



**Te Tari Tohutohu Pāremata**  
Parliamentary Counsel Office

# How to draft

**SECONDARY LEGISLATION DRAFTING TOOLKIT**





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# Introduction



# Introduction

This guide deals with the heart of producing high-quality legislation, including what it needs to achieve, the approach to drafting, and tips for managing common drafting challenges.

The Parliamentary Counsel Office (PCO) is the Government's law drafting and publication office and legislative advisor. Its main objective is to promote high-quality legislation that is easy to find, use, and understand and, to that end, to exercise stewardship of New Zealand's legislation as a whole.

The PCO's stewardship role extends to legislation that is drafted and published by agencies other than the PCO. There are many agencies that draft and publish secondary legislation that is vital to the operation of the whole legislative package. The PCO has published this guide to support those agencies to produce high-quality legislation.

This guide is based on material from PCO's internal drafting manual. To make it easier to keep up to date, we have not heavily tailored the guide or every example to the context of agency-drafted secondary legislation.

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## How to use this guide

The guide includes a lot of helpful material, some of which you may want to read just once or twice to understand the nature and process of drafting. Other material (such as that relating to plain language and reducing complexity) you may want to refer to more regularly or dip in and out of as particular issues arise.

It may feel like a counsel of perfection in places, but this is in order to provide the best possible advice. In practice many things will impact on how realistic it is to follow the guide in your particular case.

The guide is likely to be most relevant when tackling more complex drafting (eg, those involving substantial amounts of policy) rather than more formulaic or mechanical drafting jobs.

The PCO has published a range of other materials on the PCO website ([www.pco.govt.nz](http://www.pco.govt.nz)) to support agencies drafting and publishing secondary legislation. These include:

- standard components of secondary legislation, which provides standard wording and guidance on the features common to all secondary legislation
- a Word template that is pre-formatted for drafting secondary legislation
- the [Secondary Legislation Access Standards](#), which deal with requirements and best practice relating to notification and publication
- PCO's plain language standard, checklist, and supporting documents.

## Drafting roles

The guide is most applicable where each of the following roles are undertaken by different people:

- deciding policy
- turning the policy into instructions for a drafter and checking that draft legislation achieves the policy
- drafting legislation
- peer reviewing draft legislation.

While this will not always be the case in an agency context, it is a useful discipline to treat policy and drafting as separate roles and to be aware of what role you are acting in at a particular time. It is always good practice to have a second person to review and give feedback on a draft.

This guide focuses on the drafter’s role in designing and drafting legislation. If you are instructing on secondary legislation within your agency, see the PCO’s [template for drafting instructions on secondary legislation](#), which you can adapt to suit your agency’s context.

## What high-quality legislation looks like



Ensuring that legislation is well designed is important for 3 key reasons:

- poorly designed legislation will often not achieve its goals. Even if the main goals are delivered, legislation that gives rise to significant unintended consequences or fails to adapt to meet society’s needs over time may impose unnecessary costs and undermine wider government aims for society
- high-quality legislation is also critical to the functioning of New Zealand’s democracy. Legislation involves coercive power, and law making comes with responsibility to make legislation that is proportionate, reasonable, rational, and consistent with New Zealand’s constitutional principles
- good legislation saves significant costs for the system. The costs come not only from the time needed for Parliament, officials, and the public to develop and pass legislation, but also from the need for administrators and the public to make changes to implement it. As a result, legislation can be difficult to change once made.

The 3 fundamental objectives of high-quality legislation are as follows:

- legislation should be **fit for purpose**—
  - legislation should be used only when necessary, and when used it should be effective for that

purpose (including by minimising unintended costs and limiting the scope for avoidance)

- the purpose needs to be clearly defined early and robustly tested (including for legal workability)
- legislation should not expose the Government to excessive litigation
- legislation should be designed to provide certainty as to rights and obligations but also build in sufficient flexibility to stand the test of time, without the need for frequent amendment
- legislation should be comprehensive enough to deal with likely scenarios
- legislation is part of wider regulatory systems and must work effectively within them (including, increasingly, the international legal system) as well as integrating with the existing body of legislation and common law
- legislation should be **constitutionally sound** by reflecting the fundamental values and principles of a democratic society and the principles of the Treaty of Waitangi, and in the processes by which it is made
- legislation should be **accessible** for users—legislation should be able to be easily found by citizens, and easy to navigate and understand. As a result, those involved in making legislation must think about how users will find and access it.

## What poor quality legislation looks like

On the other side of the coin, legislation is of low quality if it—

- is unnecessary
- fails to give effect to the policy
- conflicts with, or casts doubt on, existing law
- is inconsistent with sound legal principles
- imposes unnecessary compliance costs
- has unintended consequences
- is easily circumvented or open to misuse
- has not been drafted in plain language
- cannot be used without excessive recourse to lawyers or the courts
- frustrates users with technicalities.

Legislation is unsuccessful, more broadly, if it—

- causes unnecessary controversy. For example, if it causes the Government embarrassment by raising unjustified concerns about what the law does or does not do
- causes processing difficulties. For example, if a Bill needs to be recommitted to the committee of the whole House
- requires corrective action after it is passed.

Many pieces of legislation seem to have high-quality aspects in one sense, but not in others. For example,—

- legislation may achieve the desired outcome but be very difficult to read
- legislation may be written simply and adequately guide the ordinary law-abiding person in the street, but may be written so that it does not deter the disobedient or foil those who would wish to circumvent it
- legislation that is timely from a government's point of view may seem rushed or ill-considered to others and may not deliver the intended policy in practice.

There will always be detractors. Environmentalists may see resource management legislation differently from developers. But in the end, it is the nature of legislation to reflect the decisions made by Parliament, which in turn reflect the compromises in society more generally. If everyone agreed wholeheartedly with a piece of legislation, it might not have been necessary to pass legislation at all.

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## Ingredients for making high-quality legislation

As a general guide, here are the ingredients for making high-quality legislation:

### Substance

- a well thought-out, logical policy
- clearly expressed aims for, results of, or outcomes from the policy
- compliance with legal principles
- consistency with existing law
- attention to detail

### Process

- listening, learning, teamwork
- commitment
- time
- a sensible decision-making structure
- adequate consultation within and outside government
- a decision-making climate conducive to good legislation.

# Five stages of drafting



# Introduction

The 5 stages of drafting help to achieve the objective of high-quality legislation that is easy to find, use, and understand. The 5 stages of drafting are:

1. Understanding
2. Analysis
3. Design
4. Composition
5. Scrutiny.

Ideally you should repeat all 5 stages whenever you are asked to incorporate a significant new idea into a draft. In reality this is like learning to drive – the steps are not followed rigidly, and it becomes intuitive in practice. What is important is to realise that there are different steps and that you can miss important stages if you dive into composition too quickly.

Below we step through each of these 5 stages.

## Stage 1: Understanding

### Know your material well

Seek first to understand, then to be understood. You have no chance of producing a draft that is readily understandable by the reader unless you fully understand the message to be conveyed.

Before picking up the pen, develop your understanding of the key aspects of the proposal. For example,—

- what is to be done and why?
- how is it to be done?
- what is the legal and general context?

Good instructions should include this information. But instructions may include gaps or only set out issues at a superficial level.

If there is any doubt, you need to ask the instructor questions to clarify the intent.



#### Key tips

- encourage instructors to use our [template for drafting instructions on secondary legislation](#)
- offer advice on good instructions in the particular context (especially if the instructor is inexperienced)
- be understanding. Preparing instructions is a very challenging task
- ask for an early meeting with the instructor. This is a useful way to develop an agreed understanding on the policy, to build rapport, and to ask questions, especially on a complex or big drafting project. It's also a good way to understand the skills and experience of the people involved and to establish clear responsibilities and accountability for the job.

## What is to be done and why?

Find out what the core policy objectives are and why legislation is needed to achieve them. What does the legislation need to do?

You need to understand what basic problem the legislation will address, both in a big picture sense and in relation to each element of the proposal. That is, what is the social, economic, or other end that the Government or the maker is hoping to achieve?

### *Instructor should make sure the key people are involved*

It is essential for the instructor to keep key people involved in discussions about what the legislation needs to do and why.

## How is it to be done?

You need to think about what legal changes are needed to give effect to the policy objectives. Many legal rules can be boiled down to the following essentials:

- **Who** does the rule apply to?
- **What** must/may/must not/may not be done?
- **When** does the rule apply? (ie, the circumstances or conditions)
- **Then what** are the legal consequences?



