

OPC Drafting Manual

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Purpose of the manual

Overview

1 The purpose of this manual is to provide an overview for drafting legislation in the Office of Parliamentary Counsel.

2 The manual is intended to be a starting point. Consequently, many sections of the manual provide a brief overview and then refer to more detail that is contained in other documents such as the Drafting Directions, the Drafting Notes, the Office Manual or Word Notes.

Relationship to other documents

Drafting Directions

3 The Drafting Directions are an authoritative series of pronouncements on a range of drafting issues. Drafting Directions are issued by First Parliamentary Counsel (*FPC*) after consultation with all drafters and the editorial staff.

4 The Drafting Directions are available on Folio. Until recently, the Drafting Directions were a numbered series (by year and then sequential number).

5 More recently Drafting Directions covering particular topics have been rationalised into larger Drafting Directions. In addition, the Drafting Directions have been organised on a topic basis and numbered accordingly.

6 In the 1980s and before, Drafting Directions used to contain administrative information. This is now relatively uncommon. Also, some Drafting Directions used to be quite short and cover very specific points. Nowadays, they cover a particular subject matter, although they often still only deal with some specific points on that subject.

7 Some other documents are described as having the “status of a Drafting Direction”. This means that they contain rules that should be followed by drafters unless they obtain an exemption in a particular case from FPC.

Drafting Notes

8 The Drafting Notes are a collection of papers written (mostly) by OPC drafters. Some have been subject to some form of peer review but they have not been subject to consultation within OPC and do not have the “approval” of FPC.

9 The Drafting Notes are made available as a research tool for all drafters and as a way of recording and sharing drafting knowledge.

10 Printed sets of Drafting Notes are not maintained. The Drafting Notes are available to all staff through Folio Office Documents.

11 Drafting Notes can be updated by the author editing the document and arranging for the version on Folio to be updated. This is relatively uncommon.

12 Drafting Notes tend to cover a topic.

13 Although there have been projects to ensure that Drafting Notes are prepared on topics that are of importance, the coverage is still somewhat haphazard.

FPC emails

14 From time-to-time, FPC issues emails on drafting issues. These are similar to Drafting Directions but have generally not had the same consultation process.

15 It is intended that these emails will be quickly incorporated into a Drafting Direction, but before they are incorporated, they can found under Drafting emails from FPC in the Folio Office Documents database.

Relationship with this manual

16 Some of the material that was previously covered in Drafting Directions, Drafting Notes and FPC emails has been incorporated into this manual. However, often this manual only has a brief outline of an area and you need to go to one of the other documents for greater detail.

Presentation and form of legislation

Overview

17 OPC aims for consistency in the presentation and form of legislation. This consistency is intended to provide a coherent statute book that is easy to use for regular users of legislation. Therefore, this is an area in which there are a substantial number of rules which must be followed when drafting legislation.

18 This section sets out information about a range of matters that deal with the presentation and form of legislation.

Format of legislation

19 The format of legislation is strictly controlled. Details of the format are contained in the OPC Word Note series—particularly Word Note 3 which contains legislation templates, styles and examples and Word Note 4 which contains Formatting rules for OPC legislation and amendments.

20 While there are some differences in the format of some kinds of legislation—in particular, Acts that are part of the Tax Code—OPC is working to reduce the number of variations to give all legislation a consistent look and feel.

Bill titles

General

21 Each Bill has two titles—a short title and a long title. The long title of the Bill is also referred to as the title.

22 The long title could be thought of as a description of the Bill and the short title could be thought of as its name.

Long titles for Bills

23 The long title is used to describe the contents of the Bill. This is usually done in a very general way. For example “A Bill for an Act to amend the law relating to taxation, and for related purposes.”

24 The drafting of the long title is very important as the long title must encompass all the matters included in the Bill. If there are matters that are not covered by the long title, the Bill may need to be withdrawn from Parliament and then reintroduced.

25 When a Bill receives the Royal Assent and becomes an Act, the words “A Bill for” are dropped from the long title.

26 Drafting Direction 1.1 has more detail about long titles.

27 The long title of an Act can be amended by a later Act. This would be done, for example, where amendments render the title incorrect or misleading.

Short titles for Bills

28 The short title is the name that is used to refer to a particular Bill or Act. For example “*Income Tax Assessment Act 1997*”. Short titles are always shown in italics.

29 While a Bill is in Parliament, the name includes the word “Bill”. This is changed to “Act” when the Bill receives the Royal Assent.

30 The year in the Act title is the year in which the Act passes Parliament. This is usually, but not always, the year in which it receives the Royal Assent. (See for example the *Australian Sports Drug Agency Act 1990* which was passed by both Houses of the Parliament in 1990 but was assented to in 1991.) The year is also occasionally changed by a later amending Bill. For example the *Workplace Relations Act 1996* was originally the *Industrial Relations Act 1988*.

31 The short title of an Act can be amended by a later Act. This would be done, for example, where amendments render the short title incorrect or misleading.

32 As a general rule, you should take particular care when naming a Bill to ensure that the name you choose is as informative as possible (within reason) and does not cause unnecessary confusion to the Parliament or to any other users of legislation.

33 Drafting Direction 1.1 has more detail about short titles.

Act numbers

34 Each Act is given an Act number which is made up of the year in which it receives Assent and a number based on the order in which Bills were assented to in that year. For example the 45th Bill assented to in 2005 would be Act No. 45, 2005.

35 As the year in the Act number is the year of Assent, it occasionally does not match the year in the Act name. For example, the *Australian Sports Drug Agency Act 1990* which was passed by both Houses of the Parliament in 1990 but was assented to in 1991 is Act No. 18, 1991.

36 Even when the year in the Act name is amended (as with the *Workplace Relations Act 1996* which was originally the *Industrial Relations Act 1988*) the Act number does not change.

Instrument names

General

37 Each instrument (other than a commencement Proclamation) has a name. The name is used to refer to the instrument.

38 The name given to an instrument must provide a convenient way of referring to the instrument and be unique so that the instrument can be identified with certainty from its name alone.

39 The name of an instrument will consist of a number of elements to reflect the instrument's parent Act, subject matter, nature, type, year of making and its number for the year. Names are always shown in italics.

40 The name of an instrument can be amended by a later instrument. This would be done, for example, where amendments make the name incorrect or misleading.

41 Drafting Direction 1.1A has extensive information about instrument names.

FRL numbers—legislative instruments

42 Each legislative instrument that is registered on the Federal Register of Legislation (*FRL*) is given a number which is made up of the following elements:

- the letter F – for instruments on FRL (as opposed to other laws)
- 4 numbers – the year of the instrument's registration
- the letter L – for legislative instrument as made
- 5 numbers – these are generated by the FRL system.

43 As the year in the FRL number is the year of registration, it occasionally does not match the year in which the instrument is made.

Portfolio for cover page of Bill

44 The portfolio of the Minister who is to be responsible for the carriage of the Bill through the Parliament (also known as the sponsoring Minister) is shown on the cover page of the Bill.

45 Drafting Direction 1.2 has further information about this, including an up-to-date list of the portfolios.

Portfolio for signature page of regulations

46 The portfolio of the Minister who is responsible for a regulation (also known as the countersigning Minister) is shown on the signature page of a regulation.

