

PARLIAMENTARY COUNSEL

Drafting Direction No. 1.6 Asterisking to identify defined terms

Document release 1.2

Reissued April 2026

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Part 1—Introduction—the issues

1 There are 2 broad issues:

- when to use asterisks:
 - in new legislation;
 - in existing legislation (other than the Tax Code);
 - in the Tax Code;
- how to use asterisks:
 - which occurrences of defined terms should be asterisked;
 - the features of legislation that support the asterisking system.

Part 2—When to use asterisks

New legislation

2 FPC approval is required to use asterisking in any Bill for a new principal Act (that will not form part of the Tax Code) or in any new instrument. In deciding whether to use asterisks, the drafter should consider the size of the draft and the extent to which it will rely on defined terms.

The size of the draft

3 Asterisking is an attempt to address the difficulty of locating definitions and knowing which terms or expressions are defined. That difficulty is likely to be greater in larger legislation, so very small legislation is less likely to benefit significantly from asterisks. Asterisking of legislation outside the Tax Code tends to occur in fairly large Acts. However, within the Tax Code, some medium-sized and smaller Acts have also been asterisked (eg. the Wine Equalisation Tax Act, the ABN Act and the Luxury Car Tax Act).

4 Drafters should particularly consider asterisking for a new Bill that is likely to become large because of later amendments: it is far easier to begin with asterisks than to amend the Act later to include them.

The extent to which the legislation will rely on defined terms

5 The more heavily legislation relies on defined terms, the more likely it is that it would benefit from using asterisks. Conversely, if legislation does not rely much on defined terms, it would be harder to justify including the features that need to be in place to cater for the minimal use of asterisks.

Existing legislation (other than the Tax Code)

6 When drafting legislation to amend other legislation (the ***principal legislation***), drafters should follow the asterisking practice in the principal legislation. This means that drafters should:

- use asterisks in inserted text if the principal legislation uses them;
- not use asterisks in inserted text if the principal legislation does not use them;
- if the principal legislation uses asterisks and a new definition is inserted, amend existing occurrences of the newly defined term, which may previously have been relying on ordinary and natural meaning, to include asterisks and make any other appropriate amendments (not all of the existing occurrences will need to be amended, see the rules below). Asterisking amendments may be done using a table format as set out in the Amending Forms Manual in accordance with the rules set out in the Manual.

The Tax Code

7 All Acts forming part of the Tax Code use asterisks, apart from some very short Acts. Drafting Direction 1.8 provides more details, and includes a list of the Acts that make up the Tax Code.

Part 3—How to use asterisks

8 There are 2 aspects to this:

- which occurrences of defined terms should be asterisked;
- the features of legislation that are needed to support asterisking.

Which occurrences of defined terms should be asterisked?

The basic rule: when to use an asterisk

9 An asterisk should be put in front of the first occurrence of each defined term in each:

- subsection (or section not divided into subsections);
- definition (including a definition in a subsection that is not part of the general definitions section or Dictionary);
- row of a table (that has substantive effect, rather than being just explanatory)—note that this departs from the previous Tax Code practice of asterisking the first occurrence in each cell of a table;
- step in a method statement;
- clause (however referred to) in a non-amending Schedule.

10 A defined term should be asterisked in a formula unless the definition is in the subsection containing the formula or the next subsection. Each occurrence of the term in the formula should be asterisked (even if the term is also asterisked in the text introducing the formula).

11 You can just type a normal asterisk, which uses a larger font size, as the ‘Fix document’ and ‘Finalise’ macros will replace them with the correct asterisks. For information on how to add asterisks to defined terms in formulas, see Word Note 3.6.

The basic rule: when *not* to use an asterisk

12 Asterisks are not used in:

- non-operative material;
- headings (including headings quoted in parentheses in an operative provision);
- notes or examples;
- tables that are only explanatory (e.g. for signposting purposes);
- Guides and outline provisions;
- diagrams (unless they have substantive effect);
- the definition of the term concerned (e.g. disposal, not *disposal).