### *Key tip*

- **ask the instructor to give you 1 or more examples of the problem to show how the current law falls short, and how this legislation will address the problem.**



### *Key tip*

- **if you think that key messages may be lost in translation, remind your instructor to ensure all key staff are involved and perhaps suggest meeting directly with those people.**



### *Key tips*

- **consider what options are available**
- **focus on proposed outcomes (how the legislation should operate in practice). Sometimes an instructor asks for a specific drafting approach (for example, instructing you to use particular words). It is important to ask questions to uncover the underlying problem. This will help you to find the best drafting approach.**

## What is the legal and general context?

### *Legal context*

What is the existing law in the relevant area and how does it operate in practice? How will the proposed legislation fit in with the law?

Are there any New Zealand Bill of Rights Act or [Legislation Guidelines](#) issues?

For secondary legislation, the empowering provision and Act provide the key legal context. Parliament delegates the power to make secondary legislation through an Act. The power to make secondary legislation is only as broad as the delegation allows. The Act may also set procedural preconditions for making the legislation. For example, a requirement to only make the secondary legislation after consultation or a recommendation is made.

If you are amending existing legislation, read enough of the legislation to have a reasonable familiarity with its purpose, structure, and style. A lack of familiarity increases the risk of missed linkages, inconsistencies, and other anomalies. The extent to which you need to read the existing legislation will depend on the size and complexity of the amendments.

If the proposed legislation will consolidate or rewrite existing legislation, you should study that legislation. This often includes—

- reading the legislation
- knowing about the important court cases concerning the legislation
- studying a leading textbook or academic writings.

If the proposed law deals with a particular subject matter, check out the precedents in that area. This is very important for maintaining consistency.

### *General context*

In order to understand the general context, you should consider the following:

- Are there any relevant dependencies or constraints?
- Are there issues that are very controversial?
- Are there any other projects that are related or relevant to the proposed legislation, whether they are recent, current, or proposed?

You may well need to ask for further information on 1 or more of the following:

- when must the new law come into force?
- who must the new law apply to?
- what is the scope of any new obligations to be created?
- how should the new law be enforced?
- are any exceptions or qualifications needed?
- what transitional arrangements need to be provided?

## Stage 2: Analysis

Part of your role as a drafter is to analyse, from a legal point of view, what the client is proposing to do and try to protect the client from any pitfalls.

The analysis stage consists of—

- checking the instructions
- establishing the policy objectives
- checking that legislation is necessary and appropriate
- for secondary legislation, checking the scope of the empowering provision
- carrying out legal research
- considering how the proposed legislation fits with existing law
- identifying the issues to be addressed
- checking that the proposed legislation is well designed
- deciding how much detail to put in the legislation.

### Checking the instructions

You should check that—

- the necessary policy approvals have been obtained
- each part of the instructions is logical. For example, if something in the instructions is based on a premise that appears to be legally incorrect, you should query the premise
- the instructions are consistent. For example, if the instructions appear to be inconsistent in their treatment of a particular matter, you should query the apparent inconsistency.



#### Key tip

- **don't expect your instructions to be perfect. Instructions often overlook issues (it's impossible to think of everything). You need to be proactive and flexible to close the gap between hypothetical (utopian?) gold standard instructions and the instructions you have actually received.**

### Establishing the policy objectives of the proposed legislation

You should think about—

- what the legislation has to do. What changes to the current approach are intended? In legal terms, what must the legislation you are drafting achieve?
- what the reader needs to know.

One of your key responsibilities is to establish the objectives of the legislation and to ensure that the proposed legislation is what is needed to do the job. It is easy to become concerned with the detail and lose sight of the main objectives of the new legislation.

See chapter 2 of the [Legislation Guidelines](#).

### Checking that legislation is necessary and appropriate

Having established the policy objectives, the next question that must always be asked is whether legislation is necessary and is the most appropriate means of achieving the policy objective. See [part 3 of chapter 2 of the Legislation Guidelines](#).

You should consider the issue in relation to the legislation as a whole and in relation to each provision. Ask yourself whether the legislation or provision is intended to make or alter the content of the law and, if so, how? Is it imposing legally enforceable rights or obligations? Or is it intended to do something else (for example, “guide” or influence action without proper legal consequences).

If any part of the proposed legislation is only serving as guidance, this should be separated out from the body of the legislation. Consider the following options:

- publishing separate guidance
- including the material in the legislation’s explanatory note, which provides a summary of the effect of the legislation and does not form part of the law
- including notes within the legislation as an aid to users of the legislation (a guidance note). These notes should be clearly identified as guidance and should only be used sparingly and in accordance with PCO’s guidance for their use. Take care as they can form part of the legislation and can only be changed via amending legislation.

If you consider that the legislation is not legally necessary or is not the most appropriate means of achieving the policy, discuss this with the instructor. It is important to assess and advise on the risks of using legislation when it is not necessary in your particular context – see [part 3 of chapter 2 of the Legislation Guidelines](#) on these risks.

Legislation may not be legally required to, for example,—

- confer powers on Ministers, officials, and government bodies if adequate powers already exist in the common law (including the prerogative) or elsewhere in the statute book
- regulate matters that can be controlled by the Crown by contract
- set up advisory committees or create bodies that could appropriately be set up as ordinary companies
- impose a duty where there is no legal consequence for a breach.

Even if legislation is not legally necessary, however, there may still be good policy reasons for the Government to commit itself to a particular course of action through legislation (eg, by way of a statement of purpose and principles on which the action is based).

## Checking the scope of the empowering provision

Secondary legislation must be within the bounds of the delegation from Parliament or else it is invalid.

Interpreting the scope of the delegation involves more than just reading the words of the empowering provision. You need a full understanding of the wider Act, the purpose of the delegation, fundamental constitutional principles, judicial review grounds, and the constraints set by Parliament's Regulations Review Committee.

You must get legal input when interpreting the scope of an empowering provision.

## Carrying out legal research

Legal research may be required at this stage to support your analysis of the issues. This includes looking for precedents, which is very important for consistency.

## Considering how the proposed legislation fits with existing law

New legislation must fit into the existing body of law in a coherent way. A failure to properly address existing legislation or the common law may make the law difficult to understand in its full context or lead to uncertainty or errors. Those problems may, in turn, lead to higher rates of non-compliance, litigation, or remedial legislation. See [chapter 3 of the Legislation Guidelines](#).

Ensuring that your secondary legislation fits in with the empowering Act's scheme and the legal system in general is not just about avoiding invalidity. It is also a fundamental part of ensuring that the secondary legislation is—

- fit for purpose. For example, secondary legislation that fails to dovetail with the Act is likely to cause practical problems for users
- constitutionally sound. For example, secondary legislation that goes beyond Parliament's intent undermines the rule of law. It also interferes with the proper relationship between Parliament and the Executive
- accessible. For example, users will find your secondary legislation easier to understand if it works well with the Act.

In drafting secondary legislation, you are trying to create an integrated whole comprising the Act and 1 or more pieces of secondary legislation. This has 2 aspects as follows:

- the structure and content of the secondary legislation must be complementary to, and compatible with, that of the Act; and
- the language used in the secondary legislation must be consistent and in harmony with that used in the Act.

Creating an integrated whole is not only a matter of facilitating communication and maintaining professional standards. It is about avoiding conflicts or dissonance that may create legal workability problems.

You should also consider whether the legislation complies with the fundamental common law principles, such as—

- everyone is subject to the law, including the Government
- the law should be clear, and clearly enforceable
- there should be an independent, impartial judiciary
- there should be representative democracy and free and fair elections
- the principle of legality (legislation should be consistent with the dignity of the individual and the presumption in favour of liberty)
- property rights should be respected
- the law should be consistent with the right to natural justice
- the law should not restrict the right of access to the courts
- the law should not affect existing rights and should not criminalise or punish conduct that was not punishable at the time it was committed
- legislation needs to clearly authorise the raising, spending, and borrowing of money
- the law should comply with New Zealand's international obligations.

See [chapter 4 of the Legislation Guidelines](#), which discusses these fundamental common law principles in more detail.

## Identifying the main issues to be addressed

You should identify all of the main issues that need to be addressed—some can be translated into draft legislation and others will need to be resolved before drafting can start.

## Checking that the proposed legislation is workable

In considering whether the proposed legislation is legally workable, ask yourself the following questions:

- does each element achieve its legal purpose in the best way? Is there anything redundant?
- does the proposal contain loopholes, gaps, overlapping categories, or ambiguities?
- is the proposal overly complex?
- are there issues that have not been dealt with (ie, are there unanswered questions about how the proposal will work in practice)?
- are there any aspects that appear obviously unworkable in practice?
- is the proposal too vague to provide clear legal rights or obligations?
- will the operational or procedural matters work well? Do they fit with existing related systems (such as court processes, related licensing provisions)?
- is there sufficient flexibility in the system to allow for modification over time?