47 If there is an “Acting” Minister within the portfolio, that Minister or Parliamentary Secretary’s name is used in the signature block. For example, if the Attorney-General is away and the Minister for Home Affairs is Acting Attorney General, the Minister for Home Affairs’ name is in the signature block.

48 If a non-portfolio Minister is “Acting”, the title of the non-portfolio Minister and the words “for [*portfolio Minister*]” are used. For example, if the Attorney-General is acting for the Minister for Immigration and Citizenship, the signature block will be “Attorney-General for the Minister for Immigration and Citizenship”.

Name and title of rule-maker for signature page of instruments

49 The name and title of the rule-maker for an instrument is shown on the signature page of each instrument.

Commencement provisions

50 Commencement provisions set out when the Act, instrument or provision comes into operation. One way of looking at this is that this is the time when the text is “written” into the statute book. This will always be a point in time.

51 Where it is expressed to be a date, section 3 of the *Acts Interpretation Act 1901* provides that it “shall come into operation immediately on the expiration of the last preceding day”.

52 Commencement provisions in Bills drafted by OPC are often quite complicated. Therefore, a standard approach using a table has been developed to make it very easy to determine when particular provisions in an Act commenced. The table is designed to have the actual date included in the table by publishers once it is known.

53 Although the *Acts Interpretation Act 1901* provides for a default commencement if no commencement provision is included, it is OPC policy that every Bill must have a commencement provision.

54 The long-standing practice is to require that each legislative instrument (except for commencement Proclamations) contain a commencement provision.

55 Subject to special provision in a particular Act, legislative instruments commence under section 12 of the *Legislation Act 2003*.

56 Commencement provisions need to be contrasted with application provisions. An application provision will be used where it is necessary to specify *what* a provision applies to. For example, “to gifts made after 20 January 2005”. Not all provisions need an application provision. There is more information about application provisions below.

57 Drafting Direction 1.3 has extensive information about commencement provisions.

Amending forms

58 Another area in which OPC adopts a strictly consistent approach is amending forms.

59 The forms to be used are those set out in the Amending Forms Manual. The Amending Forms Manual is listed under its own heading in Folio Office Documents.

60 The Amending Forms Manual is given the status of a Drafting Direction by Drafting Direction 1.4.

61 Macros have been developed in Word to simplify the use of the standard amending forms. The Amendment Shorthand System (ASS) macro provides an abbreviated method for typing the amending “formulae”. It substantially reduces the number of keystrokes needed to produce the amending formula. Details of this macro are in Word Note 28.

62 The Parliamentary Amendments (PAMs) ASS macro has been developed to simplify the forms used for Parliamentary amendments. This macro uses a menu and dialog box approach. Details of this macro are in Word Note 41.

Textual amendments

63 In common with all other Australian drafting offices, OPC uses a “textual amendment” system. Textual amendments involve identifying particular bits of text and either inserting or adding other text after it, omitting that text or omitting the text and substituting other text for it. Sometimes the changes are just little ones, other times one amendment might go for many pages.

64 This can be contrasted with the approach of repealing the whole Act or instrument and re-enacting or re-making a replacement and the approach of modifying the operation of existing provisions.

65 After an amending Act or instrument is passed or made, these amendments are then incorporated into the Principal Act or instrument to produce a consolidated version called a compilation.

66 For Acts, this is done by the Publications Group of OPC. The compilations are then published on ComLaw (www.comlaw.gov.au). Private publishers also produce compilations of some Acts, but these are not authoritative.

67 For instruments, this is done by the Publications Group of OPC for instruments that must be drafted by OPC or by the administering Department or agency for instruments if the instrument can be drafted by another agency. The Publications Group of OPC do however undertake compilations for other agencies on a billable basis. The compilations are registered on FRL (www.legislation.gov.au). Private publishers also produce compilations of some instruments, but these are not authoritative.

Definitions

Introduction

68 Definitions are an important tool in legislative drafting. They are used for a number of purposes. Primarily, they are used to make legislation more readable by labelling concepts that are used throughout the legislation and reducing the need to repeat text.

69 However, the overuse or misuse of definitions can reduce the readability of legislation. Therefore, it is important to ensure that definitions are used carefully.

70 One approach that OPC has started to adopt is “one expression, one meaning”. Under this approach, an expression is not defined to have different meanings in different parts of an Act or instrument.

71 The Plain English Manual and Drafting Direction 1.5 contain the main guidance for using definitions. That Drafting Direction refers to a substantial number of other Drafting Directions that also deal in some way with the use of definitions. There is also a paper in the Drafting Notes titled “Drafting—Definitions: notes for non-SES drafters”.

Asterisking to identify defined terms

72 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 Bills, so a very small Bill is less likely to benefit significantly from asterisks.

73 To date, asterisking of Acts outside the Tax Code has been confined to fairly large Acts. However, within the Tax Code, some medium-sized and smaller Acts have also been asterisked (e.g. the Wine Equalisation Tax Act, the ABN Act and the Luxury Car Tax Act).

74 Drafting Direction 1.6 deals with asterisking to identify defined terms, as does Part 5 of Drafting Direction 1.8.

Units of text in Acts and instruments

75 For Acts, and for instruments made after 1 January 2012 other than rules of court, the basic unit of text is a section. These can be grouped into Chapters, Parts, Divisions and Subdivisions. Sections can be divided into subsections, paragraphs and subparagraphs. Some older sections are also divided into sub-subparagraphs. For instruments made before 2012, unit names may vary according to the type of instrument.

76 For rules of court, the basic unit of text is a rule. These can be grouped into Chapters, Parts, Divisions and Subdivisions. Rules can be divided into subrules, paragraphs and subparagraphs. Some older rules are also divided into sub-subparagraphs.

77 When amending a principal instrument, a drafter should use the same unit name as the principal instrument.

78 There is also a range of other units of text in Bills and instruments.

79 Attachment A contains information about the different units of text that are found in Bills and instruments that are drafted in OPC. Drafting Direction 1.1 also contains further information about the numbering of sections in Bills and instruments.

Numbering and lettering

General

80 OPC currently uses two approaches to the numbering and lettering of provisions of Acts. These are the “standard” approach and the “Division-Section” approach. Details of these approaches are contained in Attachment A.

81 Drafting Direction 1.7 contains particular rules about numbering and lettering.

Naming conventions

82 In legislation drafted by OPC, we have adopted the convention of referring to units below the section level using the smallest unit of text. For example:

- (a) section 12
- (b) subsection 12(1)
- (c) paragraph 12(1)(a)
- (d) subparagraph 12(1)(a)(ii)

83 This can be contrasted with the approach used in some other jurisdictions of referring to all of these items as “section” (e.g. section 12(1)(a)(ii)).

Application provisions

84 The purpose of an application provision is to provide exactly how the “new” law will apply and how the “old” law will cease to apply. This may involve providing for the “old” law to continue to apply for limited purposes despite the fact that the old law has been repealed.

85 There is a paper in the Drafting Notes titled “Drafting—Application and Transitional Provisions”. This provides guidance on the main points to be considered when drafting application provisions.

Transitional provisions

86 There are many types of transitional provisions. The most common type of transitional provision modifies the effect of the “new” law.

87 Other types of transitional provisions are as follows:

- (a) modify the effect of the “old” law (as it continues to apply by virtue of an application provision);
- (b) override the presumption against retrospectivity;

- (c) ensure that an amendment does not affect the interpretation of the “old” law;
- (d) ensure that the repeal of an amending Act, or of amending provisions, does not affect the operation of amendments made by the amending Act or amending provisions.