Defined terms that are not asterisked

13 Some defined terms occur so frequently that it would be unhelpful and distracting to asterisk them. These terms are specified in a table at the front of the legislation. For example, subsection 3-5(3) of the *A New Tax System (Luxury Car Tax) Act 1999* provides:

(3) The following basic terms used throughout the Act are *not* identified with an asterisk.

| Common definitions that are not asterisked | |
|---|-------------------|
| Item | This term: |
| 1 | indirect tax zone |
| 2 | luxury car tax |
| 3 | supply |
| 4 | you |

14 However, the number of defined terms that are not asterisked should be kept to a minimum. Having too many of them tends to attract criticism and compromise the integrity of the asterisking system.

Specific issues to do with using asterisks

15 Paragraphs 16 to 31 deal with some specific issues, and things drafters should know, in using asterisks.

Relational definitions

16 Terms may be defined in relation to specific things or circumstances (eg *design* of a uniform has the meaning given by....).

17 Drafters should try to avoid defining a term in a relational way in one part of legislation where the term takes its ordinary meaning in another part of the legislation.

18 If a term is defined in a relational way, the term should only be asterisked in the legislation when the term is used in a context that attracts the defined meaning. When the term is only used in its ordinary (undefined) meaning, it should not be asterisked.

19 However, care is needed in deciding when the context attracts the defined meaning. Often the context attracts the defined meaning in some, but not all, conceivable situations. In that case, the term should be asterisked.

Composite defined terms

20 If a defined term (eg. business travel expense) includes another defined term (eg. travel expense), only the composite defined term is asterisked. In that example: *business travel expense, not *business *travel expense.

Extended definitions

21 If a term is defined using a number of provisions (such as a section with several subsections or an entire Subdivision), occurrences of the defined term within that extended definition are not asterisked. It would be unhelpful to asterisk them because the asterisk would only refer the reader back to the definition itself. For example, s.11-15 of the GST Act provides:

- (1) You acquire a thing for a *creditable purpose* to the extent that you acquire it in *carrying on your *enterprise.
- (2) However, you do not acquire the thing for a creditable purpose to the extent that:
etc.

Narrative style

22 The normal asterisking rules apply even where the narrative style is used across several provisions. For example:

- (1) The Commissioner must cancel the registration of a *resident agent if the Commissioner is satisfied that ...
- (2) The Commissioner must notify the *resident agent of the cancellation.

23 Both references are asterisked, even though the reference in the second subsection clearly links to the reference in the first subsection.

Alternative occurrences in the same provision

24 The former Tax Code practice of asterisking alternative occurrences of a defined term in the same subsection etc. no longer applies. For example, subsection 28-12(1) of the *Income Tax Assessment Act 1997*, drafted using the former Tax Code practice, used to read:

- (1) If you owned or leased a *car or hired a *car under a hire purchase agreement...

However, if that subsection were being drafted now, it would read:

- (1) If you owned or leased a *car or hired a car under a hire purchase agreement...

“Labels” are generally not asterisked

25 Asterisks should not generally be used to identify “labels” for concepts, even if the labelled concept is used in another section. Labels are simply short tags to save repetition of text rather than definitions that clearly establish concepts. Similarly, the Dictionary/definitions section should generally not be cluttered with signposts to labels for concepts. If a label is generic, it may also be useful to use the label again in an obviously different context for a different concept.

26 If a signpost is needed to help the reader find the provision creating the label, you can include a reference to that provision where the label is used, or a note (although it shouldn't be necessary to do this where the label is used in the same section that creates it). For example:

392-35 Stage 1—working out your basic amount

Work out the amount (the *basic amount*) of tax that would be payable on your *basic taxable income ...

392-75 Working out the kind of adjustment

Compare your basic amount worked out under section 392-35 with your notional amount ...

27 There may be circumstances in which it is useful to asterisk labels where they are used (eg. in the company tax losses provisions in Division 165 of the *Income Tax Assessment Act 1997*, labels are used in provisions that are a considerable distance from the provisions where the labels are created, and some labels are used in different places to tag different concepts).

28 Labels should be used sparingly and should not be used to avoid asterisking a term.

Asterisking different grammatical forms

29 Different grammatical forms of a defined term have a corresponding meaning to the defined term (section 18A of the *Acts Interpretation Act 1901*), and should be asterisked accordingly. For example, if the term “manufacture” is defined in an Act that uses asterisks, occurrences of the term “manufacturer” in that Act should be asterisked.