### Key tip

- **for each rule, consider whether there are realistic situations or contexts where unexpected outcomes may arise. Ask questions about how the law is expected to apply to those situations or contexts. However, it is important to remember that exceptions can add complexity:**

#### **Not dealing with remote scenarios**

*Many people equate detail with certainty. As a result, some argue that a Bill must contemplate every possible scenario, no matter how remote. Whether to address a remote scenario in detail is a policy decision. In deciding whether to include a specific rule dealing with a remote scenario, consideration should be given to whether the certainty produced by including the rule is proportionate to the risk of not addressing the remote scenario, bearing in mind the increased length and complexity of the Bill resulting from including the rule.*

*[Reducing complexity in legislation](#), Office of Parliamentary Counsel (Aust)*

See [chapter 1 of the Legislation Guidelines](#) for more useful information about good legislative design.

## Approach to legislation—General versus detailed

The next step is to decide how much detail to put in the legislation. Questions here include—

- should the legislation be “open textured”/“principles-based” or detailed? This means, should it set principles and allow the administration discretion in the application of the legislation, allowing the courts to determine disputes in particular cases? Or should it set out in detail how the legislation will apply in every eventuality?
- should the legislation be self-contained or referential? This means, should it contain the whole story, or should it rely on or cross-refer to other sources of law such as the common law or other legislation that is relevant in the area?

The law should be such that those bound by the law know what to expect. For example, rights should be conferred and obligations imposed with sufficient particularity so that those affected can regulate their behaviour and affairs accordingly.

A critical question is often whether the full nature of rights and obligations should be ascertainable from the Act and secondary legislation alone, or whether it is sufficient for the legislation to enable the courts to interpret the full nature of rights and obligations.

Be aware, before you start drafting, that the size and complexity of legislation is frequently the subject of criticism.

The question is one of balance. An appropriate degree of precision should be aimed for, but Acts, and to a lesser extent secondary legislation, should not contain unnecessary detail. Detailed legislation requires frequent amendment.



### Key tips

- **do not over-regulate activities. If in doubt about the value of a provision, ask the instructor whether they are really committed to regulating in such detail. For example, many Acts establishing an agency state that a board member needs to sit on any committee set up by the board. This may well be a matter that could be left to the board to decide**
- **consider whether the matter is already covered by the general law or the Crown prerogative**
- **the most obvious time to consider using a principles-based approach is when you would otherwise have to cover a wide range of alternatives in minute detail, or when your instructor can't be sure of covering every possible alternative. If you can use a simple general statement that will certainly cover most of the alternatives, but might not cover all of them, your legislation will be a lot simpler**
- **ensure, to the extent possible, that the legislation will stand the test of time. For example, do not prescribe details that may quickly be overtaken by events**
- **unnecessary detail sometimes creeps into a new Bill or new secondary legislation when parts of the replaced legislation are simply carried forward in their entirety. It is tempting to throw in precedents that you assume have stood the test of time. All material should be critically evaluated to ensure that it is appropriate**
- **in recent years, there has been an increasing tendency for instructors to prescribe mere administrative processes in legislation. You can often decrease the problem of indigestible detail by omitting this non-legislative material from the legislation.**

See also,—

- [Reducing complexity](#)
- [Regulatory Lessons from the Leaky Home Experience.](#) This article discusses the potential problems associated with a shift in regulatory design from prescribing in detail how buildings must be built to setting higher-level performance criteria to be achieved.

### ***Self-contained versus referential legislation***

Self-contained legislation means that readers can see the whole picture in one document and they do not need to flick between different sources of law.

Referential legislation either—

- relies on the reader knowing that the other parts of the jigsaw are in other places, eg, the common law, the Legislation Act 2019, or related legislation; or
- cross-refers the reader to those other sources of law.

For example, if your legislation uses the term “working day”, and you intend this to have its normal meaning, the choices are—

- do not define it, on the basis that the standard definition in the Legislation Act 2019 will apply anyway
- define it as “working day” having the same meaning as in [section 13 of the Legislation Act 2019](#)
- repeat the content of the definition in the interpretation provision in your new legislation.

The advantages of self-contained legislation may include the fact that the reader does not need to flick around between different documents.

The advantages of referential legislation include—

- shorter legislation
- legislation that focuses on the main points, rather than all of the details
- legislation that is more future proof, eg, it does not need to be changed to bring it up-to-date with changes in other legislation or the common law.

In the case of “working day”, the advantages of referential legislation outweigh the advantages of a self-contained approach. The PCO’s practice is to rely on the definitions in the Legislation Act 2019 without a separate definition.

Be aware that if, in your legislation, you repeat (eg, write out in full) a provision that is found in other legislation, you may not have conveyed the full meaning of the provision that you are trying to carry across. This is because the provision in the other legislation will not stand in isolation and will be interpreted in accordance with the spirit of the other legislation and with other definitions of the other legislation.

For secondary legislation, you generally should not repeat definitions found in the empowering Act unless there is a compelling reason for doing so. These definitions will automatically apply to your secondary legislation (see [section 20 of the Legislation Act 2019](#)). Nor should you repeat provisions of the empowering Act as you risk an inconsistent restatement as well as muddying the waters as to where the obligation comes from – the Act or the secondary legislation.

# Stage 3: Design

## Overview of the design stage

The design stage involves the planning and organisation of material.

Good organisation of material improves understanding by setting up a structure that readers can readily follow, whether across the legislation as a whole or within a provision.

Good organisation of material can also help the courts to ascertain the “scheme of the Act” and to interpret it in that context.

The need for in-depth planning will vary with the size and complexity of the legislative project. However, in most cases, it is worth doing a blueprint or an outline of your draft before you start drafting. This means that you concentrate on the big picture before getting into the detail. This will help you to develop ideas and identify gaps.

Planning is likely to consist of—

- working out a framework or an overall conceptual structure that best implements the purpose of the legislation
- grouping the material into Parts, subparts, and schedules and arranging your material within these. For practical guidance on how best to arrange your content, see below.

It may be helpful to plan with the assistance of visual aids, such as tables, diagrams, and flowcharts.

### ***Drafting is like designing and building a machine ...***

*A machine built without a plan isn't usually very successful. Similarly a draft Bill prepared without previous planning may be more complicated and less clear than a Bill prepared with the benefit of a detailed plan. By settling a detailed plan before starting to draft, you can select the drafting structure, terminology and approach that best suit the function of the draft.*

*(OPC's Plain English Manual, paragraphs 24-25)*

## High-level matters to consider

The following questions can help you in developing the plan or design for the legislation:

- does the legislation have a clear purpose? What are the main goals and principles? What basic approach or mechanism should be adopted to implement the purpose?
- what are the main messages? Readers can more easily discern a theme running through the legislation if the key provisions are reasonably prominent
- what is the relative importance of the matters to be dealt with? How do the matters relate to each other and to other legislation? What material is substantive and what is procedural or administrative? What material is of wide application and what material is of limited application?
- who is your audience? What arrangement of material within the legislation would make most sense to them? For example, the distribution of material between the body and the schedules.
- what is an appropriate division of material between different instruments, including between primary and secondary legislation (see [chapter 14 of the Legislation Guidelines](#))
- are there any Legislation Guidelines issues that concern you? See, for example, [chapter 4 of the Legislation Guidelines](#), which relates to conflicts with fundamental principles and values.

*It's a great help to planning if you can establish the main goals and principles at an early stage. These can then be used as a benchmark for testing the more detailed rules needed to achieve the goals.*

*(OPC's Plain English Manual, paragraph 32)*

## Arrange the content in the order most likely to make sense to readers

### *Overall conceptual structure*

You should work out the overall conceptual structure of the legislation. Think about how you can group the material into Parts, subparts, cross-headings, and sections or clauses.

Group related concepts in a way that makes the relationships easy to understand.

### *Guidance for arranging material*

The following sets out guidance for arranging material in a logical order.

#### **Substance vs procedure**

Substantive matters should come before procedural matters.

Administrative and procedural provisions should be located after substantive provisions so as to give prominence to what is important to readers. Readers should not have to read through a lot of provisions that set up bodies and define their functions and powers before they get to what really matters to them.

#### **General vs particular**

The general should come before the particular.

#### **Wide vs narrow application**

Provisions that have universal or wide application should come before provisions that have limited application.

#### **Other ways of arranging material**

Material can also be arranged—

- in time sequence. For example, deal first with applications for a licence, then the issue of a licence, then conditions, then cancellation or suspension
- by reference to probability (most likely to least likely)
- for secondary legislation, following the structure used in the empowering Act if suitable.

The arrangement of material should always be consistent. If a particular order has been used in one place, it should be followed elsewhere if the underlying reasons are the same.

## Engaging about design with instructors and the peer reviewer

### *Instructors*

In broad terms, you are responsible for the way that the legislation is expressed and presented. However, developing the overall legislative design is a collaborative process with your instructor. It is particularly important to involve instructors at the design stage if—

- the drafting project is large or complex
- there are significant gaps in your instructions
- the instructions have suggested an approach to the design that you do not agree with
- your proposed design is controversial or novel.

