
Qld	May occur at any level (merit-based).
SA	Last several years it has proved best to recruit lawyers with some private practice experience (e.g. last 3 recruits with 5, 3 and 6 years' private experience).
Tas	Usually only have been able to recruit at entry level.
Vic	Usually lawyers with no legislative drafting experience (1 high level position filled by an interstate legislative counsel several years ago).
WA	At any level. At senior levels, experience in another legislative drafting office essential.
NZ	PCO appoints at any level. PCO appoints lawyers from public and private sectors. Recruits with less than 3 years hard experience usually appointed as Assistant Parliamentary Counsel. More experienced lawyers appointed as Parliamentary Counsel (in NZ this is a Governor-General appointment).
Ontario	Recruitment level depends on immediate needs of office.

3.4 Are junior legislative counsel paired with particular senior counsel? Or are junior/senior pairs made and broken on a job-by-job basis?	
ACT	No fixed arrangements for pairing, but mentoring relationships are used for new starters and in some other situations (e.g. a legislative counsel returning after maternity leave). Pairs are made and broken on a job-by-job basis.
Cwlth OLD	Junior-senior pairs are job-by-job, but juniors and new members of the office are also given a general mentor.
Cwlth OPC	1 or 2 APC paired with 1 SES (executive) legislative counsel for about 12 months at a time, not on a job-by-job basis.
NSW	Junior legislative counsel closely supervised by senior legislative counsel. Occasionally work in a team (taking routine etc. aspects of larger project).
NT	No formal pairing system. APCs work independently on own projects (subject to informal discussions with PC, DPC or SAPC as they go). APCs work formally settled by PC, DPC or SAPC when it reaches final stages.
Qld	Legislative counsel and supervising legislative counsel, job-by-job (for juniors, senior legislative counsel assigned as supervising legislative counsel).
SA	Junior/senior pairings job-by-job.
Tas	Junior/senior pairs as part of training process, with pairs changed approximately every 18 months.
Vic	Pairs (occasionally trios with executive component) made and broken on a job-by-job basis. Through the 1990s, fixed pairings prevailed, but even so some cross-pairing occurred.
WA	Each draft has legislative counsel and a reader (another legislative counsel). Senior legislative counsel can be assigned senior or junior readers. Junior legislative counsel are assigned to senior readers if the degree of difficulty warrants it.
NZ	A trainer is assigned to each junior legislative counsel. Supervisors are assigned for each legislative drafting job and different supervisors are assigned for different jobs. Large Bills worked on in teams of 2 or more legislative counsel will mix and match junior and more experienced legislative counsel.
Ontario	Currently using a long-term pairing.

3.5 Briefly describe the settling process for the work of junior and more senior legislative counsel. Is there any standard settling procedure for the work of senior legislative counsel (e.g. scrutiny by executive counsel)?	
ACT	APC work is always settled by a senior legislative counsel (“D2”). The PC often acts as “D3” if he is not the D2. All work of legislative counsel (including DPCs) is read or settled by another legislative counsel or the PC. Larger legislative drafting teams are becoming more common. PC reads all Bills at some stage.
Cwlth OLD	Work of junior legislative counsel closely supervised (LO and SLO). Work of PLO legislative counsel settled by unit head, or by another PLO with review by unit head if needed. PLC (office head) reviews, and may settle, unusual jobs.
Cwlth OPC	APC work is always settled by an SES (executive) legislative counsel. SES legislative drafting work is not settled. But SES work is always read and commented on by another legislative counsel.
NSW	Work of junior legislative counsel closely supervised. No draft leaves office unless seen by supervisor. Open door policy. All Bills (junior and senior legislative counsel) reviewed by Bill Review Group (PC, DPC, SAPC).
NT	See answer to 3.4 for the APC level. PC, DPC and SAPC settle their own work. PC reads all final drafts, whether prepared by APC, SAPC or DPC.
Qld	All drafts checked by someone [similar to ACT system]. At advanced stage, drafts are given to senior legislative counsel with word search macro results. D2 then settles draft, in consultation with D1 as necessary.
SA	All legislative counsel can settle regulations or proclamations (but the work of junior legislative counsel must be checked by a senior legislative counsel). Work of junior legislative counsel is settled by a senior legislative counsel. PC, DPC and SAPC settle their own work.
Tas	Apart from those at the APC level, all legislative counsel are responsible for settling their own work.
Vic	All Bills drafted by junior legislative counsel are supervised by senior legislative counsel. Bills drafted by senior legislative counsel are unsettled. CPC reads all Bills before they are sent to Cabinet, unless prevented due to time constraints. For supervised Bills, 1st and last drafts are always read—settling practices otherwise vary depending on supervisor. All Bills are read before Cabinet by 2 editorial proof readers to detect errors.
WA	The reader’s responsibility (see 3.4) is to check the draft and make suggestions as appropriate. The more difficult work of a junior legislative counsel is settled by a sufficiently experienced legislative counsel.
NZ	A supervising legislative counsel settles a draft by a junior legislative counsel. Legislative counsel not under supervision settle their own drafts with a peer reviewer unless impracticable to do so. Team leaders, CDPC, and CPC entitled to comment and require changes to drafts of all legislative counsel.

3.5 Briefly describe the settling process for the work of junior and more senior legislative counsel. Is there any standard settling procedure for the work of senior legislative counsel (e.g. scrutiny by executive counsel)?	
Ontario	A junior lawyer's work is reviewed by a senior lawyer. Senior lawyers are responsible for settling their own work. All government Bills are reviewed by a cabinet committee before first reading, but for policy not word-smithing.

3.6 Do you use a time recording system? Is there any formal/informal method of billing client agencies (or particular agencies, e.g. independent statutory authorities)?	
ACT	Time recording system for legislative drafting and non-drafting tasks. The data is used for reporting only (Annual Report, Estimates Committee, internal management, particularly useful for gauging burden of private members' work). No actual billing.
Cwlth OLD	Time recording covers all tasks. We bill for "contestable" work, for which agencies do not have to come to us; essentially anything other than regulations, commencement proclamations and work from within the Attorney-General's Dept.
Cwlth OPC	No to both.
NSW	Government legislative drafting – no to both. Private members' drafting – core drafting hours recorded [maximum limit on core hours drafting for PMs – see above].
NT	No to both.
Qld	No to both.
SA	No to both.
Tas	Some legislative drafting categories billed – simple time-recording system for these.
Vic	No to both.
WA	No to both.
NZ	No to both. PCO commissioned a study by PricewaterhouseCoopers in 1998 into cost recovery. Study involved discussions by PWC with Australian legislative drafting offices. PWC recommended against cost recovery. Will investigate time recording (not cost recovery) in 2005.
Ontario	All work is docketed. Government work is billed.