88 There is a paper in the Drafting Notes titled “Drafting—Application and Transitional Provisions”. This provides guidance on the main points to be considered when drafting transitional provisions.

Legislation with special formats and rules

Tax Code Bills

89 Bills dealing with Acts in the Tax Code are dealt with in Drafting Direction 1.8.

90 The Drafting Direction contains special rules that apply to Bills that will form part of the Tax Code or that amend Acts that are part of the Tax Code. The rules do not apply to any other Bills.

Social Security Bills

91 The formatting of Social Security Bills is dealt with in Word Note 30. This mainly deals with some components in such Bills that are not found in other legislation.

Usage (including plain English)

Plain English/Plain Language

92 OPC began moving to the use of plain English in the mid-1980s. Our approach to plain English was documented in the early 1990s in *The Plain English Manual* which was largely drafted by the then First Parliamentary Counsel, Ian Turnbull QC. *The Plain English Manual* is in Folio Office Documents.

93 More recently, we have adopted the term “plain language”. This has been done to indicate that we see clear writing as being a wider concept than some of the narrower approaches that had been adopted by some when referring to plain English.

94 *The Plain English Manual* continues to provide the foundation for OPC’s approach to plain English drafting. The manual provides both a good overview of plain English drafting as well as specific examples of words and phrases that can be used to simplify drafting.

95 Drafting Direction 2.1 gives *The Plain English Manual* the status of a Drafting Direction and also contains a small number of additional rules on spelling and punctuation.

Macquarie Dictionary and the Style Manual

96 OPC relies on the *Macquarie Dictionary* and the *Style Manual* as the basic authorities for spelling and related matters.

97 The Macquarie Dictionary is considered to be the best source of information on current Australian spelling and usage. If there is a conflict between the Macquarie Dictionary and the Style Manual, you should follow the spelling or usage in the Macquarie Dictionary since it is more frequently updated.

Gender-neutral language

98 For many years, OPC has drafted using gender-neutral language. Drafting Directions on this topic were first issued in 1984.

99 Gender-neutral language is used to make the language of legislation more inclusive.

100 We have found that this approach does not make provisions more cumbersome or lead to a proliferation of “his and hers” etc. throughout new legislation as drafters tend to use the description of the relevant person (e.g. “the taxpayer’s”) instead. In many cases this makes the provision clearer than if just “his” was used and may also avoid ambiguity where there is more than one person referred to in the provision.

101 Drafting Direction 2.1 contains guidance on the use of gender-neutral language.

Use of various expressions in legislation

102 There are a range of miscellaneous matters that need to be taken into account when using expressions in legislation. These include avoiding using registered trade marks and matters to be aware of when borrowing legislation from other jurisdictions.

103 Many of these matters are covered by Drafting Direction 2.2 which has parts that include:

- (a) matters to be aware of in choosing expressions to be used in legislation;
- (b) words and expressions to be used in legislation;
- (c) definitions of specific expressions;
- (d) scoping provisions;
- (e) Government terminology;
- (f) financial sector terminology;
- (g) notes saying documents are available on websites.

Content

Constitutional law

104 Constitutional law is extremely important to drafters in OPC. There are two main aspects to this. First, every provision of every Act must be supported by a constitutional power. Secondly, there are a number of constitutional prohibitions that must not be contravened.

105 Constitutional law also impacts on a number of procedural matters such as the House in which certain Bills must be introduced.

106 Drafting Direction 3.1 covers a range of these constitutional matters. In addition, there are numerous papers in the Drafting Notes that deal with constitutional law matters.

Taxation

107 The Constitution sets out a variety of procedural requirements in relation to taxation Bills that drafters need to be aware of.

108 Drafting Direction 3.2 deals with the following matters:

- (a) the House of introduction for Bills that deal with taxation or that amend Acts that deal with taxation;
- (b) obtaining notices for Bills dealing with taxation;
- (c) that taxation is to be imposed by express words;
- (d) when to structure provisions as provisions imposing tax.

109 Drafting Direction 3.2 deals with the drafting issue of the application of amendments relevant to the making of assessments of income tax and fringe benefits tax.

110 There are a number of papers in the Drafting Notes that deal with taxation.

Application of legislation in relation to various maritime and external areas

111 Drafting Direction 3.3 deals with the application of Commonwealth legislation to the territorial sea of Australia, the internal waters of Australia, the contiguous zone of Australia, the exclusive economic zone of Australia and the continental shelf of Australia. It also deals with the application of Commonwealth legislation in relation to the adjacent areas in respect of the States and Territories and in relation to the Australian Antarctic Territory.

112 There is also a paper in the Drafting Notes titled “Drafting—Geographical application of Acts”.

Exercise of powers etc. (including by Governor-General)

113 There are a number of issues that drafters need to be aware of when conferring powers on people. A number of these are covered in Drafting Direction 3.4 which covers the following matters:

- (a) the implied conferral of powers and the decision in *Hong Kong Bank v ASC* (1992) 108 ALR 70;
- (b) the application of subsection 33(3) of the *Acts Interpretation Act 1901*;
- (c) the effect of changes in legislation on delegations;

- (d) that Ministers or Departments should not be required to consult other Ministers or Departments;
- (e) whether a person, who is authorised to exercise a power “after report” or “after receiving a recommendation” of some person or authority, may exercise the power otherwise than in accordance with the report or recommendation.

114 Drafters also need to be aware that, when conferring a power on the Governor-General, the power should not be subject to any precondition that requires the Governor-General to consider a matter. If a precondition is required, it should require that another person, generally the Minister, consider a matter. This is covered in more detail in Drafting Direction 3.4.

Offences, penalties, self-incrimination, secrecy provisions and enforcement powers

115 The drafting of offences, penalties, self-incrimination provisions, secrecy provisions and enforcement powers are an important part of the work of OPC.

116 When drafting provisions dealing with offences, criminal penalties, secrecy provisions and enforcement powers, drafters should refer to the relevant sections of the Guide to Framing Commonwealth Offences, Infringement Notices And Enforcement Powers (available at <http://www.ag.gov.au>). When drafting self-incrimination provisions, drafters should refer to that Guide and the Administrative Law, Evidence and Legislative Instruments Scrutiny Guide.

117 Where issues arise in relation to matters covered by the Guide to Framing Commonwealth Offences, Infringement Notices And Enforcement Powers, they should be raised with OPC’s Criminal Law Liaison Officer. This will ensure that dealings with the Criminal Law area of the Attorney-General’s Department are coordinated.

118 The drafting of civil penalty provisions is not currently dealt with by any specific area of the Attorney-General’s Department.

119 Drafting Direction 3.5, in addition to setting out information about the Guide to Framing Commonwealth Offences, Infringement Notices And Enforcement Powers and the Criminal Law Liaison Officer, provides more detail in the following areas:

- (a) the form of offence provisions: using the expression “commits an offence” and not the expression “a person may/must only” to create an offence and forms for strict liability and absolute liability;
- (b) penalties for criminal offences: using penalty units and not using the expression “Maximum penalty”;
- (c) penalties for civil penalty provisions;
- (d) aggravated offences;
- (e) the geographical jurisdiction of offences;
- (f) general offences created by Chapter 7 of the *Criminal Code*;

- (g) the basis of the privilege against self-incrimination and the abrogation and preservation of the privilege;
- (h) secrecy provisions to take account of powers of the Parliament and Parliamentary Committees;
- (i) compensation for damage to electronic equipment or data.

