

PARLIAMENTARY COUNSEL

Drafting Direction No. 3.13 References to cases in notes

Note: This Drafting Direction contains references to the “head drafter”. It is a reference to the senior person who is responsible for matters of drafting policy. This form is used to enable the Drafting Directions to be applied in other organisations. In OPC the head drafter is FPC.

Document release 2.2

Reissued September 2025

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Introduction

1 In the course of drafting legislation or parliamentary amendments, you may be asked to include a note referring to a case to explain a particular provision.

2 There is no objection in principle to including case references in notes.

3 An example of a case reference in a note is the note at the end of subsection 63(2) of the Australian Consumer Law (see Schedule 2 to the *Competition and Consumer Act 2010*).

(2) To avoid doubt, subsection (1)(a) does not apply if the consignee of the goods is not carrying on or engaged in a business, trade, profession or occupation in relation to the goods.

Note: This subsection was inserted as a response to the decision of the High Court in *Wallis v Downard-Pickford (North Queensland) Pty Ltd* [1994] HCA 17.

4 The form “as a response to [the decision]” should generally be preferred over forms like “to overcome” or “to confirm” which could be read as involving an attempt to identify the effect of the case in the legislation. It is sufficient to say that there is a relationship between the court’s decision and the enactment of the provision concerned, without going on to say what we think is the exact nature of that relationship.

5 You should show the head drafter any note you propose to include that is in a different form from the above note.

Use medium neutral citations if possible

6 You should include medium neutral citations in the note if possible. Medium neutral citations are assigned to judgments by the relevant court or tribunal. They are independent of citations that the commercial publishers give. They aid electronic searching and retrieval of judgements. They use paragraph numbers to avoid page numbers, which can differ depending on the source.

7 A template is: *Plaintiff v Defendant* [year of judgement delivery] court designator (e.g. FCA) unique judgement number (e.g. 678). An example is: *Plaintiff v Defendant* [2020] HCA 29.

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19 September 2025

Document History		
Release	Release date	Document number
1.0	1 May 2006	s06rd389.v01.doc
2.0	2 October 2012	s06rd389.v10.doc
2.1	31 August 2020	s06rd389.v17.doc
2.2	19 September 2025	s06rd389.v21.doc

Note: Before the issue of the current series of Drafting Directions, this Drafting Direction was known as Drafting Direction No. 13 of 1994.