3.7 Do you have regular office (or legislative drafting group) meetings? If so, how regular?	
ACT	Weekly call-over meetings of all legislative counsel to monitor workloads and priorities. All-staff meetings monthly. Drafting and Publishing Standards Committee meets monthly. Management group meets monthly. Regular morning teas and social functions.
Cwlth OLD	Weekly meetings for legislative drafting units. Various office committees meet less frequently. Full office meetings rare.
Cwlth OPC	Monthly all-staff meeting. First and Second PC and SES legislative counsel meet fortnightly. Regular meetings of specific committees. Regular internal training sessions for legislative counsel on legislative drafting matters (monthly on average).
NSW	Legal officers' meeting most Wednesday mornings.
NT	Formal meetings held as and when required. A tradition of morning and afternoon tea provides an opportunity for regular, informal meetings.
Qld	Regular meetings of legislative counsel and specific committees (including current legislative drafting practices, uniform styles, fundamental legislative principles). Meetings of legislative counsel are usually weekly, others fortnightly.
SA	No.
Tas	Fortnightly 1-hour meetings.
Vic	Monthly (on average) 1-hour meetings. Weekly 1/2 hour meetings for CPC to monitor workloads. Weekly management meeting (1 hour) of 3 executive officers.
WA	Management meeting bi-monthly (PC, 2 senior counsel, 3 senior clerical staff). Fortnightly meetings of PC, DPC and Director, Legislation Services. Fairly informal weekly staff meetings.
NZ	Yes. 2 teams fortnightly, 1 weekly. At team meetings, legislative drafting assignments are distributed and workload and progress gauged. Style of meetings varies between teams (and matters covered, e.g. continuing education). Every 2 months or so, all-staff meeting. Various social occasions for informal contact within office. PCO management team meets 3 times each week. Management team and team leaders meet monthly.
Ontario	Aim at weekly 1-hour lawyers' meetings. At height of session meetings may be cancelled at short notice.

4 Publications

4.1 How is final draft legislation published? (e.g. camera-ready copy to printer/in-house printing etc). In what format (A4/B5)?	
ACT	Pdf files of Bills to printer, B5 window on A4 paper. Bills are supplied to Assembly in B5 pamphlet format. Urgent Bills may be supplied to agency (pdf or hard copy) for presentation in A4 format. Final draft regulations are sent to line area as pdf files. Also B5 window on A4 paper (after making and notification they are published in B5 pamphlet form). Amendments are supplied in A4 format (printed in-house). After passage and notification, Acts are printed by the Assembly (from camera-ready copy generated from word files given to the Assembly by PCO).
Cwlth OLD	Regulations—electronic camera-ready copy to printer. Other instruments—in-house printing or PDF files to agencies.
Cwlth OPC	Electronic camera-ready copy to printer. Draft Bills in B5 pamphlet form.
NSW	Camera ready A4, B5 window. Bills printed in-house; the rest outsourced.
NT	Electronic camera-ready copy to government printer in A4 and photo-reduced to B5 by printer.
Qld	Camera-ready copy of draft Bills to GoPrint (government printer). GoPrint handles printing for various stages during passage. Bills in A4, Acts, reprints etc. in Crown Quarto.
SA	Electronic file to government printer. The documents are printed in A4 (Acts also published in A4).
Tas	Camera-ready A4 to printer (postscript file + hard copy as final check). The OPC controls camera-ready copy for all stages of legislation (drafts, minister copy, Parliamentary prints and amendments, vellum ²³).
Vic	Camera-ready copy to printer. Bills-at-Cabinet in A4. Bills approved by Cabinet and Acts published in B5 pamphlets.
WA	Word 97 copy to State Law Publisher. Bills in B5, subsidiary legislation gazetted in A4 format. Reprinted legislation in B5 format from pdf files supplied by PCO.
NZ	In process of moving from WordPerfect 9 to WordPerfect 11. WordPerfect file converted to SGML by contract printer. Will move to Epic XML authoring tool as part of Public Access to Legislation project implementation. Bills published in A4. Acts and regulations published in B5.
Ontario	First reading copy printed in-house in Word. Camera-ready copy for printer after 1st reading. 8.5" x 11" paper (North American letter size). 2nd and 3rd reading versions of Bills also prepared for camera-ready stage by OLC. 3rd reading version is post-Assent, incorporating any amendments in committee.

²³ The vellum is the copy of the Bill that is submitted to the State Governor for the royal assent.

4.2 What is the standard source you use for up-to-date legislation of your jurisdiction (e.g. in-house past-ups/in-house database)?	
ACT	PCO legislative counsel access legislation through the legislation register (also available to public) (www.legislation.act.gov.au).
Cwlth OLD	In-house database made available to the public as SCALE PLUS. ²⁴
Cwlth OPC	Consol database maintained by Attorney-General's Dept.
NSW	In-house SGML database (updated within 3 days).
NT	In-house paste-ups, in-house reprints database (Acts in force, no uncommenced changes). Public access to database via NT Legislative Assembly website: http://www.nt.gov.au/lant/hansard/hansard.shtml
Qld	OQPC electronic legislation database (in-house to staff).
SA	Hardcopy and electronic versions supplied by government Printer on an on-going basis. Data provided by the SA PCO. (These are also available to the public.)
Tas	The OPC maintains in-house database, Tasmanian Legislation Database; still some use of hardcopy paste-ups. Amendments done by marking up Principal Act taken from legislation database. Certain parts of database available to public.
Vic	Law Today database. Data from Vic CPCO available to both legislative counsel and public at www.dms.dpc.vic.gov.au . Also in-house database that shows amendments that have yet to take effect.
WA	PCO compiles and uses cut-and-paste Acts, regulations, rules and by-laws in hardcopy and electronic forms. The electronic versions are also available to the public through the State Law Publisher.
NZ	Hardcopy paste-ups (private contractor); Electronic database via Folioviews (legal publisher). PCO will use its own electronic database following implementation of the Public Access to Legislation project.
Ontario	e-laws (www.e-Laws.gov.on.ca) available to legislative counsel and public. Legislative counsel use an intranet site which mirrors the internet site. Databases current to within 14 days for consolidated law and 2 days for source law.

²⁴ SCALE has now been replaced by ComLaw (www.comlaw.gov.au).