120 Note that the approval of the Attorney-General may be needed for an abrogation of the privilege against self-incrimination.

Statutory authorities

121 The drafting of legislation in relation to statutory authorities is a very large topic.

122 Drafting Direction 3.6 deals with various matters in relation to the establishment of a new statutory authority.

Tribunals and other administrative bodies

123 Many decisions by Commonwealth decision-makers are reviewable by the Administrative Appeals Tribunal (*AAT*). This is a merits review.

124 In addition, there are a range of specialist tribunals that have been set up to review decisions in particular areas. It is government policy that no new merits review bodies should be created.

125 The paper by the Administrative Review Council, “What decisions should be subject to merits review?” sets out guidelines about which decisions should be subject to merits review. The Administrative Law, Evidence and Legislative Instruments Scrutiny Guide also contains useful material on this topic and other matters relevant to merits review. These papers are available in the Drafting Notes and Other Drafting Documents parts of Folio Office Documents.

126 The Administrative Law Unit of the Attorney-General’s Department should be consulted in relation to any proposals to:

- (a) exclude merits review (after considering the Administrative Review Council paper); or
- (b) vary any AAT review right or AAT procedure; or
- (c) create a new merits review body.

127 Drafting Direction 3.7 deals with the notification of review rights, the protection and liabilities of witnesses and contempt in relation to tribunal proceedings.

Subordinate instruments

128 The passage of the *Legislation Act 2003* changed a number of aspects of the way in which provisions providing for subordinate instruments are drafted. Consequently, any earlier precedents should be treated with caution.

129 Drafting Direction 3.8 covers the drafting of provisions in Bills related to subordinate instruments in some detail.

Evidence and proof (including oaths and affirmations)

130 Drafting Direction 3.9 deals with the following matters:

- (a) departures from the Evidence Act and the existing common law rules of evidence;
- (b) certificates or other instruments that are prima facie evidence or conclusive evidence of a matter;
- (c) documents purporting to be a certificate or other instrument that are taken to be such a certificate or other instrument;
- (d) the making of oaths and affirmations;
- (e) the persons before whom an oath or affirmation may be made;
- (f) privileges.

131 The Administrative Law, Evidence and Legislative Instruments Scrutiny Guide deals with evidence, including the privilege against self-incrimination, legal professional privilege and other privileges. The Evidence and Legislative Frameworks Section should be consulted on proposals that seek to override the rules of evidence or to abrogate privileges. The approval of the Attorney-General may need to be sought on proposals that seek to abrogate privileges.

Australian governments or jurisdictions

132 Many Acts and instruments have the potential to apply to the Commonwealth and/or States and Territories. Whether it will in particular cases is a matter of policy.

133 Drafting Direction 3.10 covers the following:

- (a) binding the Crown;
- (b) how to refer to States and Territories;
- (c) application of laws to a Territory (other than ACT and NT);
- (d) States grants;
- (e) State land titles functions.

Commonwealth agreements (including treaties and conventions etc.)

134 The Commonwealth enters into a range of agreements that then need to be implemented by, or referred to in, legislation. Agreements that the Commonwealth enters will generally fall into one of the following broad categories:

- (a) international agreements that are binding at international law (e.g. treaties and conventions);
- (b) non-binding international agreements;
- (c) domestic agreements between the Commonwealth and other domestic bodies politic such as the States and Territories;
- (d) informal agreements or contracts between the Commonwealth and private parties (these agreements may involve either domestic or foreign private parties but would be governed by private, not public, law).

135 The matters you need to consider vary according to the kind of agreement in question. Drafting Direction 3.11 deals with the following in relation to agreements covered by paragraphs 134(a) and 134(b):

- (a) the role of Parliament;
- (b) identifying international agreements.

136 Drafting Direction 3.11 deals with the following in relation to agreements covered by paragraphs 134(c) and 134(d):

- (a) the authority to enter these kinds of agreements;
- (b) payments under agreements;
- (c) agreements entered into by Ministers and other Commonwealth officers;
- (d) identifying domestic or private agreements.

137 The formatting of agreements in legislation is dealt with in Word Note 25. The basic rule is that the agreement should be formatted in a way that is substantially similar to the format of the agreement. Exactly how closely the format of the agreement will be followed will be a matter of judgement in each case.

138 There are also 2 papers in the Drafting Notes dealing with giving effect to international agreements.

Appropriations and public money

139 At times it is necessary in a Bill to make clear that the provision itself is not an appropriation but that a further express appropriation is required before payments can be made.

140 Drafting Direction 3.12 sets out the forms of words that should be used to achieve this in particular cases.

Explanatory material

141 At OPC we include a range of explanatory material within legislation to assist the users of our legislation.

142 These include simplified outlines, decentralised tables of contents, flowcharts, examples and notes. More information about these can be found in various papers in the Drafting Notes (See particularly “When words are not enough: Graphics and other innovations in legislative drafting” by Hilary Penfold QC).

143 Drafting Direction 3.13 sets out the form of note that should be used to refer to a case to explain an amendment.

Procedural matters

Introduction

144 Information about procedural matters within OPC can be found in a number of sources. This partially reflects history—it depends where the information was first recorded—and it partially reflects the different users within OPC—it has been put where it is considered the relevant users are most likely to find it.

145 This section of the manual describes some of the sources. It also gives an overview of where material on certain topics can be found.

OPC Office Manual

146 The OPC Office Manual has been prepared to provide an introduction to the practice and procedure of OPC. It does not attempt to deal with formal rules to be observed in drafting as such rules are dealt with in documents such as Drafting Directions and the Plain English Manual. Nor does it attempt to set out the minutiae of OPC practice where the practice is the subject of detailed instruction. That instruction will be found in the Office Procedural Circulars or manuals for staff in particular areas.

147 The chapters of the Office Manual are:

- 1 Establishment and functions of OPC
- 2 Organisational structure of OPC
- 3 Basic drafting procedures for preparation of Government legislation
- 4 Legislation Approval Process (LAP)
- 5 Dealing with Bills after submission to LAP
- 6 Relationship with the Attorney-General’s Department and AGS during preparation of Government legislation
- 7 Special considerations applying to omnibus Bills
- 8 Private Members’ Bills and amendments
- 9 The training of drafters
- 10 Performance appraisal

- 11 Drafting tools
- 12 Facilities provided by the Attorney-General's Department
- 13 Information Technology
- 14 Printing, photocopying and correspondence
- 15 Security
- 16 Work conditions

148 There is also a glossary of commonly used terms.

Other Manuals

149 OPC is developing a range of manuals for staff in particular areas of the office. Although some, such as the Domestic Travel Manual, have little direct relevance to drafting, others contain detailed information about processes surrounding the preparation of legislation. The manuals that are most closely related to drafting are:

- (a) the Legislation Team Manual; and
- (b) the Editorial Team Manual; and
- (c) the Designated Checker Training Module.

Office Procedural Circulars

150 Office Procedural Circulars are a numbered series of circulars on matters of ongoing relevance to staff generally or to a particular group of staff. They deal with operational matters that are not strictly drafting matters. They are generally issued by FPC. The General Manager is responsible for their numbering and distribution. Together they constitute a detailed body of information that is of importance to everyone in OPC.

