

# PARLIAMENTARY COUNSEL

## Drafting Direction No. 2.1 English usage, gender-specific and gender-neutral language, grammar, punctuation and spelling

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 for Bills and the PLC for instruments.

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## Part 1—English usage and grammar

### *Plain English Manual*

1 The Plain English Manual should be regarded as having the same status as a Drafting Direction.

2 However, paragraph 69 (which is about the use of “and/or”), paragraphs 155 and 156 (which refer to including objects provisions in amending Bills) and paragraph 169 (which refers to including alphabetical indexes at the end of long Bills) are practices that OPC does not follow.

3 If there are any other inconsistencies between the Plain English Manual and any other Drafting Direction or Word Note, the other Drafting Direction or Word Note prevails.

### ***Lessons from Chew v The Queen—distinguishing purpose from result in prohibitions***

#### **Background**

4 In *Chew v The Queen* (1992) 173 CLR 626, the High Court interpreted subsection 229(4) of the Companies (Western Australia) Code which read:

An officer or employee of a corporation shall not make improper use of his position as such an officer or employee, to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the corporation.

5 Five Justices held that an officer or employee contravenes the provision if he or she makes improper use of his or her position as such **for the purpose of** gaining an advantage etc. or causing detriment etc. One Justice held that it is enough if the officer or employee makes such use of the position and this **results in** a gain or detriment, regardless of the purpose of the officer or employee. One Justice held that the provision requires both the purpose and the result.

6 The judgments in the case yield some lessons for drafters.

#### **Distinguishing purpose from result**

7 The spread of judicial opinion in *Chew* forces the conclusion that the infinitive construction in the provision (“to gain ... or to cause detriment ...”) did not convey the intended meaning clearly enough.

8 In similar provisions, you should indicate expressly whether a purpose or result is meant. If both are intended, expressly state that.

9 In drafting a provision intended to cover purpose, you should consider:

- (a) whether it is necessary to cover the case of multiple purposes and, if so, how the proscribed purpose should relate to the others; and
- (b) whether it must be the sole purpose, or the sole or dominant purpose, or whether it needs only to be a substantial purpose; and

- (c) if the purpose is to be the dominant purpose, whether it should be dominant over each other purpose, or dominant over all the other purposes taken together.

10 Although the question of multiple purposes did not arise in *Chew*, the provision should perhaps have dealt with it.

11 If the provision had been intended to operate by reference to result rather than purpose, it should probably have read as follows:

An officer or employee of a corporation contravenes this subsection if he or she makes improper use of his or her position as such an officer or employee and the improper use:

- (a) results in the officer or employee gaining, directly or indirectly, an advantage for himself or herself or for any other person; or
- (b) causes detriment to the corporation.

12 The “must not” form is inappropriate here, because the contravention is not complete until one of the specified results happens.

13 In expressing purpose or result, different forms of words may be appropriate in different cases.

### ***Nouns of multitude***

14 Nouns of multitude such as “number”, “majority” etc. are not always singular in number. On the contrary they are usually plural. The most common mistake is to assume that the word “number” must be singular. For example, it is correct to say that “the number of books on the table is six” because it is the number that is six, not the books. But “a number of books are on the table” is correct because it is the books that are on the table, not the number. Fowler says that a good working rule (although not an inflexible one) is that the definite article before a noun of multitude usually means that the noun is singular and an indefinite article usually means that the noun is plural.

## **Part 2—Gender-specific and gender-neutral language**

### ***New drafting***

#### **Use of masculine and feminine personal pronouns**

15 A masculine personal pronoun in draft legislation must always be accompanied by a feminine personal pronoun (and vice versa) except in the very rare case of legislation intended to apply to people of one sex but not the other (e.g. maternity leave legislation). Drafters should use their discretion in deciding, in individual cases, whether it would be better to avoid the use of pronouns altogether by repeating the relevant noun instead.

#### **Use of “Chair” (instead of “Chairperson” or “Chairman”)**

16 “Chair” should be used (instead of “Chairperson” or “Chairman”) when establishing new offices. If your instructors do not wish to use “Chair”, you will need to explore other titles such as “President”, “Senior Member”, “Convener”, etc.