4.3 Is the legislative drafting office responsible for republications? How up-to-date is your republication program? Is there any statutory authority or accepted convention for the parliamentary counsel to make corrections or stylistic changes to republications?	
ACT	Yes. Official republications of all primary legislation are available on the legislation register website. The <i>Legislation Act 2001</i> authorises corrections, minor stylistic changes, other editorial changes, renumbering (though renumbering rarely done without express statutory direction to renumber under the <i>Legislation Act 2001</i>). Notes (not a part of Acts or subordinate laws) may be updated or removed for official republications.
Cwlth OLD	On-line consolidations of both primary legislation (for Cwlth OPC) and regulations are normally up-to-date (a note indicates any unincorporated amendments). Print versions are published from time to time as there is demand. Reprints Act 1972 enables very minor editorial changes, but this power is sparingly used.
Cwlth OPC	Attorney-General's Dept. (not OPC) responsible for republications.
NSW	Selected Acts (about 100) reprinted regularly. The <i>Reprints Act 1972</i> enables very minor editorial changes, but this power is sparingly used.
NT	<p>Yes. Electronic consolidations generally available within 5 working days after commencement. Over the last 2 years [since Nov. 2004], the number of hardcopy reprints produced has increased. Previously the decision to publish hardcopy reprints was made by the Govt Printer based on whether all stocks of previous reprints had sold. Now the decision is made by the OPC in consultation with the Government Printer and the Australian Law Librarians Group (NT Branch). The decision to reprint a particular piece of legislation is based on the number of amendments made to it and its popularity.</p> <p>The only statutory authority to make corrections or stylistic changes is under the <i>Amendments Incorporation Act</i>, s. 4, which requires the omission of the year from the citation of a Principal Act when it is reprinted after amendment. Rely on convention to make very minor corrections to some punctuation.</p>
Qld	<p>Yes. OQPC function under LSA, s. 7(k). Since 1992 (commencement of LSA), function fulfilled through Queensland Legislation Reprints series.</p> <p>2 reprinting programs – printed, authorised reprints (QLR series); electronic reprints and updated versions of printed reprints. Legislation Reprinting Policy – when reprints will be reprinted in each of these.</p> <p><i>Reprints Act 1992</i>, Pts 3 and 4, authority for editorial changes. But OQPC use of these powers is now strictly limited to 'those regarded as essential from a publishing perspective' (e.g. consequential amendments, spelling, punctuation, reordering definitions and lists, format and printing style, removing renumbered provisions, removing amended provisions, removing enactment words, renumbering expressly required, minor corrections).</p>
SA	Yes. Statutory authority for changes under <i>Legislation Revision and Publication Act 2002</i> . A Senior Assistant Parliamentary Counsel is the Commissioner for Statute Revision under that Act.

<p>4.3 Is the legislative drafting office responsible for republications? How up-to-date is your republication program? Is there any statutory authority or accepted convention for the parliamentary counsel to make corrections or stylistic changes to republications?</p>	
Tas	<p>The OPC maintains Tasmanian Legislation Database. Automatic consolidation system – aims to provide in-house access and access to the public of up-to-date consolidated and new legislation on the day that a change occurs or the day new legislation gets Royal Assent, commences or, in the case of subordinate legislation, is notified in the gazette. Point in time searching is available from 1 February 1997 for Acts and April 1998 for Statutory Rules. Corrections etc. under <i>Legislation Publication Act 1996</i>.</p>
Vic	<p>Yes. Republications only if there have been enough amendments to make republication worthwhile. Capacity to republish fairly soon after amendment (often on date of effect of amendment). No express statutory authority to make changes. But until recent changes to the <i>Interpretation Act</i> [which made section headings and punctuation part of law] the view was taken that amendments to section headings and punctuation could be made in republication, but the power was rarely exercised. The respondent considers that OCPC can make stylistic changes of a formatting type at will, but notes that this has only ever been done across the board (e.g. new Act format in the early 1990s).</p>
WA	<p>Yes. The <i>Reprints under Reprints Act 1984</i>. Attorney-General (through delegate, Parliamentary Counsel) may authorise some minor corrections and stylistic changes. Not all authorised changes are made – it is often considered more useful for a reprint to contain a historical record of the written law being reprinted than to omit all spent provisions that there would be power to omit. Approximately 90% of WA legislation is reprinted in “new” (1999) format. The balance is of marginal relevance.</p>
NZ	<p>Yes. PCO compiles and publishes reprints of Acts and regulations under annual reprints programme determined after consultation with users, e.g. judiciary, law society, law librarians, government departments. See <i>Statutes Drafting and Compilation Act 1920</i> and <i>Acts and Regulations Publication Act 1989</i>. Acts and regulations are reprinted in a new format (from 1 January 2000) and in line with current legislative drafting practice (see <i>Acts and Regulations Publication Act 1989</i>, ss. 17A-17F).</p>
Ontario	<p>Yes, in partnership with the Queen’s Printer. We do the database updating and camera-ready work. We publish office consolidations and provide updated files for the e-Laws website. We have no authority at present to make corrections but spelling errors and other typos are fixed. [Past practice has been to publish official consolidations every 10 years (“decennial” revisions) - republications - of virtually all primary (non-amending), Acts and regulations in force, authorised under a revising statute. Last revision was in 1990 (incorporating official French translations of Acts and many regulations). This practice is probably going to be superseded by next phase of the e-laws project, in which it is intended to publish authorised electronic consolidations of each law (on an individual basis) soon after it is amended.]</p>

4.4 Is your legislation (including any associated subordinate legislation or instruments) published on the internet? If so, how? (e.g. via SCALE²⁵ or AUSTLII, or in-house website)?	
ACT	<p>Primary site: www.legislation.act.gov.au. Authorised (pdf) files; non-authorised (rtf) files; selected future republications also available that show the effect of uncommenced amendments (rtf). ACT PCO has an active back capture program for source law (primary and subordinate legislation as made) and point-in-time republications. Notifications and subordinate instruments (e.g. approved forms, determined fees) are available online (disallowable instruments from 1989, others from 2001). Bills are available from 1994.</p> <p>AUSTLII: www.austlii.edu.au/au/legis/act/consol_act/</p>
Cwth OLD	<p>Primary site: SCALE http://scaleplus.law.gov.au/</p> <p>AUSTLII: www.austlii.edu.au/au/legis/cth/consol_reg/</p>
Cwth OPC	<p>Primary site: SCALE http://scaleplus.law.gov.au/; Bills at Parliament House website: www.aph.gov.au/legis.htm.</p> <p>AUSTLII: www.austlii.edu.au/au/legis/cth/consol_act/</p>
NSW	<p>Primary site: www.legislation.nsw.gov.au/</p> <p>AUSTLII: /www.austlii.edu.au/au/legis/nsw/consol_act/</p>
NT	<p>Primary site: http://www.nt.gov.au/lant/hansard/hansard.shtml. Current consolidations; historical consolidations; Bills; numbered Acts; numbered subordinate legislation. Instruments not published.</p> <p>AUSTLII: www.austlii.edu.au/au/legis/nt/consol_act/</p>
Qld	<p>Primary site: www.legislation.qld.gov.au/Legislation.htm. LSA, s. 7 (m) requires OQPC to arrange for electronic access to Queensland legislation. OQPC legislation database fulfils this function. Electronic reprints frequently updated.</p> <p>AUSTLII: www.austlii.edu.au/au/legis/qld/consol_act/</p>
SA	<p>Primary site: www.parliament.sa.gov.au/legislation/5_legislation.shtm. Made available to SA Parliamentary website, fortnightly cycle. [NB no link to statutes through Attorney-General's page on government website].</p> <p>AUSTLII: www.austlii.edu.au/au/legis/sa/consol_act/</p>
Tas	<p>Primary site: www.thelaw.tas.gov.au/</p> <p>AUSTLII: www.austlii.edu.au/au/legis/tas/consol_act/</p>
Vic	<p>Primary site: www.dms.dpc.vic.gov.au.</p> <p>AUSTLII: www.austlii.edu.au/au/legis/vic/consol_act/</p>

²⁵ SCALE has now been replaced by ComLaw (www.comlaw.gov.au).