*Discussing the plan with your instructors can be a useful way to test the suitability of terms that you might use in the Bill. If a term causes misunderstanding during discussions, try to choose a better one.*

*(OPC's Plain English Manual, paragraph 29)*

See [What can you expect from your drafter? And what does your drafter need from you?](#) in the PCO's policy to law guidance.

### *Peer reviewer*

An early peer review is useful to highlight early issues, including in relation to the overall legislative design. An early peer review need not be done as a document check, a conversation on key design issues may be enough.

### *Team drafting*

Team drafting involves an inherent risk of inconsistent styles and language. At an early stage, it can be helpful and can save time if drafters agree styles before drafting begins. Using a style sheet can help to ensure consistency.

## Matters relevant to design of amending legislation

### *Follow the structure of the principal legislation*

Most amending legislation simply follows the structure of the principal legislation it amends. That is, the amendments are made sequentially rather than being grouped thematically (topic by topic). Experience has shown that grouping amendments thematically often presents accessibility and other practical problems.

Rather than grouping amendments thematically, you could instead highlight the various topics or themes in the explanatory note.

It is acceptable to move minor amendments into a schedule. For example, if “cat” is to be replaced with “dog” in a significant number of places, it might be better to move these amendments into a schedule.

### *Amend or replace?*

Sometimes it is better to replace a whole Act or piece of secondary legislation, rather than amending it.

The process of amending legislation can make it lose coherence. This often occurs when numerous amendments are made to legislation over time. See [Amendments can affect coherence](#).

Some factors in favour of replacement are—

- the proposed amendments are very extensive, to the point where a full replacement would not take much longer to draft than a set of amendments
- the proposed amendment legislation would be hard for readers to follow
- the legislation being amended is dated or otherwise difficult to read
- the legislation being amended is very small (for example, the [Student Loan Scheme \(Repayment Threshold\) Regulations](#) are routinely revoked and replaced by an instrument that is largely identical apart from the amount of the repayment threshold).

However, one factor weighing against replacement is if readers may be confused over which provisions are new and which are simply carried over.

The factors for and against replacement of a whole Act or piece of secondary legislation apply equally to the replacement of other “chunks” of legislation, such as a provision, Part, or schedule.

### *Example*

**The Commerce Amendment Act 2018 replaced subpart 11 of Part 4 of the Commerce Act 1986 in its entirety. This design decision was made because it was difficult to follow the amendments in this very technical area. The explanatory note for the Bill flagged that some aspects of the Part remained the same, with phrases like:**

*Clause 10 replaces subpart 11 of Part 4 of the Act, which relates to airport services, with a new subpart 11. Some aspects of new subpart 11 are the same as the existing subpart. The main difference is that the new subpart includes a process for imposing negotiate/arbitrate regulation, default-customised price-quality regulation, or individual price-quality regulation on specified airport services.*

*New sections 56B and 56C restate current sections 56B and 56C. They provide that specified airport services are subject to information disclosure regulation.*

The decision undoubtedly made it easier to follow subpart 11. However, the trade-off was that there remained some confusion for readers about what was new.

## Stage 4: Composition

### Writing in plain language

During the composition stage, you should follow the guidance in the [Using plain language](#) part of this guide.

See also the guidance on [Reducing complexity](#).

### But before you put pen to paper...

... you should make sure you have adequately covered stages 1 to 3. In particular, ask yourself—

- do I understand what this provision is trying to achieve? Are there significant gaps in my understanding?
- does my instructor have a clear idea of the policy intent, or are they relying on the draft to help settle this?

The discussion above does not mean that you need to defer making a start until you have the answers to all issues. If you can start on some parts, but not others, draft these parts and leave placeholders with lots of questions. This approach has the advantage of keeping the ball rolling. This approach is also often a good way of showing the instructor where the gaps or issues are. It can be difficult, even for the most experienced instructor, to understand theoretical gaps or issues until they are exposed on paper.

### Start with matters of substance instead of form

At the beginning of the composition stage, you should focus on substantive issues instead of form. Focus on accurately reflecting the drafting instructions and on developing some key terms. Generally, it is not a good use of time to try to polish the drafting at this early stage. It is better to do this once your instructor has reviewed several versions and the substance is largely settled.

If you start thinking about minor drafting points too early, you and your instructor risk becoming distracted from what the legislation needs to do. This in turn could lead to the draft becoming bogged down.

It is useful to make sure your instructor knows that you are trying to get a “first cut” down at this stage, rather than a polished draft, so that they also know what to focus their review on.

*As the draft develops, there is a shift of emphasis from the prime object of accurately achieving the legislative intention to the subsidiary but very important objective of achieving that intention with the greatest degree of clarity possible.*

*(Thornton’s Legislative Drafting (5th ed) page 164)*

### Templates and standard provisions

If you can, don’t start from scratch. The use of templates and standard wording improves efficiency, accuracy, and accessibility.

The PCO has made a [Word template](#) available for agencies to use that is pre-formatted for drafting secondary legislation. Agencies have also developed their own templates for their context. Either approach is acceptable and better than starting from a blank sheet of paper.

You should refer to PCO’s guidance on [standard components of secondary legislation](#) regardless of what template you use. The guidance sets out standard wording for the core components of secondary legislation (eg, Title, enacting statement, and commencement).

PCO also has an ongoing programme of developing solutions to common problems in legislation. The solutions include drafting practices and standard or model clauses for common components of legislation. These are described in [Solutions to common problems](#).

So far we have only developed standard or model clauses for a limited range of topics, and largely on topics only relevant to primary legislation. We plan to standardise more areas over time, including those that will be useful to agency drafters. As we develop those standard or model clauses, we will make them available to agencies.



#### Key tips

- follow PCO’s [guidance on wording for standard components of secondary legislation](#)
- use a consistent template for the same class of legislation
- make use of or adapt the [PCO Word template](#) if suitable
- the [Secondary Legislation Access Standards](#) contains guidance about minimum content (see CPTPP section under Standard 1, and Standard 4).

- the provisions you have borrowed may rely on other provisions for their effectiveness
- you should not follow an outdated style for the sake of consistency with a precedent
- just because it is “on the books” doesn’t mean it is right. A precedent could be a product of a poor process. A precedent may also be a product of a different time (and, therefore, may no longer be consistent with best practice).

See also [Inconsistent language](#).



#### Key tips

- prefer precedents that are drafted in plain language
- prioritise consistency within a regulatory regime
- if possible, aim to use a precedent from legislation that followed good processes (that is, not a rushed piece of legislation).

## Using precedents

It is generally useful to draw on precedents in preparing your draft.

Precedents are useful—

- as a source of ideas and a means of checking you have covered all matters that ought to be covered
- to ensure your approach is relatively consistent with similar New Zealand provisions
- to promote consistency within a regulatory regime. Use of precedents and consistency of language within a regulatory regime can avoid interpretation difficulties arising from minor differences in wording as well as avoiding unnecessarily varied processes or requirements for those subject to the legislation.

However, some words of caution when using precedents:

- no matter the source of the precedent, you should not adopt it uncritically
- you must adapt the precedent to fit the language of your draft

## Avoid unduly concentrating on the words rather than the policy

An issue that sometimes arises relates to where the instructor concentrates on particular words at the expense of making clear policy decisions or the drafter loses sight of the underlying policy by focusing too closely on particular words.

For example, say a disagreement arises over a particular provision. What ought to occur is a discussion of the policy considerations involved, followed by a policy decision or a clarification of the policy. Too often, however, somebody says, “What if we said XYZ?”, and the discussion turns to wording rather than policy.

It is often okay to “draft as you go”, but bear in mind that there are at least 4 ways in which concentrating on wording at the expense of policy can have damaging results:

- it can result in policy omissions. If everybody concentrates on the words already existing or proposed, it is very easy to overlook some element of policy that has not yet been put into words
- particular forms of words can become sacrosanct. If a form of words has been agreed after difficult negotiation or long discussion, people are usually reluctant to change it—even if defects are pointed out
- concentrating on wording is contrary to unity and consistency of policy. All legislation comprises discrete pieces of wording. Any concentration on wording becomes a concentration on a particular part of the legislation concerned. It becomes too easy to settle the form of some proposed legislation clause by clause, and end up with provisions that embody no general policy and perhaps even conflict with each other in various ways
- concentrating on wording is an invitation to compromise. Policy compromises are not necessarily bad, and are often good, but drafting compromises are often bad and can lead to unintended policy results. A compromise on a purely drafting matter often means that, rather than use approach A or approach B, the legislation concerned uses an amalgam of the 2 that is worse than either of the approaches. A policy compromise effected by drafting means is usually a process by which those who want policy A and those who want policy B agree on wording so vague that it could mean either (and may be held by the courts to mean something else entirely).

If this situation arises, lift your pen and ask yourself again the questions at the beginning of this section.