30 In the *Income Tax Assessment Act 1997*, the Dictionary includes some signpost definitions such as this:

held: see hold.

31 This is unnecessary because of section 18A of the *Acts Interpretation Act 1901*, but is included in the *Income Tax Assessment Act 1997* to promote the aim of helping the reader to match the definition with occurrences of the defined term. It is not a requirement of the asterisking system, and it should not be used solely for the purpose of supporting the asterisking system.

The features of legislation that support the asterisking system

Provisions giving effect to the asterisking system

32 Legislation that uses asterisking should include provisions that do the following:

- state that asterisks are used;
- very briefly state the basic rules for asterisking;
- state that the fact that a defined term is not asterisked is not relevant to interpreting the term;
- include a table of the defined terms that are not asterisked.

33 The following precedent (designed for use in Acts and adaptable for instruments) should be used and should be included in Part 1. The precedent should not be altered without good reason—a drafter who wishes to alter this precedent because it is unsatisfactory in some way must bring the problem to FPC’s attention, so that if necessary the precedent can be improved.

Identifying defined terms

- (1) Many of the terms in this Act are defined in section 5.
- (2) Most of the terms that are defined in [section ?/the Dictionary in Part?] are identified by an asterisk appearing at the start of the term: as in “**[insert a defined term used in the Act]*”. The footnote with the asterisk contains a signpost to [section ?/the Dictionary].
- (3) An asterisk usually identifies the first occurrence of a term in a section (if not divided into subsections), subsection or definition. Later occurrences of the term in the same provision are not usually asterisked.
- (4) Terms are not asterisked in headings, notes, examples, explanatory tables, guides, outline provisions or diagrams.
- (5) If a term is not identified by an asterisk, disregard that fact in deciding whether or not to apply to that term a definition or other interpretation provision.

- (6) The following basic terms used throughout the Act are not identified with an asterisk:

| Terms that are not identified | | |
|--------------------------------------|------------------|------------------------------|
| Item | This term | is defined in section |
| 1 | | |
| 2 | | |
| 3 etc. | | |

34 Acts forming part of the Tax Code include these provisions in a different form, largely because of their connection to the sections on non-operative material: see Subdivision 2-C and subsection 950-100(2) of the *Income Tax Assessment Act 1997*.

The footer

35 Legislation that uses asterisks should include a footer on each page (but not the cover page or the Table of Contents). The footer should be along the following lines:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1 (from the *Income Tax Assessment Act 1997*); or

*To find definitions of asterisked terms, see section 5 (from the former *Child Care Payments Act 1997*).

36 The footer should generally fit on one line. This may not be possible in some cases, such as where the legislation containing asterisks relies on definitions in the parent Act. For example, the *Aged Care (Consequential Provisions) Act 1997* includes this footer:

*To find definitions of asterisked terms, see the Dictionary in Schedule 1 to the *Aged Care Act 1997*.

37 The IT staff provide technical support for inserting the footer.

Single location for definitions

38 The asterisking footer relies on there being one location in the legislation where all the defined terms are located (either the definitions themselves or signposts to the definitions). It will not work, and must not be used, if Chapters, Parts etc. of the legislation have their own dedicated definition sections, unless the definitions are at least signposted in the Dictionary/main definition section. Any “just in time” definitions must also be signposted in the Dictionary/definition section.

39 The definitions do not have to be in a Dictionary at the back of the legislation. For example, the former *Child Care Payments Act 1997* had a definition section near the front.

40 If a defined term is defined differently in different contexts, it is important to ensure that all the different meanings given to the term are brought together in the Dictionary/main definition section. For example:

cost:

- (a) **cost** of a *depreciating asset has the meaning given by Subdivision 40-C; and

- (b) *cost* of an item of *trading stock, in the case of an animal that you acquired by natural increase, has the meaning given by section 70-55.

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26 March 2026

Document History

| Release | Release date | Document number |
|----------------|---------------------|------------------------|
| 1.0 | 1 May 2006 | s06rd374.v01.doc |
| 1.1 | 7 September 2020 | s06rd374.v10.doc |
| 1.2 | 26 March 2026 | s06rd374.v12.doc |

Note: Before the issue of the current series of Drafting Directions, this Drafting Direction was known as Drafting Direction No. 6 of 2000.