4.4 Is your legislation (including any associated subordinate legislation or instruments) published on the internet? If so, how? (e.g. via SCALE²⁵ or AUSTLII, or in-house website)?	
WA	<p>Primary site: State Law Publisher, via Parliament House website: www.slp.wa.gov.au/statutes/swans.nsf [NB no link through Dept of Justice website – only through WA government – Parliament – Statutes].</p> <p>AUSTLII: www.austlii.edu.au/au/legis/wa/consol_act/</p>
NZ	<p>Primary site: www.legislation.government.nz</p> <p>This is an unofficial database of up-to-date legislation provided by Brookers Ltd (part of Thompson group) under an arrangement with the PCO and is available free. It is an interim website and database.</p> <p>Individual Acts and regulations, repealed Acts and revoked regulations, and Bills, are available free to browse at: www.knowledge-basket.co.nz/gpprint/docs/welcome.html.</p> <p>Following implementation of the Public Access to Law project, the interim database will be replaced by a database owned by PCO and maintained by Brookers Ltd under contract with PCO. That database will also be available free on the internet. The PCO will, over time, “officialise” the database through the exercise of reprint powers under the <i>Acts and Regulations Publication Act 1989</i>.</p>
Ontario	<p>Primary site: www.e-Laws.gov.on.ca Source laws and consolidations of statutes [and regulations]. Bills available via the Legislative Assembly website at www.ontla.on.ca.</p>

4.5 Are there any plans for an electronic form of the legislation to become the statutorily authorised official form of the law (as now in the ACT)?	
ACT	Authorised versions are published on www.legislation.act.gov.au , in pdf form (non-official rtf files also supplied for convenience of users). Downloads (electronic and print) from authorised pdf files are authorised by the <i>Legislation Act 2001</i> .
Cwth OLD	From 1 January 2005, authorised versions of Commonwealth legislative instruments will be available on a new Legislative Instruments Register under the <i>Legislative Instruments Act 2003</i> .
Cwth OPC	Under review.
NSW	Under active consideration.
NT	Not at this stage.
Qld	<i>Evidence Act 1977</i> recently updated to allow courts to receive copies of legislation from any source that appears reliable. The authentication of electronic reprints is inevitable.
SA	Under review.
Tas	Plans but nothing concrete.
Vic	No.
WA	No, but courts widely use the electronic database.
NZ	Yes. Timeline to be determined.
Ontario	Yes. In policy development stage.

5 Drafting style

5.1 Samples of primary Acts (subordinate laws) and amending Acts (sub laws)	
ACT	<i>Health Professionals Act 2004</i> (No 38 of 2004); <i>Health Professionals Legislation Amendment Act 2004</i> (No 39 of 2004).
Cwth OLD	<i>Petroleum (Submerged Lands) (Diving Safety) Regulations 2002</i> (No 300 of 2002); <i>A New Tax System (Goods and Services Tax) Amendment Regulations 2003</i> (No. 1) (No 37 of 2003).
Cwth OPC	<i>Spam Act 2003</i> ; <i>Criminal Code Amendment (Terrorism) Act 2003</i> .
NSW	<i>Chiropractors Act 2001</i> ; <i>Workers Compensation Legislation Further Amendments Act 2001</i> .
NT	<i>Electoral Act 2004</i> (Act No. 11, 2004); <i>Gaming Machine Amendment Act 2004</i> (Act No. 45, 2004). This amendment Act uses traditional, long-form amending formulae. From the November 2004 sittings onwards, all amendment Bills will be drafted using short-form amending formulae.
Qld	<i>Mental Health Act 2000</i> , No 16; <i>Financial Management Standard 1997</i> (including commentary); <i>Domestic Violence Legislation Amendment Bill 2001</i> ; <i>WorkCover Queensland Amendment Regulation (No. 1) 2001</i> , SL 197.
SA	<i>Petroleum Act 2000</i> ; <i>Racing (Controlling Authorities) Amendment Act 2000</i> (No 59 of 2000); <i>Statutes Amendment (Gambling Regulation) Act 2001</i> (No 18 of 2001).
Tas	<i>Child Care Act 2001</i> ; <i>Gas Amendment Act 2001</i> ; <i>Federal Courts (Consequential Amendments) Act 2001</i> .
Vic	<i>Surveying Act 2004</i> (No 47 of 2004); <i>Transport (Rights and Responsibilities) Act 2003</i> (No 101 of 2003).
WA	<i>Port Authorities Act 1999</i> ; <i>Port Authorities (Consequential Provisions) Act 1999</i> .
NZ	<i>International Crimes and International Criminal Court Act 2000</i> ; <i>Civil Aviation (Medical Certification) Amendment Act 2001</i> ; <i>Fisheries (Foreign Fishing Vessel) Regulations 2001</i> ; <i>Employment Relations Act 2000</i> .
Ontario	“Any recent Bills in our Assembly will give you feel for our style.” (See www.ontla.on.ca) “The PDF version will also give you a feel for our printed formats. The e-Laws site www.e-laws.gov.on.ca/ will give you a feel for our electronic layout.”

5.2 How would you briefly describe the house style of your office (e.g. by comparison with other Australasian or other English-language jurisdictions, or with non-legislative legal drafting)? Has it changed greatly in recent times?	
ACT	Until 1998, PCO followed traditional Commonwealth legislative drafting style (though in the late 90s that was already developing beyond what was used for ACT laws) – as clear and concise as possible but with a conservative bias. This style was still clearer than non-legislative drafting and UK legislative drafting. From early in 1999, PCO has moved rapidly to a more radical plain language style. A simpler vocabulary is used (e.g. notices are usually “given” rather than “issued”). Shorter sentences and shorter sections are encouraged. Legal (and other) jargon is avoided and legislative language is less formal than before. Narrative presumptions are more boldly made, avoiding cumbersome cross-references.
Cwlth OLD	Moved towards plain English in the 1990s. Substantial changes were made in the late 1990s, with a good deal of experimentation. Some of those experiments have become normal, others have been dropped. The emphasis is on communicating effectively with the reader.
Cwlth OPC	Emphasises plain English and has made a conscious move towards simplifying provisions and making them more readable. Substantial resources invested in last 10-15 years have resulted in a significant change in legislative drafting style. Use of plain English drafting devices is noticeable – in addition to the obvious changes, the process of legislative drafting has altered. Many legislative counsel now adopt particular planning techniques and hold more face-to-face meetings than previously. More external scrutiny in some cases (Tax Law, Corporations projects).
NSW	Plain clear language. Early 1990s: enthusiastic use of plain English devices (flow charts, boxed overviews, examples, notes). Recent years: “return to reliance on the use of the words and structure of the document”.
NT	Similar to most other Australian jurisdictions. Rely on well-structured provisions expressed in clear, concise language. Over the last few years, greater use of standard form provisions. Over the last 12 months, greater use of the narrative and a reduction in the number of cross-references. From the November 2004 sittings onwards, all amendment Bills will be drafted using short-form amending formulae.
Qld	Plain English style. Style changed in early to mid-90s and then settled down in the later 1990s. Consideration could than be given to documentation of changes and finessing of changes to style.
SA	Plain English style.
Tas	Similar to other Australian jurisdictions. “Aim for clear and concise language”. Main layout change from B5 to A4 several years ago. Style changes made from time to time.