## **“Gender-specific” words**

17 Words ending in “man” which might reasonably be seen as importing the masculine gender should be avoided in favour of gender-neutral words, e.g. “police officer” instead of “policeman”. However, you should avoid substitutes created simply by replacing “man” with “person” (“policeperson” would not be acceptable).

## ***Amendments of existing legislation***

### **Insertion of feminine pronouns**

18 There are still large numbers of occurrences of masculine pronouns without equivalent feminine pronouns in the statute book. However, most of them do not require amendment. The occurrences that do not require amendment include the following:

- occurrences in agreements or other documents set out in legislation (these occurrences would only be amended if the agreements or other documents are themselves amended);
- occurrences in legislation that have little or no current or future operation (many of these occurrences remain on the statute book for years, often because this is easier for administrators than repealing them and making any necessary transitional or savings provisions—it would be a waste of time to update their language);
- occurrences in legislation in which the use of masculine pronouns alone might reflect a deliberate policy, and where amendments should not be made without a conscious policy decision (this legislation would usually be a subset of legislation with little or no current or future operation, but not always—see the discussion about the *Navigation Act 2012* in paragraph 24).

19 If you come across a case in which feminine pronouns should be inserted, you should make the necessary amendments if time permits. There may be some efficiency in arranging for service centre staff to prepare a first draft of the amendments.

### **Chairman/Chairperson and deputies**

20 If you are amending legislation that establishes an office of “Chairman”, you should replace that title with “Chair”.

21 If you are amending legislation that establishes an office of “Chairperson”, you should not replace that title with “Chair” unless requested by your instructors to do so.

22 If you are amending legislation to establish an office of deputy to an existing office of “Chairperson”, the titles of the offices should be consistent (e.g. “Deputy Chairperson” and “Chairperson”).

23 Note that section 18B of the *Acts Interpretation Act 1901* (which applies to legislative instruments because of paragraph 13(1)(a) of the *Legislation Act 2003*) allows the occupant of an office that has the title of Chair, Chairperson, Chairman or Chairwoman to be referred to by any of those titles or any other similar title. Similar provision is made in respect of an office that has a deputy chair title.

## **“Gender-specific” words**

24 The few possibly “gender-specific” words that do remain in Commonwealth legislation need to be treated with considerable care. For instance:

- “Ombudsman” is generally accepted as having an origin unrelated to the English use of “man” as a suffix.
- The *Navigation Act 2012* still refers to “masters” of ships. This expression is still found in relevant international treaties and there is considerable reluctance to change it without a careful examination of any possible legal consequences.

25 If you come across an apparently “gender-specific” expression in existing legislation, you should discuss the matter with your instructors, and with the head drafter, before deciding to replace it.

## **Part 3—Punctuation**

### ***More lessons from Chew v The Queen—use of punctuation***

26 Most of the judgments in *Chew v The Queen* considered the first comma in the provision and speculated about its origin and effect, but no Justice thought that the comma helped resolve the issue in the appeal.

27 Although 2 Justices expressed something like the traditional reservations about punctuation as an aid to interpretation, the others all treated it as an integral part of the provision. It is clearly appropriate for drafters to rely on punctuation in order to convey meaning.

28 However, it is plain from the result of the case that the first comma in the provision served no useful purpose.

29 Punctuation that is required neither by the rules of grammar nor to help convey a provision’s meaning should be avoided. Before using a comma simply as an aid to readability, you should consider whether it would be better to recast the provision.

### ***Punctuating a final paragraph or subparagraph***

30 A final paragraph or subparagraph that is not the end of a section or subsection should be punctuated with a semi-colon (as in paragraph (1)(b) of the following example):

- (1) If:
  - (a) ... ; and
  - (b) ... ;then ....

## Part 4—Spelling

### ***Adoption of Macquarie Dictionary or Style Manual***

31 Spellings recommended in the latest edition of the Macquarie Dictionary or Style Manual should generally be used in legislation. Changes in the Macquarie Dictionary reflect the evolving nature of spelling in Australian English usage. For example:

- “internet” is no longer capitalised;
- “website” is one word (note that the expression “internet site” should not be used);
- lodgement and acknowledgement are now spelt with an “e”.

32 However:

- the spelling “judgement” (with an “e”) is used, except in the context of a court’s decision or reasoning in which case the spelling “judgment” (without an “e”) is used; and
- “trade mark” should be two separate words (not a single word as recommended by the Macquarie).