Information Technology Circulars and Word Notes

151 These are two numbered series of circulars issued by the Information Technology staff to provide guidance for the effective use of computers in the various applications available in OPC and to provide guidance for the effective use of OPC's highly customised Word system.

152 Drafters need to be very familiar with the matters covered by Word Notes. Some Word Notes, particularly Word Notes 3 and 4, contain rules about the formatting of legislation and must be applied by all staff who work on legislation. Other Word Notes, particularly Word Notes 20, 21 and 27 contain important information about the processes for preparing legislation for printing and for introduction into Parliament. Word Note 47 contains information about preparing instruments.

153 The IT Circulars tend to provide more general guidance on the use of the OPC IT system although IT Circular 20 (on Folio Databases), IT Circular 47 (on Online research

services and IT Circular 48 (on the IBIS database) are obviously very relevant to our drafting work.

Procedural matters covered by Drafting Directions

Introduction

154 There are a number of procedural matters that are particularly important to drafters. These are currently covered by Drafting Directions, although some of the material may in future be incorporated into the Office Manual.

Relationships with instructors

Who is our “client”

155 An important thing to remember when dealing with instructors is that they are not our sole “client” for a particular Bill. The “client” should generally be seen as the Government as a whole.

156 This distinction is important because it means that there are matters—particularly the checking of authority and the referral of drafts to other agencies—where our responsibility may conflict with the wishes of our instructors.

Bills and instruments with multiple “instructors”

157 On some projects, there will be a number of agencies with a legitimate interest in the Bill or instrument. For example, when drafting a Bill or instrument affecting the operations of a statutory agency, there may be the portfolio Department as well as the agency and possibly a central agency. Often, these agencies will be represented at drafting meetings and may provide comments on draft Bills.

158 It is important in such projects that drafters determine who the instructor is. The drafter should then only act on instructions that are given by (or agreed to by) that instructor. This ensures that the drafter is not caught in the middle of disputes by making changes that are not authorised by the person or agency responsible for preparing the Bill or instrument for Government.

159 Normally, the instructor will be from the portfolio Department that is most affected.

160 In general, drafters should take a flexible approach to the involvement of other agencies in the drafting process. They should however ensure that the instructing agency is aware of all discussions etc. that are held. It is also normally good practice to require that the instructing agency formally issue all instructions.

161 In some areas where this issue is common, standing arrangements have been made to ensure that all parties understand their role. For example, for Revenue legislation, the Treasury has made it clear that while they have sole responsibility for instructing, they are committed to involving the ATO. However, this involvement is only to be done at the instigation of the Treasury instructor. See Office Procedural Circular 98 for more information.

Location of meetings

162 For many years OPC has had a practice of requesting instructors to come to OPC rather than drafters going to instructing agencies. While the continuation of this approach is supported, there will be cases where it will be more appropriate for drafters to attend some meetings at instructing agencies.

163 One issue that arises from our preference for instructors to come to OPC is that we need to ensure that we are appropriately hospitable. To this end, carparking spaces are available for instructors and a number of conference rooms have been established. Drafters should also ensure that instructors are offered tea and coffee etc. at appropriate intervals.

164 Details on booking conference rooms and car spaces for visitors are contained in IT Circular No. 14.

Other matters

165 Drafting Direction 4.1 sets out various matters that are relevant to our dealings with instructors. There is also a paper in the Drafting Notes titled “First meeting with instructors”.

Complexity flags

166 The complexity flag system is designed to provide a structured approach to raising issues of complexity with instructors. OPC has developed the system as part of implementing the Government’s Clearer Commonwealth Laws initiative.

167 The complexity flag system will mainly consist of comments (***complexity flags***) being included in draft Bills or instruments (or drafting plans) raising issues where OPC considers that there is complexity.

168 The instructing Department will then respond to those comments.

169 In some cases the flags will relate to the intent of the basic policy or fundamental aspects of how the policy is to be implemented. In other cases the flags will relate to matters of detail or particular provisions.

170 OPC drafters will work with their instructors to try to get the complexity removed from the Bill or instrument.

171 To ensure that senior management in the instructing Department are aware of complexity that remains, there will be a complexity contact officer in the Department. Where a complexity is not removed on the instructions of the instructor, First Parliamentary Counsel will arrange for a copy of the document with the unresolved complexity flags to be sent to the complexity contact officer in addition to the instructors.

172 OPC will maintain a database that will retain all of the complexity comments and the Departmental responses. This database may be useful in identifying systemic causes of complexity. It may also provide suggestions for avoiding complexity in future cases.

173 Drafting Direction 4.1A sets out the details of the complexity flag system.

Referral of legislation to other agencies

174 The referring of draft legislation to other agencies is a very important whole-of-government role for OPC.

175 We refer Bills and instruments to agencies who have a right or responsibility to provide policy input, generally because the agency has a coordinating or whole-of-government responsibility for a matter dealt with in the Bill or instrument (such as legal policy issues for the Attorney-General's Department, public sector terms and conditions issues for the Australian Public Service Commission, etc). The intention is to ensure that our Bills and instruments properly reflect over-arching government policies.

176 Drafting Direction 4.2 provides details of the referral of Bills and instruments.

177 The referral process is assisted by a macro (the Ref2AGs macro) that simplifies the process of sending material to the relevant areas. Details of this macro are contained in Word Note 33.

Consultation with States and Territories under an intergovernmental agreement

178 Some Commonwealth legislation is part of a national scheme of legislation that also involves the States or Territories. Other legislation has been the subject of agreements with the States and Territories that requires the Commonwealth to consult the States and Territories before it amends the legislation.

179 Examples include the *Corporations Act 2001*, the GST and the agriculture and veterinary chemicals legislation.

180 Drafting Direction 4.3 provides details of the processes that should be followed in these cases. Drafting Direction 4.6 deals with policy approval for drafts for consultation with the States or Territories.

Statute law revision amendments and technical errors in Bills and instruments

181 From time to time technical errors are made in Bills. Once these have been enacted, they can be fixed by an amending Act or by FPC's editorial powers (see Drafting Direction 4.4).

182 These technical changes are often described as Statute Law Revision, or SLR, amendments.

183 OPC includes some SLR amendments in appropriate portfolio Bills. Where there is no appropriate portfolio Bill, the amendment may be included in a Statute Law Revision Bill. It is proposed to have such Bills regularly. In limited cases, FPC's editorial powers may be used to correct the error.

184 Drafting Direction 4.4 provides details of the matters that need to be considered when dealing with SLR amendments and what drafters should do if they find an error in a Commonwealth Act.

185 If technical errors are made in instruments, they can be fixed by an amending instrument or by FPC’s editorial powers (see Drafting Direction 4.4).

186 It is also proposed to have a Statute Law Revision Regulation regularly.

Australian Government Solicitor advice

187 Legal issues routinely arise during the drafting of legislation. Some kinds of issues are dealt with by drafters, while other kinds of issues are more appropriately referred to the Australian Government Solicitor (**AGS**).

188 Drafting Direction 4.5 provides some guidelines for when it is appropriate for drafters to refer legal issues to AGS. It also sets out the process that is to be followed once it is decided to refer a matter to AGS.