5.2 How would you briefly describe the house style of your office (e.g. by comparison with other Australasian or other English-language jurisdictions, or with non-legislative legal drafting)? Has it changed greatly in recent times?	
Vic	<p>“Reasonably modern”; “can generally be relatively easily understood by a reader who has completed one of the upper levels of secondary school”. However, the respondent’s view is that the format has deficiencies (headings, smaller point sizes for schedules, little space between sections and bolding of Victorian Act references.) Compares well with Commonwealth (though Commonwealth legislation is inherently more complex, perhaps). Not quite as plain or informal as NSW legislation. Way ahead of private legal drafting (“in terms of their legal writing, many Victorian lawyers have yet to make it into the 20th century, let alone the late 20th or this century”). Plainier than NZ in style, and way ahead of US legislation.</p>
WA	<p>Straightforward—no frills.</p> <p>Format changed 1999—now largely based on Commonwealth format.</p>
NZ	<p>“NZ has been evolving plain language style since 1997. In matters of legislative drafting style and format, NZ is closer to Australian legislative drafting practices than to UK or Canada. Features of NZ approach include use of examples, avoidance of excessive cross-referencing, avoidance of legalistic terminology and jargon, use of purpose and overview provisions, flow charts, and other techniques. Format of legislation changed January 2000.”</p>
Ontario	<p>“We attempt to follow the principles of plain-language drafting. We have been heavily influenced by the civil code style of Quebec. I would describe our style as midway between the civil code and the common law drafting styles. Compared to much of what happens in non-legislative drafting we use a much simpler style. Are we 100% successful in following plain language principles – no. However, like so much of life – it is a journey. Recent changes – no law Latin, no law French in English versions, no Anglicisms in French versions, gender-neutral style, no clause sandwiches.”</p>

5.3 How much variation in legislative drafting style is there within the office? Apart from the osmotic effect of the training process, is there much (or any) express insistence on uniformity of style?	
ACT	“The change in style introduced in 1999 in the ACT office was accompanied by an increased emphasis on uniformity and on documentation of house style. The Parliamentary Counsel has a hand, or at the least an active oversight, in all legislative drafting projects. There are stricter controls on standard vocabulary, and a greater attempt is made than before to establish standard approaches to standard issues. But this does not prevent differences in style between legislative counsel; legislative drafting is still a bespoke art that seeks individualised solutions for particular problems.”
Cwth OLD	“There is a limited set of situations where uniformity is required, and a larger set where it is required unless a senior legislative counsel agrees to the variation. Otherwise, the approach will depend on the legislative counsel concerned and the subject matter.”
Cwth OPC	Insistence on compliance with Amending Forms Manual, Drafting Directions and the Plain English Manual, all available via http://www.opc.gov.au/about/documents.htm . Legislative counsel are encouraged to draft in a style that promotes a uniform statute book, while recognising that each legislative drafting job needs to be considered in its specific context.
NSW	Standard precedents for many matters, but room for variations in individual style. Junior legislative counsel rotated through supervisors to sample different approaches while developing own style.
NT	Legislative counsel are required to give effect to all formal legislative drafting directions. Exceptions only with the approval of the PC or DPC. Legislative counsel are encouraged to think more about the structure of provisions and to make greater use of the narrative.
Qld	Insistence on uniformity of style. Drafting Standard and Precedents and Information Standard followed. Word search macro used to vet words and phrases. Standards and macro subject to continuous improvement. D2 process ensures common thread.
SA	“Relatively mild variation of legislative drafting styles.”
Tas	“Little express insistence on uniformity of style.” Enact system (style sheets etc) “imposes a certain amount of consistency on legislative counsel.” Amending forms automated due to automatic consolidation system. “Legislative counsel can override the automatically generated wording but this is seldom done.”
Vic	Considerable variation. “Some of us draft in a general style that was state of the art in the early 1980s – some of us draft in a style that would not be out of place in the most progressive of the Australian offices, and most of us fall somewhere in between.” Uniformity for some things (e.g. commencement provisions), but no express insistence for the most part. Limits on radical departures from norm.
WA	Word 97 macros used extensively, resulting in uniformity in formal matters. General conformity of style, but no rigid insistence on uniformity.

5.3 How much variation in legislative drafting style is there within the office? Apart from the osmotic effect of the training process, is there much (or any) express insistence on uniformity of style?	
NZ	“Format is uniform and is enforced. The plain language style of legislative drafting is still evolving and a certain amount of experimentation in style is possible and inevitable. Individuality is encouraged within limits. The bulk of legislative drafting in the PCO is consistent in style.”
Ontario	“Reasonable range, but most would recognise an ‘Ontario’ style.”

5.4 What written documentation is there of the office legislative drafting style (e.g. office manuals, collections of legislative drafting instructions)? How comprehensive and up-to-date is the documentation?	
ACT	An Office Practice Manual (recently updated); Words and Phrases Guide (being updated); Amending Guide; Spelling and Abbreviations Guide; Technical Amendments Guidelines. Some of these are available on the PCO website; the rest are intended to be made available in the future: http://www.pco.act.gov.au/pages/draftpubstand.htm .
Cwlth OLD	Drafting directions: <i>Words and Phrases</i> guide; rules on how to set out different kinds of provisions; ad hoc papers dealing with issues such as retrospectivity. The document is fairly extensive and reasonably up-to-date, but it is intended to rewrite it to improve its organisation.
Cwlth OPC	Extensive and up-to-date Drafting Directions. Word Notes relate to styles and formatting, also comprehensive and up-to-date. [Drafting Directions, Plain English Manual and Amending Manual are available via: http://www.opc.gov.au/about/documents.htm .]
NSW	Drafting instructions 1985-1991. Drafting circulars 1992-2004. Professional development circulars 1991-2004. Amendment in committee manual (up to date). Drafting manual (being revised).
NT	The Guide to Legislative Drafting sets out amending formulae (but needs to be updated in light of recent move to short-form amending formulae). Drafting directions are issued periodically. The Guide and legislative drafting directions are available in electronic form.
Qld	Drafting standard; Original legislation process manual; Precedents and Information Standard; Fundamental Legislative Principles Standard; Word Search Macro. Subject to continual improvement – monitoring and review by office committees.
SA	None. Some precedents for proclamations.
Tas	Up-to-date office procedures and precedent and EnAct users manual. No up-to-date legislative drafting instructions, but they are currently being updated.
Vic	An Office Manual has recently been compiled and is in use, still incomplete although a lot of work has gone into it. It incorporates legislative drafting instructions, old and new, on various topics.
WA	Model Bill with amending forms-1999, comprehensive but not up-to-date (but there have not been significant changes). Customised word-processing manual, up-to-date. Parliamentary Counsel's occasional legislative drafting notes. Intended to consolidate these into a legislative drafting manual in due course.
NZ	<i>Drafting Manual</i> and <i>Style Guide</i> . Both documents are being revised.
Ontario	Short set of legislative drafting conventions (available to clients and public). All documents including Drafting Manual are kept up-to-date. An instructions document is circulated to clients.