33 If there is a conflict between the Macquarie Dictionary and the Style Manual, you should follow the spelling in the Macquarie Dictionary since it is more frequently updated. If a change in the Macquarie Dictionary would result in a change in practice, you should advise the head drafter.

### ***Spelling of “Indigenous”***

34 Always capitalise “Indigenous” when it refers to the original inhabitants of Australia—as in “Indigenous Australians” and “Indigenous communities”. It needs no capitals when used in a general sense to refer to the original inhabitants of other countries.

35 However, it is not necessary to amend existing uses of “indigenous” that should be capitalised according to this approach, unless this would lead to glaring inconsistencies with new material being inserted into the legislation concerned.

## Part 5—Numbers, percentages and fractions

### ***Cardinal numbers***

#### **The general rule**

36 Cardinal numbers must be expressed as Arabic numerals (for example “2”). There are 2 exceptions to this rule, which are set out in paragraphs 37 and 40 below.

#### **Exception—“zero” and “one”**

37 The cardinal numbers “zero” and “one” should be expressed as a word unless:

- (a) the number is to be preceded by or followed by a mathematical symbol, or a unit of measurement, currency or time; or
- (b) the number represents an abstract mathematical concept such as an indexation factor; or
- (c) the number is used in a date; or
- (d) the number is used to indicate a number of penalty units.

38 This means that the following uses of the numbers “zero” and “one” are correct:

- (a) “one of the following”;
- (b) “if one person is a child of another person”;
- (c) “at least one application”;
- (d) “1 year/1 month/1 week/1 day”;
- (e) “1 penalty unit”;
- (f) “0%” or “1%”;
- (g) “\$0” or “\$1”;
- (h) “0” or “1”;
- (i) “0 megalitres” or “1 megalitre”;
- (j) “0 kilometres” or “1 kilometre”;
- (k) “1 January 2009”.

39 If you are uncertain whether to use “zero” or “0”, consider using “nil”.

**Exception—cardinal numbers at the start of sentences or headings**

40 Cardinal numbers that start a sentence or provision heading should be expressed as words. For example, the following subsection is correct:

- (4) Two or more fees may be prescribed for the same matter.

**Ordinal numbers**

41 Ordinal numbers up to and including “tenth” should be expressed as words. Ordinal numbers above “tenth” should be expressed using Arabic numerals (for example “12th”).

42 This means that the following uses of ordinal numbers are correct:

- (a) “the first day of the month”;
- (b) “the second of the following”;

- (c) “a third person”;
- (d) “the 21st day”;
- (e) “the 48th hour”.

43 The rules in paragraphs 41 and 42 also apply to ordinal numbers in amending items, amending item headings and parliamentary amendments.

44 In an ordinal number that is expressed using an Arabic numeral, the 2 letters coming immediately after the numeral should not appear in superscript.

### ***Numbers greater than 999***

45 Numbers greater than 999 should be expressed using commas rather than using spaces or, for a 4 digit number, using a comma rather than no space. For example:

- \$4,928,000 (not \$4 928 000);
- 1,000 penalty units (not 1000 penalty units).

### ***Percentages***

46 Percentages should be expressed using the symbol “%”, not the words “per cent”.

### ***Fractions***

47 Non-decimal fractions with a denominator greater than 10 must always be expressed using Arabic numerals (for example, “ $1/12$ ” or “ $1/26$ ”). It is a matter for the drafter’s discretion whether a non-decimal fraction with a denominator of 10 or less should be expressed as words or using Arabic numerals (for example, “three-quarters” or “ $3/4$ ”).

48 If a fraction is expressed in 2 words, a hyphen should be used (for example, “one-quarter”, “one-half” and “three-quarters”). If a fraction is expressed using Arabic numerals, do not use the Word feature for fractions. Fractions can be inserted by clicking the OPC Fraction (1/2) button on the OPC tab or by selecting the OPC Macros menu, Formatting, Insert Fraction (see Word Note 12).

49 The rule in paragraph 47 does not affect the use of decimal fractions (for example, “0.5%” or “rounding 0.5 cents upwards”).

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**Document History**

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Note: Before the issue of the current series of Drafting Directions, this Drafting Direction was known as Drafting Direction No. 11 of 2004 and Drafting Direction No. 3 of 2001.