## Stage 5: Scrutiny

### Fresh eyes

If possible, leave a day or so between drafts. The opportunity to let a draft mature so that it can be reviewed with a fresh pair of eyes is important.

### Reread in full

Reread your draft in full at key stages if time permits. Just checking the changes is not usually enough.

### Stay focused

When you are reviewing your work:

- limit distractions
- don't multitask
- take regular breaks.

### Peer review hat

Next time you look at the draft, try putting on your peer reviewer hat and pretending that the draft was done by someone else.

### Spell check

Run the draft through the spell check in the authoring tool.

### Reread the instructions

After finishing the draft, reread the instructions. Once you have finished grappling with the complexities of the subject matter, you often find that you read the instructions differently than you did the first time.

Also, you may have forgotten small points that were previously buried in the instructions.

## Reread the principal legislation

Reread the principal Act or secondary legislation if you have been amending them.

If time permits, try consolidating your amendments into a rewrite of the principal Act or secondary legislation. Often you will spot errors when you see the amendments in place.

## Using the explanatory note

Use the explanatory note as a tool. Write the note now. Is it simpler or better than the body of your provisions? If so, can you use the simpler or better ideas from the note in the body of the provisions?

## Being flexible

Don't get so wedded to your draft that you lose the incentive to improve it.

## Complexity

Are any provisions overly complex? See the [Guide to reducing complexity](#).

## Fudge detector

Scrutinise it closely with your "fudge detector". Are there parts of your draft that have fudged the issue? This may have arisen because you are trying to reconcile 2 irreconcilables. Or because you never fully understood what you were trying to do. If so, try again.

## Test with examples

Test your draft by running some examples through it (if helpful, obtain some scenarios from your instructor). For example, if you have a provision that contains a formula by which a monetary amount is to be calculated, run some real figures through the formula.

Often including a worked example in the legislation can highlight flaws or a misunderstanding between you and the instructor.

## How would you explain it to a family member?

Leave the draft aside for the moment and pretend that you are explaining your provision to a member of your family. Will they understand it?

Can you use your plain language explanation in the draft itself?

## Definitions

Double check your definitions. Do they apply correctly in each place where you have used each word? Have you defined terms which you no longer use?

## Persistence

Remember, at this point, persistence is the key. Resist the temptation to send the draft out just because you are bored with it.

## Confidence

At some point, though, your draft will meet a deadline and will need to be introduced, reported back, or passed, or made.

It is OK to stop making changes once the draft has stabilized to a point where you and your instructors are happy with it (even if others keep making suggestions), and indeed it is best to stop making significant changes once the risks of upsetting the applecart outweigh the benefits of continuing to polish your draft.

# Using plain language



# The Plain Language Standard and Checklist

The PCO has a [Plain Language Standard](#) and [Checklist](#) for everything from emails to legislation.

Use the Standard and Checklist when drafting and peer-reviewing.

The Standard and Checklist are designed to support good writing.

## A commitment to clear drafting

Using plain language in legislation supports the objectives of high-quality legislation. In particular, plain language promotes legislation that is—

- fit for purpose (by ensuring that legislation is written with a clear purpose and that the content fulfils that purpose)
- accessible (by ensuring that legislation is easy to find, use, and understand)
- constitutionally sound (by ensuring that people can read and understand the law, so promoting the rule of law).

Clear drafting is important because:

- unclear drafting imposes administrative and legal costs
- unclear law may frustrate the will of Parliament or the maker
- unclear drafting brings the law into dispute
- users (including MPs and the general public) are increasingly impatient with overly complex legislation
- it is hard to take pride in our work if the intended audience can't read it.

## Big picture elements

There are 5 big picture elements to consider when you draft legislation:

- what is the **purpose** of the legislation? How can I make the purpose clear?
- how can I design the legislation to **support** the purpose?
- how can I **structure** the document in a clear and logical way?
- what **headings** would be useful?
- how can I achieve a professional, helpful, and engaging **tone**?

This section explains how focusing on these big picture elements will help you to communicate effectively.

### Is the purpose of the document clear?

*The legislation should be written with a clear purpose in mind*

A clear purpose is the foundation of any good legislation.

[Section 10 of the Legislation Act 2019](#) provides that the meaning of legislation must be ascertained from its text and in light of its purpose and context. This applies whether or not the purpose is expressly stated in a purpose clause. Chapter 8 of *Burrows and Carter Statute Law in New Zealand* explains the critical importance of purpose to the interpretation of legislation. In particular, if the text has 2 or more possible meanings, the text should

be given the one that best accords with the purpose of the legislation.

If you draft the legislation with a clear understanding of the purpose, it is more likely that the end product will reflect that purpose. This, in turn, reduces the risk that the courts or other readers will apply the wrong purpose or be unable to discern any purpose.

A clear understanding of the purpose can also help you to uncover any underlying policy uncertainties or misunderstandings.

### ***The legislation should have an informative Title***

The Title should help readers to find the legislation they are looking for.

See [Standard components of secondary legislation](#) for the standard approach to titles for secondary legislation.

### ***The legislation should make the purpose clear***

A clear purpose helps readers to—

- decide whether the legislation is relevant to them
- understand the legislation.

A purpose clause is one way of making the purpose clear in an Act. However, a purpose clause, particularly one that states a broad policy objective or aspiration, is rarely needed in secondary legislation. The purpose of the secondary legislation will generally be that of the empowering Act or some aspect of it.

To express a purpose differently from that in the empowering Act might invite an argument that the secondary legislation is ultra vires (ie, outside the scope of the delegation). For this reason, you should generally avoid including a purpose clause in your secondary legislation.

Rather than adding a purpose clause, you need to keep front of mind how your secondary legislation links into and supports achievement of the broader purposes of the empowering Act as well as keeping in mind the particular reasons for which the secondary legislation is being made.

You should ensure that the design features of the legislation help to communicate the purpose of the legislation and of each provision. For example, the following can contribute to a clear purpose:

- a clear and logical structure. In particular, readers can more easily discern a theme running through the legislation if the key provisions are reasonably prominent

- useful and frequent headings
- identifying the substantive provision in the Act to which the secondary legislation relates (see for example regulations 5, 7, and 8 of the [Incorporated Societies Regulations 2023](#) and regulation 4 of the [Overseas Investment Regulations 2005](#))
- examples, overviews, signposts, and other devices that support meaning
- an explanatory note that makes the legislation accessible to readers who may not be legally qualified or have specialised knowledge of the subject area.

### ***Write legislation for your readers***

Your writing will be clearer and more effective if you write for your audience.

As a general guide, put yourself in the readers' shoes. Ask yourself what readers need to know to help them to understand.

These days we don't just write legislation for other lawyers and judges. While this group is important, legislation should be reasonably accessible to all those who are likely use it.

You should always do your best to communicate effectively with all likely readers.

Readers of your legislation will have questions. That is why they are reading it.

So when you are developing your understanding of the job, think about—

- who might use the legislation
- why the legislation is important to them
- what information readers may already have and what information they may need to know
- what readers will want to achieve by reading the legislation
- what particular challenges your readers may face in understanding the legislation (eg, reading barriers).

Is the legislation mainly used by people with specialist or technical knowledge? If so, language that is well understood in that field may be the best way to communicate the message. See, for example, the [Measurement Standards Regulations 2019](#), which use language that is appropriate for people with a scientific background.

Is the legislation going to be used more broadly? For example, by consumers, employees, or “mum and dad” investors? If so, you should take particular care to make sure the legislation is accessible. See, for example, the [Protected Disclosures \(Protection of Whistleblowers\) Act 2022](#). This Act has been carefully designed to make sure it is accessible to, for example, an ordinary employee who wants to disclose serious wrongdoing about their organisation. Some of the features in the Act include—

- a helpful Title, which uses the commonly understood expression “whistleblowers”. This will help an interested reader to find the legislation
- a flowchart that sets out the key concepts. The flowchart uses the word “you” to help engage the reader
- good use of signposts (“see” references) to connect related provisions
- initial provisions to answer readers’ likely questions under the heading “Key concepts and what to do”. This structure ensures that what ordinary readers most need to know is clear at the start
- a separate part about protections (expected readers being both receivers of a disclosure and whistleblowers)
- a final part addressed to public servant readers (with more prosaic administrative details about appropriate authorities, special rules for certain organisations, and the Ombudsmen’s role)
- an easy-to-read table of examples of appropriate authorities that may receive disclosures.



#### Key tip

- **the Protected Disclosures Act has separate Parts, subparts, or schedules for different readers. This allows administrative or other technical details to be separated from the important information that lay readers really need to know. This is a useful technique that helps keep legislation readable for lay readers.**

## Does the whole document support the purpose?

### *Is the content of the legislation consistent with its purpose?*

The purpose of the legislation is a good benchmark for testing the substantive content of the legislation. In addition, measuring the content against the purpose can help you to uncover any underlying policy uncertainty or misunderstandings.