5.5 Does your office have a uniform amending style? Are amending forms documented? How comprehensive and up-to-date is the documentation?	
ACT	Yes. Amending <i>Reference Guide</i> (available on PCO website; see 5.4 above). New style developed from Qld and OLD styles (see Qld below), but with some differences. Final check reads by legislative counsel and editors enforce uniformity.
Cwth OLD	Yes. Amending forms documentation is comprehensive and up-to-date.
Cwth OPC	Yes. Amending Forms Manual (very comprehensive and up-to-date, available via http://www.opc.gov.au/about/documents.htm).
NSW	Yes. SGML DTDs ensure uniformity.
NT	Yes – see the answer to 5.4.
Qld	In <i>Drafting Standard</i> , which is detailed and current. Location line – amendment command line – inserted text line(s) (if needed). “omit”, “omit and insert”, “insert”.
SA	Yes – uniform style. Style is documented.
Tas	Yes—amending legislation automatically generated from legislative counsel’s marking-up of consolidated principal legislation. Documentation in EnAct system specifications.
Vic	Yes—uniform style. 2002 Drafting instruction “sets out the style to be used in great detail and is comprehensive.”
WA	Yes. Model Bill (see 5.4). Word 97 macros used following model Bill examples.
NZ	Amending style is uniform and there is little room for variations. Style is well documented in Drafting Manual and Style Guide and is up-to-date.
Ontario	Precedents, with some flexibility. “However, as part of e-Laws we are examining the use of highly standardized wording to facilitate easier updating of our database.” [Tas Enact and RMIT influence]

5.6 Has your office expressly adopted a plain English [plain language] policy? If so, in what form? Is there any detailed documentation of this policy (e.g. plain English legislative drafting manual)?	
ACT	Yes. One of PCO “Key objectives” (stated in Annual Report). Published legislative drafting and publication procedures are designed to achieve goal of plain language (see 5.4 above). Basic plain language style guidelines are enforced for each Bill and draft regulation (e.g. 5-line limit on slabs of text) by checklist at time of handover for editing. However, this is a checklist only and may be deviated from.
Cwlth OLD	Yes, in the ‘OPC’s Mission Statement. Documentation generally reflects policy.
Cwlth OPC	Yes. Plain English Manual (available via http://www.opc.gov.au/about/documents.htm).
NSW	“Plain language was adopted as a policy in 1986”. Plain Language Policy is available on PCO website.
NT	No express policy. However, emphasis on well-structured provisions expressed in clear, concise language.
Qld	Yes, since 1991. Standards are based on this policy.
SA	Parliamentary Counsel requirement to draft in plain English. No documentation.
Tas	Yes. No detailed documentation (apart from some precedents).
Vic	Yes, mid 1980s (at Attorney-General Jim Kennan’s insistence). Robert Eagleson in 1986 suggested additional changes. Job advertisements mention that Vic PCO is a “plain English office”. Statement of policy on website.
WA	Not formally, and there is no detailed documentation. However, legislative drafting notes are used by PC cover particular matters; some matters have evolved by convention following internal discussion (e.g. gender-free language in new legislation; avoidance of “shall” and language seen as unnecessarily legalistic).
NZ	The PCO adopted a plain language policy in 1997, although the style of legislative drafting is evolving. The policy and legislative drafting practices that support it are documented in the Drafting Manual and Style Guide.
Ontario	Yes—lawyers’ meetings, standard texts, legislative drafting conventions and legislative drafting manual.

<p>5.7 Here are some of the markers associated with plain English [plain language] legislative drafting style. Give brief notes of office practice.</p> <p>5.7.1 Is “must” used rather than “shall”?</p>	
ACT	“Yes. “Shall” is never used. But not all uses of ‘shall’ replaced by ‘must’ (alternatives: present tense for statements of law; passive ‘is to’ if imperative not appropriate). <i>Legislation Act 2001</i> , s. 146 defines ‘may’ and ‘must’”.
Cwlth OLD	“Yes. ‘Shall’ is never used. Replaced by ‘must’ wherever grammatically appropriate. Up to the legislative counsel to find an alternative otherwise.”
Cwlth OPC	Yes, always.
NSW	“You must not use shall!”
NT	Yes.
Qld	Yes. When appropriate, “shall” is also changed to “must” when principal legislation is amended.
SA	Yes.
Tas	“Yes. <i>Acts Interpretation Act 1931</i> [s 10A] defines ‘must’, ‘is to’ and ‘may’.”
Vic	“Yes, 1985 (Attorney-General Jim Kennan’s insistence), for obligation. Most legislative counsel stopped using ‘shall’ entirely. But recently use of ‘shall’ for obligation is re-emerging.”
WA	“Shall” is avoided. “Must” or an alternative is used instead sometimes, but not always.
NZ	“Must” or alternative used instead of “shall”, except for Royal Warrants and associated regulations for military medals.
Ontario	No. Disagree with Eagleson etc. rationale for change.