189 The drafter’s role routinely involves answering instructors’ questions about things such as the interpretation of a particular provision in the Bill or instrument, the interpretation of the Act or instrument being amended or of other legislation, the constitutionality of the Bill or instrument or any part of it, or how the general law might apply in particular circumstances. The issues can range from straightforward to extremely complex, and from relatively unimportant issues to issues that are crucial to the legislation’s legal effectiveness.

190 Under the Legal Services Directions, legal work is tied to AGS and the Attorney-General’s Department if it involves:

- (a) constitutional law issues; or
- (b) national security issues; or
- (c) legal advice which is to be considered by Cabinet or relied on in preparing a Cabinet submission or memorandum; or
- (d) legal advice on a legislative proposal to be considered for adoption by government or on draft legislation for introduction into Parliament.

191 Similarly, advice on compliance with treaties is tied to the Attorney-General’s Department, AGS or the Department of Foreign Affairs and Trade.

192 Questions about the rules for tied work should be directed to the Office of Legal Services Coordination (**OLSC**) in the Attorney-General’s Department.

193 OPC is a tied provider for certain “drafting work”, but, as indicated by paragraphs 190 and 191, some legal work (for example, constitutional law advice) is tied to other agencies. While drafters can employ their knowledge of constitutional law and other issues to inform the drafting process, they are prevented from providing, for example, constitutional law advice.

194 It is a matter for a drafter’s discretion whether a particular legal issue is one that can be properly dealt with by the drafter drawing on his or her own knowledge, or one that should be referred to AGS for advice.

195 However, generally, drafters should refer a legal issue to AGS if any of the following apply:

- (a) the issue is not completely clear-cut and its resolution may have serious, or politically significant, consequences;
- (b) there is a real issue of constitutional law;
- (c) the instructors intend or would expect to refer to or rely on the advice they receive in the course of legal or parliamentary proceedings or public debate;
- (d) the instructors require written advice on the issue for their records (unless, for example, the issue is closely related to drafting, such as the effect of a commencement provision);
- (e) it is a request for a drafter to interpret a provision that he or she drafted, once the legislation has been passed or made.

196 When answering instructors' questions, drafters should clarify with the instructors the use to which they intend to put the answer.

197 The guidelines should not inhibit drafters' use of their legal qualifications and drafting experience to answer straightforward legal questions that routinely arise throughout the drafting process.

Legislation Approval Process for Bills and parliamentary amendments

198 The purpose of the Legislation Approval Process (***LAP***) is to ensure that draft Bills and parliamentary amendments have received all necessary government clearances before the Bills are introduced into Parliament or the amendments are moved. All draft Bills and parliamentary amendments must be cleared by a Parliamentary Secretary or junior Minister designated by the Prime Minister for this purpose (the ***designated approver***). This clearance is given on advice from the Legislation Secretariat in the Department of the Prime Minister and Cabinet (***PM&C***).

199 OPC's unique role in the process is to provide independent advice that the Bill or amendments are covered by appropriate policy authority. The OPC drafter is the only independent player in the approval process who knows enough about the Bill or amendments to be able to test the Bill or amendments against the policy authority within the usual deadlines. This is not to suggest that other players (e.g. policy officers in PM&C) could not acquire the necessary understanding of legislation, only that they may not be able to do it properly in the brief period between when the legislation is lodged with PM&C and when it is lodged with the designated approver (often less than 2 working days).

200 Further information about the significance of the Legislation Approval Process, and OPC's role in it, can be found in *OPC's drafting services: A guide for clients*.

201 Details on the LAP procedures are contained in Drafting Direction 4.6. In addition, Chapter 4 of the Legislation Handbook (available under Other Drafting Documents in Folio Office Documents) contains information about policy authority.

House of introduction

202 There are Constitutional limitations on the Bills that can be introduced into the Senate. It is important that drafters are aware of these limitations as an attempt to introduce a Bill into the Senate when it is not allowed has the potential to embarrass the Government and OPC.

203 To ensure that this does not occur, every OPC Bill has a drafter's block on page 1. One of the questions that the drafter must answer is "Is there any constitutional reason why this Bill should not be introduced in the Senate?".

204 The general rule is that Bills that require a Governor-General's message or that deal with taxation should not be introduced into the Senate.

205 Drafting Direction 3.2 has more detail in relation to Bills dealing with taxation. There is more information about Governor-General's messages below.

206 If there is any doubt about whether a Bill can be introduced into the Senate, the matter should be raised with FPC.

Clerk's and Chairman's amendments

207 If a minor textual error in a Bill is discovered after the introduction of the Bill, it may be possible to fix it with a Clerk's or Chairman's amendment. Unlike Parliamentary amendments, a Clerk's or Chairman's amendment is not moved in Parliament. It is simply a documentary change, made at the discretion of:

- (a) for a Bill originating in the House of Representatives—the Clerk of the House, acting with the authority of the Deputy Speaker (see Standing Order 156); or
- (b) for a Bill originating in the Senate—the Chairman of Committees (see Standing Order 124).

208 In general, only errors that are obvious on the face of a Bill are suitable for these amendments.

209 Details of the procedure to be followed are contained in Drafting Direction 4.7.

210 There are however some important matters that should be emphasised:

- (a) when dealing with Clerk's or Chairman's amendments you always deal with the House in which the Bill was introduced (it does not matter where the Bill is when the problem is discovered); and
- (b) since it is a matter of discretion for the Clerk or Chairman whether an amendment will be made, a drafter requesting an amendment should first discuss the matter with the relevant table office staff; and
- (c) the table office staff will either agree to the amendment being made or will advise that a Parliamentary amendment is required to fix the error.

Parliamentary amendments—procedural matters

- 211 Many procedural issues can arise in drafting Parliamentary amendments.
- 212 Drafting Direction 4.8 deals with the following matters:
- (a) amendments to a Bill when the Bill returns to the House in which it was introduced and when Standing Orders need to be suspended to allow the amendments to be moved;
 - (b) revising or replacing amendments that have already been circulated in either House.

Messages for Bills and Parliamentary amendments

213 A message from the Governor-General is required for all votes, resolutions or proposed laws that appropriate revenue or moneys. OPC prepares all of the documentation for these messages for Bills and Parliamentary amendments.

- 214 The basic process is as follows:
- (a) a drafter determines that a message is required and prepares a document setting out the reasons;
 - (b) the Bills Officer prepares a letter from FPC to the Attorney-General, a letter from the Attorney-General to the Governor-General and the Governor-General's message;
 - (c) FPC checks these documents and signs the letter to the Attorney-General;
 - (d) OPC delivers the documents to the Attorney-General;
 - (e) when the Attorney-General has signed the letter to the Governor-General, OPC delivers the documents to Government House;
 - (f) when the Governor-General has signed the message, OPC delivers the message to the House of Representatives table office.

215 Determining whether a Bill, or more particularly a Parliamentary amendment, requires a message can be quite complex and, in some cases, can involve disputes between the two Houses. If drafters are at all unsure about the need for a message in a particular case, they should speak to FPC.

216 Details on messages and the process to be followed within OPC are contained in Drafting Direction 4.9.

Parliamentary amendments and requests

217 There are constitutional limits on the amendments that the Senate can make to Bills. Where the Senate cannot make an amendment, it can request the House of Representatives to make the amendment.

218 This is an area that has been the subject of a number of disputes between the two Houses over the years. There are still some cases in which the two Houses disagree about the power of the Senate to make amendments.