A purpose clause in an Act cannot do substantial legal work. It must not do the “heavy lifting”. It needs to reflect, and be implemented through, the substantive content. A purpose clause often explains “why” the law is being enacted, while the substantive content provides for “what” is required. You should check to ensure that the “what” lines up with the “why”. This is particularly important for secondary legislation as the content of secondary legislation is limited by the purpose of the empowering Act and delegation.

### *Does the legislation answer the readers’ likely questions?*

As a general guide, put yourself in the readers’ shoes. Ask yourself what readers need to know to help them understand.

### *Consider using other devices to support meaning*

Tables, examples, overviews, signposts, notes, graphics, or other devices can be used to communicate the message clearly and effectively.

## Tables

You can use tables to present information in a more accessible form.

Tables are effective when the information to be presented is made up of similar kinds of components, and those components are linked in the same way.

See [section 54 of the Legislation Act 2019](#) for a helpful example.

You may need to introduce a table with a narrative statement explaining how the components set out in the table are linked together.

If a provision is becoming overloaded or repetitive because it has too many essentially similar statements, you should consider replacing the provision with a table.

In that kind of situation, a table may—

- avoid needless repetition of words that explain how similar components are linked together
- allow the explanation of the link between similar components to be given in one place (eg, the body of the legislation), and the table setting out those components to be given elsewhere (eg, a schedule).

Tables are often placed in schedules, where they may be in landscape rather than in portrait. They may also be useful within a clause, section, or regulation.

When designing a table, consider the need to amend it and the form those amendments may need to take.

For examples of tables, see—

- [section 77](#) of the Administration Act 1969
- [section 54](#) of the Legislation Act 2019
- [clauses 6](#) and [7](#) of Schedule 2 of the Overseas Investment Act 2005
- [Schedules 1](#) and [2](#) of the Crown Entities Act 2004
- [Schedule 5](#) of the Dairy Industry Restructuring Act 2001
- [section 74](#) of the Employment Relations Act 2000
- [regulations 6](#) and [14](#) of the Human Rights Review Tribunal Regulations 2002.

### Examples

Examples are used in legislation in the same way that they are used in other writing—to clarify and illustrate the point being made. Examples can bring abstract concepts to life for readers. They can help readers to grasp the point quickly.

### Types of examples

Examples may be included—

- as part of the text of the provision or
- as stand-alone “boxed” examples.

The following are examples that are part of the text of the provision:



**activity**, for the purposes of Part 6,

(b) includes ancillary or subservient functions relating to the activity, *such as* administration, management ...



Changes authorised by this section include ...

(f) changes to the case of letters or words (*for example*, the replacement of small capitals with ordinary capitals ...)

See the following for stand-alone “boxed” examples:

- [section 41](#) of the Financial Markets Conduct Act 2013
- [sections 2](#), [36](#), and [41](#) of the Personal Property Securities Act 1999
- [regulation 9](#) of the Credit Contracts and Consumer Finance Regulations 2004
- sections [29](#), [54](#), and [87](#) of the Legislation Act 2019.

Matters to consider

If you are thinking of using boxed examples, consider the following:

- which provisions should have examples? The types of provisions that may benefit from an example are those that—
  - involve a difficult concept that becomes clearer through a worked example
  - make a special point that might not be obvious
  - are related to other provisions in a way that can be usefully illustrated by an example
  - involve new terms (the application of which is best explained by use as a detailed example)
- how should the examples be drafted? Examples are illustrative and do not attempt to cover all scenarios. Adopt scenarios that are typical of the problem being illustrated, or that readers can easily relate to
- examples must be legally correct and achieve their purpose of helping readers understand what is being said. You will need to build in time for every example to be carefully checked

- avoid using an example for a criminal offence. This is because the example is unlikely to account for the various defences that might be available to the person in the example
- avoid using an example to fix an ambiguity in the substantive provision. An example isn't a substitute for clear text
- avoid overuse. A good test might be to treat each example as if it is an interruption to the reader. Read through your draft and decide if there are too many of these interruptions
- avoid overloading the example. Generally, an example should be fairly brief.

If the example refers to an entity, check that the name has not been used by a real entity.

An example should not be humorous (for example, by using amusing names).

In some cases, it may be better to include an example in explanatory materials rather than in the legislation itself.

### Status of examples

Examples are part of the legislation in which they occur. [Section 10 of the Legislation Act 2019](#) makes it plain that examples are part of the text of legislation that gives it meaning. [Section 23](#) of that Act adds that an example of the operation of a provision of the legislation does not limit the provision.

The Legislation Act 2019 ensures that examples are not given a “lower” interpretative status.

However, particular Acts may still displace this general rule by providing otherwise.

Before sections 10 and 23 of the Legislation Act came into force, legislation often included a “status of examples” clause. For example, [section 14 of the Financial Markets Conduct Act 2013](#). However, current drafting practice is to rely on the default provisions in the Legislation Act unless, exceptionally, the outcome required is that examples are only guides.

### Outline or overview provisions

The purpose of including an outline (or overview) provision is to give a more detailed tool than the table of contents can provide, as an aid for readers to find their way around the legislation more quickly. An outline provision gives readers a high-level overview of what the legislation is about and how it is structured. In this way, readers can move from the general to the particular.

See [sections 4](#) and [5](#) of the Farm Debt Mediation Act 2019. The outline for this Act is not just a list of provisions. The drafter has put themselves in the shoes of the main users of the legislation: farmers and creditors. The outline paints an effective picture of how the Act works for them.

### Signposts (see references)

A signpost (also known as a “see reference”) points to another provision that readers may find helpful. They can be very useful for drawing important connections to the readers’ attention.



#### 43 Options over financial products

- (1) For the purposes of this Part and Schedule 1,—
  - (a) an offer of an option to acquire, by way of issue, a financial product is an offer both of the option and of the underlying financial product; and
  - (b) the grant of an option without an offer of the option is an offer of the option.
- (2) See clause 11 of Schedule 1 for an exclusion in relation to options.

However, avoid—

- overloading the legislation with too many signposts
- lengthy signposts. They should generally be only 1 or 2 lines.

Too many signposts or lengthy signposts are likely to interrupt the flow of the provisions.

You also need to make sure that a signpost doesn't contain a substantive rule and is consistent with the provision that it refers to.

### Guidance notes

The purpose of guidance notes (notes) is to be an aid to readers of the legislation.

Notes should be brief. Notes should not contain substantive material.

Notes are enacted as part of the legislation and can be changed only via amendment legislation.

**When you may use a note**

*Helping the reader to navigate the provisions*

A note may set out a “sign-post” or “see” reference.

**4 Overview of this Act**

(1) In this Act,— ...

(2) This section is only a guide to the general scheme and effect of this Act.

---

**Guidance note**

See also—

(a) the Imperial Laws Application Act 1988, which provides for this Act to apply to Imperial legislation; and

(b) the Legislation (Repeals and Amendments) Act 2019, which contains repeals and amendments to other legislation, as well as later amendments to this Act to require centralised publication of secondary legislation.

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**208 Period of suspension**

The chief executive may vary the period of a suspension of an export licence by written notice to the holder of the licence.

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**Guidance note**

A decision to extend the period of a suspension may be appealed (see subpart 6).

In many cases, including a “see” reference in a note is preferable to including it in the substantive provision. For example, where the “see” reference would otherwise—

- make the substantive provision too long or complex
- cause confusion about what is and isn’t intended to be substantive.

A “see” reference in a substantive provision is still an option and may be preferable in some cases.

*Explaining a cross-reference*

A note may explain a provision that has been referred to. This is a form of “clothing” cross references.

**531 Appeals against market services licence decisions**

A person may appeal to the court against a decision of the FMA under Part 6 to—

(a) decline to issue a licence to the person ... ; or

(b) exercise a power in respect of the person under section 414.

---

**Guidance note**

Section 414 gives the FMA enforcement powers in relation to contraventions of market services obligations and material changes.

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**111 Relationship with Companies Act 1993**

Section 178 of the Companies Act 1993 does not entitle a subsidiary of the Bank to refuse to provide information that must be provided under this Act.

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**Guidance note**

Section 178 relates to information for shareholders and, among other things, sets out some reasons for which a company can refuse to provide information.

You can write shorter substantive sentences by including this sort of information in a note.

*Providing information on where to find an important document or information*

A note may refer readers to the location of a source or document mentioned in a provision.

**international transparency obligations** means obligations—

(a) under paragraph 5 of Article 26.2 (publication) of Chapter 26 (transparency and anti-corruption) of the Trans-Pacific Partnership Agreement done at Auckland on 4 February 2016; or

(b) under that provision as incorporated into the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, done at Santiago, Chile, on 8 March 2018, by Article 1.1 of that agreement

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**Guidance note**

The text of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership and other information about that agreement is available from the Ministry of Foreign Affairs and Trade Internet site.