5.7.2 Examples: Are they treated as part of the law, or do they have the same status as notes?	
ACT	Yes. Part of the law, non-exhaustive, may extend but not limit meaning of exemplified provision (<i>Legislation Act 2001</i> , s. 132). Provision may be an example even if not labelled as such (<i>Legislation Act 2001</i> , s. 132 (2)).
Cwlth OLD	Part of a regulation, but subject to <i>Acts Interpretation Act 1901</i> , s. 15AD – examples not exhaustive, and if inconsistent with provision exemplified, provision prevails.
Cwlth OPC	Part of an Act, but subject to <i>Acts Interpretation Act 1901</i> , s. 15AD – examples not exhaustive, and if inconsistent with provision exemplified, provision prevails.
NSW	Notes (not part of Act). Mainly in technical legislation, e.g. <i>Duties Act 1987</i> .
NT	Beginning to be used very sparingly. Proposed amendments to the Interpretation Act will, if enacted, clarify the status of examples. If the Interpretation Act is amended as proposed, likely to be greater use of examples.
Qld	Used sparingly. <i>Acts Interpretation Act 1954</i> , s. 14(3) similar to ACT provision but provides that exemplified provision prevails in the event of inconsistency.
SA	Used sparingly—regarded as part of Act (though no statutory provision relating to their use).
Tas	No, but have had to be accommodated [as part of the law] for adoption of interstate laws including them. Notes do not form part of Tasmanian law.
Vic	Yes. Part of the law, non-exhaustive, may extend but not limit meaning of exemplified provision (sections 36(3A) and 36A of the <i>Interpretation of Legislation Act 1984</i>). Since then increasing use (though many legislative counsel are yet to use them).
WA	Very rarely used. Not part of the law.
NZ	“Examples are used in 2 ways. Expressions in text “such as” and “for example” are common. Examples in text boxes separate from text itself are rarely used but were used extensively in <i>Personal Property Securities Act 1999</i> (PPSA). Under the <i>Interpretation Act 1999</i> , examples are among the indications in an Act that may be taken into account in ascertaining meaning (secs. 5). That is subject to any contrary intention. PPSA treats examples as indicative and if there is any inconsistency between example and provision, provision prevails.”
Ontario	Not in text, but used in explanatory note.

5.7.3 Are readers' guides, summaries, flow-charts etc. included?	
ACT	Yes, if appropriate. Use not extensive. Flow-charts inserted (rarely) as notes (non-legislative) (<i>Workers Compensation Amendment Act 2001</i>).
Cwlth OLD	Yes, if appropriate. Not much used in regulations, where they are inserted as notes. More common in other instruments, where they may appear in a great variety of forms.
Cwlth OPC	Frequently used.
NSW	Not as such. Flow charts rarely (<i>Health Care Complaints Act 1993; Mental Health Act 1990; Evidence Act 1995</i>). Summaries from time to time (<i>Taxation Administration Act 1986</i>).
NT	No. Willing to consider their use in individual cases if appropriate. However, a strong argument would need to be made out for their use in an individual case before approval for use would be given.
Qld	Readers guides: often; flowcharts: occasionally.
SA	Not used.
Tas	No, but have had to be accommodated for adoption of interstate laws including them.
Vic	Very limited experiments with tables and flowcharts. No readers' guides or summaries. Sometimes an "outline section" is used (i.e. a summary of the operation of the Act).
WA	No.
NZ	"Overviews and outlines are quite common (see <i>Personal Property Security Act 1999, Animal Products Act 1989, Building Act 2004</i>). Flow-charts are used when appropriate (see <i>Trade Marks Act 2002, Criminal Records (Clean Slate) Act 2004, Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004</i>)."
Ontario	May be supplied by instructors at first reading stage.

5.7.4 Are explanatory notes included?²⁶	
ACT	Used often, usually for internal and external cross-references. Not part of the Act (<i>Legislation Act 2001</i> , s. 127(1)). Parliamentary Counsel may authorise omission, change or insertion of note in republication (<i>Legislation Act 2001</i> , s. 116(1)(m)).
Cwlth OLD	Used frequently by some legislative counsel, rarely by others. Not part of the instrument.
Cwlth OPC	Used fairly frequently. “OPC’s view is that the status of notes is unclear, and that it may be desirable for it to be clarified by an amendment to the <i>Acts Interpretation Act 1901</i> .”
NSW	Common. Not part of Act.
NT	Beginning to be used very sparingly. Proposed amendments to the Interpretation Act will, if enacted, clarify the status of notes. If the Interpretation Act is amended as proposed, likely to be greater use of notes.
Qld	Used occasionally.
SA	Used by some legislative counsel. Footnotes do not form part of the Act (<i>Interpretation Act</i>). A note in the body of the Act would be viewed as part of the Act.
Tas	No.
Vic	Yes, but only by some legislative counsel. Previous practice of printing at end of Act restricted practical utility; use at foot of provision annotated makes them more attractive. Notes at the foot of provisions are part of the Act (<i>Interpretation of Legislation Act 1984</i> , s. 36(3A)).
WA	No.
NZ	“PCO legislative counsel do not include explanatory notes in text of Bills or regulations. All government Bills have an explanatory note. The note is in 2 parts, a General Policy Statement which is prepared by agencies and a Clause by Clause Analysis which is written by legislative counsel. Unlike England, these notes are not updated as Bills progress. The explanatory notes do not form part of the resulting Acts. All regulations have an explanatory note which is written by legislative counsel and appears after the regulation but is not part of it.”
Ontario	Yes, an explanatory note appears at front of each Bill. The explanatory notes for source laws are retained in e-laws. [But annotations are not inserted throughout the text of laws.]

²⁶ That is, annotations inserted by the drafter throughout the text of a Bill which are reproduced in official publications of the law as enacted.

5.7.5 Dictionaries: Are they located at the end rather than as “interpretation” provisions at beginning?	
ACT	All new legislation has a dictionary at end (unless there is only a short list of definitions). As part of a regular statute law amendment program, most pre-2001 legislation has been revised to move definitions into a dictionary. However, significant definitions are often inserted in an early part of a Bill as key concepts, or in particular chapters/parts/divisions, with cross-references in the dictionary.
Cwlth OLD	Dictionary at the end for long list. Otherwise, a “definitions” provision is placed at the beginning of the document.
Cwlth OPC	Uncommon, although sometimes used (e.g. <i>Income Tax Assessment Act 1997</i> , <i>Native Title Act 1993</i>).
NSW	Only if large number of intrusive definitions. “Have rather gone out of fashion”.
NT	No.
Qld	Yes (default), but ultimately a matter for judgment (e.g. may be placed at beginning if dictionary would be too remote from body of Bill, or if the Bill is short).
SA	No.
Tas	No, but have had to be accommodated for adoption of interstate laws including them.
Vic	No. Respondent yet to be convinced that this is a plain English practice. Can be difficult if dictionary not literally at the end. Victorian practice of including index in large principal Acts with list of all defined words and page number may be satisfactory substitute.
WA	A Bill for a new Act, or a reprint, usually includes a list of defined terms at the end (terms defined anywhere in the legislation), with reference to provisions. Not part of legislation, can be updated in republications. Dictionaries and glossaries seldom used as a result.
NZ	“All Acts and regulations have interpretation provisions at beginning or near beginning. Some will be included in a Part headed ‘Preliminary Provisions’. However, the <i>Interpretation Act 1999</i> has ‘definitions’ near the end, but those definitions apply to legislation generally as well as to that Act and placement is not therefore inconsistent.”
Ontario	No. Definitions are located at the beginning.