219 OPC's role is to advise the relevant Minister about whether we consider the Senate has the power to make a particular amendment. It is then the responsibility of the Minister to decide the form of the amendment (ie whether it should be moved as a request or an amendment).

220 Determining whether the Senate has the power to make an amendment can be quite complex and, in some cases, can involve disputes between the two Houses. If drafters are at all unsure, or consider that it is a case on which the Houses will disagree, they should speak to FPC as early as possible.

221 Details on amendments and requests and the process to be followed within OPC are contained in Drafting Direction 4.9. The House of Representatives Practice and Odgers' Australian Senate Practice have sections that set out the views of the two Houses on this matter. In 2016, the House of Representatives Practice was available at http://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure and Odgers' Australian Senate Practice was available at http://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures.

Presentation of Bills for Royal Assent

222 OPC is closely involved in the presentation of Bills to the Governor-General for Royal Assent.

223 Drafting Direction 4.10 details the procedures for obtaining Royal Assent to a Bill after it is passed by both Houses of the Parliament. More details of the processes are contained in the Legislation Team Manual.

Attachment A—Components of Bills and instruments

Components of Bills and instruments

224 Bills and instruments can be broken up into a number of different components. This attachment is intended to give a brief overview of the components.

225 This section sets out the numbering approach used in Bills or instruments that use the standard number system. The modifications of this system for Bills with Division-section numbering are set out in the following section.

Chapters

226 Chapters are the highest level of division that a Bill, Act or instrument can be broken up into.

227 Normally, only very large Bills or instruments have Chapters. An example of an Act with Chapters is the *Aged Care Act 2004*.

228 Chapters are given Arabic numbers (1, 2, 3 etc).

Parts

229 If a Bill, Act or instrument has Chapters, the Chapters will usually be divided into Parts.

230 Also, many medium-sized Bills, Acts and instruments are divided into Parts without there being any Chapters. An example of an Act with Parts but no Chapters is the *Age Discrimination Act 2004*.

231 Parts are given Arabic numbers (1, 2, 3 etc). For an Act or instrument that is divided into Chapters, the Part numbering starts again at the start of each new Chapter.

232 There are some older Acts and instruments in which the Parts have Roman numbers (e.g. I, II, III etc). If a new Part is added to such an Act or instrument, it is also given a Roman number.

Divisions

233 If a Bill, Act or instrument has Parts, some of them may be broken up into Divisions.

234 An example of a Part that is broken into Divisions is Part 4 of the *Age Discrimination Act 2004*.

235 Although it is possible to have a Bill or instrument without Parts or Chapters but that has Divisions, it is extremely uncommon.

236 Divisions are given Arabic numbers (1, 2, 3 etc). The Division numbering starts again at the start of each new Part.

237 Some Divisions and Subdivisions in existing instruments have decimal-style numbers based on the number of the Part in which they appear – eg Division 2.1, Division 2.2 (Divisions in Part 2), Division 3.1, Division 3.2 (Divisions in Part 3), Subdivision 4.1.1, Subdivision 4.1.2 (Subdivisions in the first Division of Part 4).

Subdivisions

238 If a Bill, Act or instrument has Divisions, some of those Divisions may be broken into Subdivisions. You can only have a Subdivision where you have a Division.

239 An example of a Division that is broken into Subdivisions is Division 3 of Part 2 of the *ACIS Administration Act 1999*.

240 Subdivisions are lettered (A, B, C etc). The Subdivision lettering starts again at the start of each new Division.

Sections

241 The basic building blocks of Acts and instruments are sections. Every Act has at least 3.

242 A section is a chunk of information identified by a bolded section number and section heading. There are no specific rules about how much information can be put into a single section—this is up to the drafter (subject to an in-house rule that a section should not be “too long”). A section or subsection can contain more than one sentence.

243 Sections can be single units or they can be broken up further.

244 Sections are given Arabic numbers (1, 2, 3 etc). The numbering runs from the start of the Act until the end of the Act or instrument.

Subsections

245 One way of breaking sections up further is to divide them into subsections.

246 Subsections are identified by an Arabic number in brackets (e.g.: subsection (1)). If a section is broken into subsections, there should be 2 or more of them in the section.

Paragraphs

247 Sometimes a subsection, or a section that doesn't have any subsections, is divided into paragraphs.

248 A paragraph is identified by a lower case letter in brackets (e.g.: paragraph (a), (b), (c) etc).

Subparagraphs

249 Sometimes a paragraph is divided up into subparagraphs. You can only have subparagraphs if you have paragraphs.

250 Subparagraphs are identified by roman letters in brackets (e.g.: (i), (ii), (iii) etc).

Sub-subparagraphs

251 Some subparagraphs are divided into sub-subparagraphs. You can only have sub-subparagraphs if you have subparagraphs.

252 OPC's current drafting practice is not to include any new sub-subparagraphs in Bills or instruments.

253 Sub-subparagraphs are identified by a capital letter in brackets (e.g.: (A), (B), (C) etc).

Other components of Bills, Acts and instruments

254 Bills, Acts and instruments sometimes have other components.

255 In particular, a Bill or instrument can have one or more Schedules at the end of it.

256 There are two types of Schedules—amending and non-amending. Where a Bill or instrument has both amending and non-amending Schedules, the amending Schedules appear last. However, a Bill for a new principal Act should not contain any amending Schedules. Consequential amendments should be in a separate amending Bill.

Amending Schedules

257 The most common type of Schedule is an amending Schedule.

258 A typical amending Bill, Act or instrument is made up of a few initial sections saying the name of the Act or instrument, when it commences and then a standard section saying that the Schedules have effect. At the end of the Bill or instrument there will be a number of different Schedules. Each of those Schedules will contain amendments to a particular Act or Acts or instrument.

259 Amending Schedules may be divided into Parts. In some cases, the Parts are then divided into Divisions. Parts and Divisions are numbered with Arabic numbers (1, 2, 3 etc). The numbering of Parts starts again at the start of each Schedule and the numbering of Divisions starts again at the start of each Part.

260 An item is the basic unit within an amending Schedule, and is the unit used to make textual amendments.

261 Each item will have a heading with an Arabic number (1, 2, 3 etc.) in the margin followed by text identifying what is to be amended. The numbering starts again at the start of each Schedule.

262 The line after the heading of an amending item sets out the amendment to be made.

263 There are some items in amending Schedules to Acts that do not make amendments. These usually contain application, saving or transitional provisions. These items can be divided into subitems. Each of those subitems is given an Arabic number in brackets ((1), (2), (3) etc).

264 Amending Schedules to instruments only contain items that make amendments. This is because section 48A of the *Legislation Act 2003* repeals a legislative instrument that is

made on or after the commencement of the section whose only legal effect is to amend or repeal one or more other legislative instruments (without making any application, saving or transitional provisions relating to the amendment or repeal).

Non-amending Schedules

265 Some Acts, Bills or instruments have Schedules at the end of them that are not amending Schedules. At OPC we call them non-amending Schedules.

266 Non-amending Schedules may be divided into Parts. In some cases, the Parts are then divided into Divisions. Parts and Divisions are numbered with Arabic numbers (1, 2, 3 etc). The numbering of Parts starts again at the start of each Schedule and the numbering of Divisions starts again at the start of each Part.

267 Non-amending Schedules are used for a number of different purposes. Sometimes they are used to contain text that could be contained in the body of the Bill, Act or instrument as a section. In this case, the things that look like items/sections are usually called clauses, and numbered using Arabic numbers (1, 2, 3 etc). Clause numbers start again at the start of each Schedule.