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**9 Additional document references for broadband anchor service**

(1) For the purposes of regulation 7(2)(a) and (b), the following documents apply to the extent that they are relevant to the Broadband Anchor Service Description:

(a) the notice of points of interconnection, published by the Commerce Commission under section 231 of the Act and dated 19 December 2019:

---

**Guidance note**

The text of the notice is available from the Commerce Commission’s Internet site.

---

(b) ...

You should only include a note that refers to an Internet site if you are satisfied that—

- the reference is reasonably stable
- the reference is reasonably authoritative.

Including a link to an Internet site is a balancing act. Do the accessibility advantages for users outweigh the risk that the link might break or the risk that the information may become out-of-date? Remember that the actual text of the note can only be changed via amendment legislation.

If you are considering including a link to a treaty,—

- you should take particular care that you are using a reliable source for the link to the text. In many cases, there is no reliable source (in which case, don’t use a note)
- you should remember that a link must not do anything substantive. The practice for using notes is not a substitute for following the ordinary rules for implementing international obligations (as set out in [chapter 9 of the Legislation Guidelines](#)).

The link text should be meaningful to your readers. Don’t use words like “click here” or a URL (eg, www. ...).

**Providing an example of a common situation of where a provision would apply**

You may include an example in a note. In some cases, this is better than including a “boxed example” or an in-line example in brackets. This may be the case if—

- there is a simple list of common situations (rather than a fact scenario that illustrates how the provision works)
- you want to avoid an example in brackets in order to shorten or simplify a sentence.


<p><b>referential words</b> means words that identify the whole or a part of a provision (including a schedule) as a provision, or as part of a provision, of the legislation in which they appear</p> <hr/> <p><b>Guidance note</b> The words “of this Act”, “of this section”, “of this paragraph”, “the said”, and “hereof” are examples of referential words.</p>
---

“In-line” examples and “boxed” examples are still options. What sort of example to use is a matter of judgement.

**Keep notes brief and avoid overuse**

Avoid overloading a note. It should only be one or two sentences. The text should generally be no more than 5 lines long.

Overuse of notes will clutter up your legislation. Too many notes disrupt the flow. Therefore, you should include a note only if there is a good reason to do so.



**Key tip**

- **consider whether you are putting too many notes into the draft. A good test is to treat each note as if it is an interruption to the reader. Read through your draft and decide if there are too many of these interruptions**
- **notes setting out “see” references are likely to be more common than notes for other purposes.**

**Use a note only for specific (not generic) issues**

A note should relate only to a matter that is specific to your legislation. It shouldn’t cover issues that are generic to legislation generally.

For example, don’t use a note to refer to the default definitions in the Legislation Act 2019. Including a note for this purpose would create an inconsistency with other legislation that doesn’t have a note in the same context.

Similarly, don’t use a note in secondary legislation to refer to the fact that a term used is defined in the principal Act.

**Other matters to consider**

If you are thinking of using a note, consider the following:

- which provisions should have a note? The types of provisions that may benefit from a note are those that—
  - are related to other provisions in a way that can be usefully illustrated by a sign-post (eg, by a “see” reference)
  - contain a key cross-reference to another provision and it is helpful to highlight what the other provision does
  - can be illustrated by a list of common examples
  - involve relevant external documents
- notes must be legally correct and achieve their purpose of helping readers to understand what is being said. You will need to build in time for every note to be carefully checked
- notes must not include substantive material. Leave the heavy lifting to the ordinary provisions: a note is only a readers’ aid
- avoid using an example to fix an ambiguity in the substantive provision. A note isn’t a substitute for clear text. Similarly, don’t include a note “to avoid doubt”.

The PCO does not currently use notes to explain or interpret the law. There is a risk that this particular type of explanatory material may stray too far from the proper role of legislation. That is, legislation shouldn’t contain commentary-type material.

## Status

Notes are an “indication” of meaning under section 10 of the Legislation Act 2019. Similar to examples, notes “count” for the purposes of interpretation.

You do not need to include a provision dealing with the status of a note (unless there is a compelling policy reason to do so).

Although notes will “count”, the courts are likely to give a note less weight than the substantive provisions. The font and format of a note should provide a fairly clear indication that it is subordinate to the substantive provisions.

How the legislation will be interpreted, if there is a conflict between a note and a substantive provision, will depend on the purpose and context of the legislation (as per section 10).

The status of notes means that you should carefully check that each note is consistent with the substantive provisions.

## Location

Generally, you should avoid including a note between paragraphs (or subparagraphs). A note in this position is likely to interrupt the flow. Instead, include the note at the end of the subsection or section. The note could say “In paragraph (X), ...”

Avoid including a note in the same location as an example box. Including both is likely to disrupt the flow of your legislation and raise questions about their relative status.

## Flowcharts

A flowchart is particularly useful when the legislation involves a process.

For examples of flowcharts in legislation, see—

- [section 3](#) of the Criminal Disclosures Act 2008
- [Schedules 1, 2, and 3](#) of the Human Tissue Act 2008
- [subpart BC of Part B](#) of the Income Tax Act 2007
- [subpart 3B of Part 3](#) of the Tax Administration Act 1994
- [Part 3](#) of the Trade Marks Act 2002.

## Is the structure and layout of the document clear and logical?

### *Placing the main message first*

Readers are more likely to absorb the main message if it is presented prominently. The main message will usually be easier to find and understand if it appears first.

Readers may miss the main message if it is buried in the details.

Placing the main message first helps a reader to decide whether the material is relevant to them and whether they should continue reading.

To follow this guidance, you first need to identify what the main message is. From a reader’s perspective, what is the key takeaway and what are the details that can be spelt out later?

### *Arranging themes in the order most likely to make sense to readers*

See [Stage 3: Design](#).

### *Presenting each clause as a set of related ideas*

Each clause (or section) should contain only one coherent group of ideas.

Clauses are like paragraphs in narrative writing. Each sentence (subclause) in a clause should relate to the main theme of the clause. The main theme should come first, in subclause (1).

The clause heading should indicate the theme or subject matter of the section. See [Are headings useful and do they aid navigation?](#)

### *Using paragraphs to enhance readability and clarity*

#### How paragraphs help

Paragraphs enhance the readability and clarity of our legislation.

They help us to—

- group ideas into logical and manageable chunks
- arrange ideas so that the relationship between those ideas is obvious
- reduce the length and density of the text (ie, by breaking the text into manageable chunks) (see also [6.11 of the Plain Language Checklist](#)).

Paragraphing is an effective technique for presenting complicated legislative sentences in a digestible state.

Careful paragraphing makes legislation plainer by—

- making the structure of sentences more apparent to readers
- avoiding needless repetition
- removing ambiguity.

### How to use paragraphs effectively

To use paragraphs effectively,—

- don't use paragraphs unnecessarily
- avoid “sandwich” structures
- ensure that paragraphs flow naturally and grammatically from the stem
- take care with paragraphs that end with a different conjunction (moving between “and” and “or” can sometimes cause confusion or complexity)
- take care with a series of 2 or more complex lists in a single sentence
- take care with em dash rules and colons
- avoid fragmentation.

See the supporting document for [3.4 of the Plain Language Checklist](#).

### Including no more than 5 subclauses in each clause

Using 5 subclauses (or fewer) makes legislation more readable.

Clauses with too many subclauses are undesirable because—

- readers find long clauses daunting
- it is harder to navigate legislation when a clause takes up more than one page
- a heading for a clause that contains too much material is likely to be more general and less informative.

See the supporting document for [3.5 of the Plain Language Checklist](#).

## Are headings useful and do they aid navigation?

*Headings are an important tool for communicating with our readers:*

*Research has shown that text is easier to understand if the overall topic is specified at the beginning. If the reader has a mental picture of the whole proposition, it's easier to see the significance of the parts and the way they relate to each other, and it's easier to concentrate on the details.*

*On the other hand, without a topic specifier, the reader has to construct a mental picture by absorbing details one at a time and fitting them together. This makes it much harder to understand the significance of the details before the whole picture is in mind. It's like doing a jigsaw puzzle when you don't have the picture on the box.*

*Headings are excellent topic specifiers.*

*(OPC Plain English Manual, paragraphs 105 to 107)*

### Headings use key words placed early in the heading

Headings that begin with key words are easier to scan or skim-read, allowing the reader to quickly grasp the structure and scope of the document. This is called front-loading.

Key words are significant words or phrases that describe the main subject of the text. When you place key words early in a heading (front-loading), the reader can get the message in one eye movement.

See the supporting document for [4.1 of the Plain Language Checklist](#).

### Headings clearly indicate specific topics or summarise main messages

Good headings help readers find information quickly and understand it more easily.

Headings provide an outline, overview, or summary of the content of the legislation. When used liberally, they—

- keep content organised
- make it easy to navigate through the legislation
- break up text for visual appeal.