5.7.6 Are in-text definitions frequently used (tagged term definitions or similar)?	
ACT	“Yes, often. A signpost definition is inserted in the dictionary if the tagged term is used in more than one section. The <i>Drafting Practice Guide</i> has recently been revised to include guidelines on the use of these and other relatively unconventional forms of definition.”
Cwlth OLD	Frequently used by some legislative counsel, rarely by others.
Cwlth OPC	Frequently used.
NSW	Frequently used (bold italic).
NT	“Yes, if appropriate. Sometimes accompanied by a ‘signpost’ in the interpretation section at the beginning of the Bill, etc.”
Qld	“Yes, often. If an in-text definition is used outside a section, it will be inserted in dictionary or general definition section and signposted.”
SA	Becoming more common.
Tas	Occasionally used.
Vic	Sparingly, but increasingly used. “Drafting device” not “plain English” device. Harder to find than normal definitions (thus “anti-plain English”).
WA	When helpful. Defined terms are bolded (they are included in the automatically generated list of defined terms – see previous answer).
NZ	These are used with a restricted range, e.g. same section or regulation, Part or proximate provisions. Sometimes used within a section or regulation, although not specifically defined, to avoid repetition, e.g. “person A”.
Ontario	No.

5.7.7 Are defined terms highlighted (e.g. by asterisk*)?²⁷	
ACT	No. Considered too distracting. But cross-reference to definition sometimes included in an explanatory note.
Cwlth OLD	No.
Cwlth OPC	Sometimes (e.g. <i>Tax Code Acts</i>). At legislative counsel's discretion.
NSW	No.
NT	No.
Qld	No. Highlighting (bold italic) only at point of definition.
SA	No.
Tas	Definitions bolded and put in quotes [at point of definition; in Tas style, no highlighting of defined terms elsewhere].
Vic	No. Experiments in some regulations. One experiment grouping defined terms at bottom of page (labour intensive, but could be automated). "Generally too distracting".
WA	No. "The Interpretation Act and other external things can also affect the meaning of terms."
NZ	No. However, boldface is used in the definition itself.
Ontario	No.

²⁷ That is, apart from the definition itself.

5.7.8 Is there any relaxation of the single sentence/single provision rule?	
ACT	No. The single sentence rule is listed as a plain language style rule of thumb (legislative drafters' checklist), despite some plain language advocates who regard the rule as resulting in complexity.
Cwlth OLD	No.
Cwlth OPC	No requirement to draft in single-sentence provisions. But not routinely relaxed.
NSW	Yes, sparingly.
NT	No.
Qld	No.
SA	Very occasionally.
Tas	No.
Vic	No absolute rule – occasionally used. Query whether plain English practice (as such) – used in the past.
WA	Not widely.
NZ	Very occasionally. When done, a semi-colon rather than a full-stop used to separate sentences. However, this practice is not encouraged.
Ontario	Yes, but only in limited circumstances.

5.7.9 Are any limits placed on sentence length and provision length?	
ACT	Yes. No more than 5 subsections/section; 5 paragraphs/subsection; 5 lines/provision. But rules of thumb only (see legislative drafters' checklist).
Cwlth OLD	5-line rule as rule of thumb. Short provisions preferred.
Cwlth OPC	No explicit rules generally. Rules for tax law improvement legislative drafting, however.
NSW	5-line rule, but flexible.
NT	No formal rules, but legislative counsel encouraged to break up chunky provisions whenever possible.
Qld	5 lines maximum without paragraphs. Preference to limit length if possible.
SA	Not particularly.
Tas	No formal rule, but informal policy to keep sentences and sections short.
Vic	No formal rule, but longstanding informal policy that sentence/provision length should not be too long.
WA	Try to keep short, but no inflexible limit.
NZ	Encouraged to break section after 6 subsections. Short sentences preferable, but use of paras/subparas tends to support longer sentences without unduly reducing readability/accessibility.
Ontario	Encourage short sentences and short provisions.

5.7.10 Are there any other special features (e.g. bias towards rewriting for plain language style when amending rather than minimal textual amendment)?	
ACT	“Rewriting when amending is actively pursued (smallest text unit or units rewritten rather than textual amendments), but not for minor and consequential amendments. Depends on the situation (e.g. see OPC comments below). I personally tend to think that a problem with too aggressive a rewriting policy is that it presumes adequate explanatory memoranda and 2nd reading speech material to explain actual change. Unfortunately, however, this presumption is often unwarranted (ACT PCO does not prepare these documents). See Vic comment below.
Cwlth OLD	Plain English rewriting decided on a case-by-case basis. Similar approach to Cwlth OPC.
Cwlth OPC	Plain English rewriting decided on a case-by-case basis. Preference towards rewriting, but depends on instructions and situation (e.g. judicial interpretation, political considerations, e.g. keeping Bill size small).
NSW	Rewriting whenever appropriate and if time permits.
NT	If appropriate and time permits, will re-write the smallest provision rather than making the minimal textual amendment. Encouraging legislative counsel to do more re-writing. Proposed amendments to the Interpretation Act will, if enacted, clarify the status of changes in legislative drafting practice. If the Interpretation Act is amended as proposed, likely to be more re-writing.
Qld	Yes, with authority from instructor.
SA	Some rewriting, as far as reasonably appropriate.
Tas	Usually minimal textual amendment.
Vic	Bias towards rewriting wherever possible. View that it is easier for people to read a complete provision rather than amendments. Rewritten text required to conform to style current at time of rewriting. Free rein over primary Act structures. Explanatory memorandum begun to be published with certain selected Acts, more generally in annual bound volumes. But standard of explanatory memorandums not good. If standard were to improve, could considerably assist readers.
WA	“Usually replace more than the minimal amount if there are multiple changes, but generally would not encourage excessive rewriting based only on stylistic preference.”
NZ	Similar to Cwlth OPC. Preference is to rewrite but depends on time, size of Bill, what else may be affected, House time. PCO applies “clean break principle” when amending older legislation so modern style may sit alongside older-style legislative drafting.
Ontario	No clause sandwiches. No law Latin or law French, non-sexist style. Prefer to rewrite when possible.

5.8—Any other comments about your office legislative drafting practice (e.g. peculiarities of your jurisdiction, or any reforms that are underway)	
NSW	NSW has moved away from the emphasis on the amending or principal Bill in printed form and is placing more emphasis on— (a) focusing attention (in accordance with plain language principles) on the readability of black letter law text (rather than devices that explain or reinterpret the black letter law), and (b) the law in force (as amended by a Bill) and its delivery, use and comprehension on-line (in this area there is significant experimentation and development).
WA	The WA parliamentary counsel's office provides revision-tracked versions of Acts proposed to be amended, but only when the amending Bill has been introduced, and if the PC considers it warranted.
NZ	A revision tracking system (redlining) to show amendments is used to assist Parliamentary select committees. This has become the established method of amending Bills and has proved popular with Members. The PCO recently engaged Michèle Asprey, an Australian lawyer and consultant on the use of plain language by lawyers, to undertake a review of NZ legislative drafting practices from a plain language perspective. The Office is in the process of considering her suggestions.
Ontario ²⁸	In 2002, Ontario also introduced a revision tracking system to show the amendments made to Bills in committee between the second and third reading stages.

²⁸ Author's note.