268 The clauses can be divided into subclauses (numbered (1), (2), (3) etc.) or paragraphs (numbered (a), (b), (c) etc.).

269 For example, the *Water Act 2007* has many non-amending Schedules.

270 Sometimes a non-amending Schedule sets out the text of an international treaty that the Bill, Act or instrument is bringing into force in Australia or that the Bill or Act relies on for constitutional power. For example, see Schedule 1 to the *Petroleum (Timor Sea Treaty) Act 2003*. If the treaty gives the units that look like items/sections a name and numbering system, those names and numbering systems are used in the Schedule and in references to provisions of the Schedule.

Preambles

271 A few Bills (particularly Bills for new Principal Acts) have preambles.

272 The preamble goes at the very start of the Bill before the enacting words and explains why the Bill is being enacted. It always ends with “The Parliament of Australia enacts:”.

273 For an example, see the *Native Title Act 1993*.

Definitions

274 Definitions are very common in Bills and instruments.

275 Definitions are used to say what particular words mean (e.g.: ***prescribed period***) and to give words special meaning for particular Acts or instruments. In other cases they take a word that has a broad meaning (e.g.: ***company***) and say that for the purposes of the Act or instrument it has a more limited meaning.

276 Definitions usually appear in a list. We put the defined word(s) in bold italics. We list the defined terms in alphabetical order.

277 Sometimes definitions are put in the narrative style (e.g.: “A person has a *qualifying interest* in an asset if...”). In that case the defined term still appears in bold italics.

Notes

278 Notes are also a common component of Bills and instruments. They are in small type and appear just under the particular Bill or instrument component they relate to.

279 We use several different types of notes in Bills and instruments.

280 Some notes go into the text of provisions of Principal Acts and instruments. They help explain links between provisions. Some of them give examples illustrating how provisions work, and might even be identified as examples rather than notes.

Tables

281 Tables are used often in Bills and instruments. OPC has developed a standard format for tables and rules for the use of tables. These are set out in Word Note 4.

Formulas

282 Some Acts and instruments include formulas. They are found particularly in Tax legislation and legislation involving the calculation of allowances or benefits.

283 OPC uses special processes for producing formulas in documents. These are set out in Word Note 10.

Penalties

284 Provisions that create criminal offences will often have a penalty at the foot of the provision. Basically a penalty is indicated by the word “Penalty” followed by a colon then by a term of imprisonment or a number of penalty units, or both.

285 Penalties should not include dollar amounts (e.g.: \$5,000). Instead, the penalty should be expressed in penalty units (each penalty unit was in 2016 equal to \$170). This is intended to ensure that the value of penalties isn’t gradually eroded by inflation.

286 Drafting Direction 3.5 deals with offences, penalties and other matters.

Overviews, calculators and other things in boxes

287 OPC uses boxes around text to highlight particular features that are used in Bills and instruments.

288 These include outline and overview provisions that give an explanation of a Bill or instrument or a Part, Division or Subdivision of a Bill or instrument.

289 Boxes are also used for method statements and calculators. These are step-by-step guides that are usually used for calculating an amount. For example, section 60 of the *Child Support (Assessment) Act 1989* has a method statement for the estimation of the child support income amount.

Components of Bills—Bills using Division-section numbering

Description of the Division-section numbering system

290 A system of numbering, called Division-section numbering, was introduced to deal with very large Acts that are likely to be subject to substantial amendment.

291 The system was designed to avoid section numbers such as 159FZZZZG and 160ZZRAAA (which appeared in the *Income Tax Assessment Act 1936*).

292 The system is sometimes called the TLIP numbering system as it was first used in the Tax Law Improvement Project (TLIP) in the rewriting of the Income Tax Assessment Act.

293 The system works by having each section number made up of 2 components separated by a dash. The first component is the Division number and the second number is the number of the section within that Division. An example of a section number in this form is 23-45.

294 For this system, Division numbers are unique within an Act (they do not start again at the start of each Part) but the section component starts again at the start of each Division.

295 Another aspect of this approach is to leave gaps in section numbers. Generally, a gap of 5 is left between Division numbers in a Part to leave space for additional Divisions. A larger gap may be left at the end of a Part. Within Divisions, gaps of 5 are usually used between the sections. Therefore, the sections in Division 45 may be numbered as 45-1, 45-5, 45-10 etc. The Division after Division 45 may be Division 50.

Modifications from the standard numbering system

296 Most of the material in the section about the components of Bills and Acts applies to legislation with Division-section numbering in the same way as it does to legislation with standard numbering.

297 The main modification is that Divisions are numbered from the start to the end of the Act and the numbering does not restart at the start of each Part.

298 In some Acts that use this method, Parts are also numbered with numbers that reflect the Chapter in which they are located. For example, Part 1-1 would be the first Part in Chapter 1 and Part 2-1 would be the first Part in Chapter 2.

299 Subdivisions in Acts using Division-section numbering also include the Division number in the Subdivision number. For example Subdivision 45-A.

Components of instruments—instruments using Part-section numbering

Description of the Part-section numbering system

300 A system of numbering, called Part-section numbering, is used in some instruments. Some of these instruments are very large and are likely to be subject to substantial amendment (such as the *Civil Aviation Safety Regulations 1998*). It can also be useful when

the content of an instrument will be filled in over time, and where the structure of the instrument reflects the structure of the Act (such as the *Water Regulations 2008*).

301 The system works by having each section number made up of 2 components separated by a dot. The first component is the Part number and the second number is the number of the section within that Division. An example of a section number in this form is 11.100.

302 For this system, Part numbers are unique within an instrument (they do not start again at the start of each Part) but the section component starts again at the start of each Part.

303 Another aspect of this approach is to leave gaps in section numbers. Within Parts, gaps of 5 are usually used between the sections. Therefore, the sections in Part 45 may be numbered as 45.005, 45.010, 45.015 etc.

Modifications from the standard numbering system

304 Most of the material in the section about the components of Bills and Acts applies to instruments with Part-section numbering in the same way as it does to legislation with standard numbering.

305 The main modification is that Parts are numbered from the start to the end of the instrument and the numbering does not restart at the start of each Chapter.

Components of instruments—instruments using numbering to reflect the number of the parent Act

Description of this numbering system

306 For some instruments, the Chapters, Parts, Divisions and Subdivisions are numbered and named so that they follow the numbering and names used for these components in the parent Act. For example, see the *Water Act 2007* and the *Water Regulations 2008*, and the *Fair Work Act 2009* and the *Fair Work Regulations 2009*.

307 In these instruments, the location in an instrument of a section that is made under a particular empowering provision in the Act will correspond to the location of the empowering provision of the Act.

308 This numbering system is designed to assist readers who are reading the Act and instrument together.

309 Another aspect of this approach is that there will be gaps in the numbering of the Chapters, Parts, Divisions or Subdivisions of the instrument if there are no sections of the instrument made for the purposes of a particular Chapter, Part, Division or Subdivision of the Act.

Modifications from the standard numbering system

310 Most of the material in the section about the components of Bills and Acts applies to instruments with this kind of numbering in the same way as it does to legislation with standard numbering.

311 The main modification is that that there may be gaps in the numbering of the Chapters, Parts, Divisions or Subdivisions of the instrument.