See the supporting document for [4.2 of the Plain Language Checklist](#).

### Headings work well together

The best way to assess whether your headings work well together is to review them in a table of contents.

A well-designed table of contents provides:

- a map of the whole legislation
- a quick guide to the location of information by page number
- an overview of the subject coverage of the legislation as a whole
- an overview that the reader can scan to locate a particular area of interest
- a logical and hierarchical breakdown of the subject matter.

See the supporting document for [4.3 of the Plain Language Checklist](#).

### Headings appear frequently enough to help readers scan and find specific information easily

Headings help readers to scan and find specific information easily and quickly. This does not necessarily mean that the more headings you use, the easier the legislation will be to read. The skill is finding the right balance between providing useful, informative headings and maintaining the flow of the legislation.

Headings are signposts for readers that reveal the structure and subject matter of the legislation. However, headings that announce every topic, subtopic, mini topic, and micro topic are exhausting to scan.

See the supporting document for [4.4 of the Plain Language Checklist](#).

### Headings are reasonably brief (no longer than 1 line)

This is not a hard and fast rule, but it is a useful guide.

Readers should be able to quickly scan a heading and still have a clear idea of the underlying information. Headings act like signposts to different areas of the legislation. Like signposts, headings work best when they are reasonably brief and accurate.

This does not mean that short headings are always better than longer ones. A heading must still provide enough information for the reader to assess its content quickly and accurately.

See the supporting document for [4.5 of the Plain Language Checklist](#).

### Headings have a clear and consistent hierarchy

Creating a clear and transparent structure is a key drafting principle. That structure is revealed through the headings, which serve as a navigational guide to the arrangement of the legislation as a whole.

From the table of contents, you need to give the reader a sense of 3 aspects of the law:

- scope: what subject matter is covered and the relative importance of various topics
- narrative flow: the flow of the “story” told by the law from provision to provision
- organisation and logic: relationships between topics indicated by nesting provisions within Parts and subparts, and cross-headings, etc.

See the supporting document for [4.6 of the Plain Language Checklist](#).

## Is the tone consistent and does it support the purpose?

### The legislation avoids emotive words, jargon, and policy-speak

#### Emotive words

You should avoid using language that has emotional overtones. Emotional language can distort the intended meaning. It sets the wrong tone.

Thornton’s Legislative Drafting (5th ed) cites a number of examples:

*The landing may be prohibited of a person who is suffering from a contagious disease that is loathsome or dangerous.*

*(From an old immigration law)*

*... incidents of a repulsive or horrible nature ...*

*(From the UK Children and Young Persons (Harmful Publications) Act 1955)*

#### Jargon

You should also avoid jargon. Jargon is specialised or technical language that is only understood by those who are members of a group or who perform a specific activity. By its very nature, jargon can alienate readers who are outside the relevant group.

Sometimes it is appropriate (and even desirable) to use specialised or technical language if using that language is the best way to communicate with those who are most likely to use the legislation. However, you always need to keep in mind the needs of readers who are unfamiliar with the language.

Jargon includes terms that only lawyers and judges use frequently. Sometimes a term has a technical common law meaning that is difficult to translate precisely (eg, non est factum). You may need to keep the term in order to reflect the precise legal meaning. See, however, [section 22\(3\)\(a\) of the Contract and Commercial Law Act 2017](#). This retained the term, but included a brief translation in brackets.

In addition, you may need to keep using a term for consistency.

However, you should remove legal jargon or replace it with a plain language equivalent if possible.

### Policy-speak

While legislation is a product of a political environment, it is important to avoid policy buzzwords or policy sound-bites creeping into legislation (for example, in purpose statements).

Policy-speak obscures the message and may reflect a political bias.

### *The legislation has a professional, helpful, and engaging tone*

Readers find overly-formal, legalistic writing intimidating. A better tone reduces the risk of your readers switching off.

Long sentences, wordy phrases, and technical terminology all contribute towards legislation that is difficult for non-lawyers to read.



#### Key tip

- think about the tone you would use, as a professional, if you were speaking to your reader in person. Often you can use the same natural (but not too informal) tone in legislation.

### *The legislation avoids unnecessary complexity*

Complexity is a major factor in inaccessible legislation.

Complex legislation involves significant costs. Users have to waste time and resources in trying to understand it and there is an increased risk of misinterpretation and non-compliance.

Some reasons for complexity are beyond your control. For example, where the policy choice or the context is inherently complex. However, you are still in a prime position to avoid or mitigate complexity. To find out how, see [Reducing complexity](#).

### *The legislation is no longer than needed to achieve the purpose and to convey the message*

Long legislation is daunting for many readers. This doesn't just apply to the legislation as a whole. It applies equally to its parts (eg, sections and clauses, subsections and subclauses, and sentences).

### Help simplify the policy

Complex policy is difficult to express and can result in numerous provisions. Where possible, you should use your problem-solving skills to help the instructor to find less complicated alternatives to address the mischief.

### General principles vs detailed drafting

See [Approach to legislation—General versus detailed](#).

### Remote scenarios

Your legislation does not have to include a rule for every remote scenario. [OPC's Guide to Reducing Complexity](#) has this helpful advice:

*In deciding whether to include a specific rule dealing with a remote scenario, consideration should be given to whether the certainty produced by including the rule is proportionate to the risk of not addressing the remote scenario, bearing in mind the increased length and complexity of the Bill resulting from including the rule.*

(page 3)

### Incorporation by reference

Incorporating material by reference is often a useful way to reduce the length of legislation. However, there are a number of pros and cons to this technique that need to be balanced.

See—

- [chapter 15.3 of the \*Legislation Guidelines\*](#)
- [sections 63 to 66](#) and Schedule 2 of the *Legislation Act 2019*.

### Short sentences

See [Are sentences short, simple, and precise?](#)

## Sentences

*The unit of communication by means of language is the sentence and not the parts of which it is composed. The significance of individual words is affected by other words and the syntax of the whole ...*

*(Lord Hoffman in R v Brown [1996] 1 All ER 545, 560)*

The structure of a sentence—the order in which words are used, whether individually or in clusters, and the positioning (or proximity) of the parts of the sentence—largely determines the meaning of the sentence.

The basic principles are that sentences should be short, simple, and precise and that sentences should be focused on one topic. The following sections set out the key things to check to support these principles.

### Are sentences short, simple, and precise?

Long sentences tax readers and keep them in suspense. To help readers, the general rule is to keep sentences short. Keep the number of ideas in the sentence to a minimum. Having more and shorter subsections or subclauses is generally preferable to having fewer longer ones.

However, a mere count of the number of words is not really a good indicator. The general rule in ordinary writing is to keep sentences to 30 words or less. In legislation, with the possibility of shredding to help the reader follow what is being said, the number of words in the whole sentence is not so relevant. It is better to ensure that blocks of text are no more than 4 lines long.

The structure of a sentence is also important. A well-structured long sentence may be easier to follow than a poorly structured short one. But it turns out that many of the techniques for good structuring also produce the most concise results.

The rest of this section suggests ways to achieve short, well-structured sentences (ie, subsections or subclauses).

### Sentences clearly express the intended meaning

Syntax, the careful and logical arrangement of a sentence's parts, helps readers to read fluently.

Most writers, no matter how skilled they are at grammar, make mistakes with the arrangement of sentence parts. But they don't necessarily realise it at the time.

It usually happens because the writer constructs a sentence without fully thinking through which parts need to go together for the whole to make sense. Writing long, complex sentences compounds the risk of introducing mismatched parts.

Mismatched parts risk—

- damaging the sentence's logic
- making the reader have to work too hard to make sense of the sentence
- confusing the reader.

See the supporting document [Mismatched sentence parts](#) for advice about how to avoid these problems.

### Sentences use the active voice

Active language communicates messages quickly, clearly, and easily. It tells readers what they really want to know: **who does what**.

Passive language winds around the meaning. It hides or buries – or sometimes omits altogether – the most important part: the **who**.

**Verbs are the most important of all your writing tools. They push the sentence forward and give it momentum. Active verbs push hard; passive verbs tug fitfully.**

*(William Zinsser On Writing Well)*

**The active voice is more direct and vigorous than the passive.**

*(William Strunk Jr Elements of Style)*

Here is a simple **active** sentence:

**Many agencies draft legislation.**

**Who + does + what**

In this sentence we make the action **passive** by swapping the subject and object:

**Legislation is drafted by many agencies.**

**What + is done + by who**

See the supporting document for [6.2 of the Plain Language Checklist](#) for advice about how to write actively. The document also explains when the passive is “better” (in the sense of being clearer for the reader).

### **Sentences are phrased positively**

Positive sentences are more direct and easier to understand than negative sentences. This is because negation requires an additional level of processing (a mental switch from ‘no’ to ‘yes’) that positive sentences do not.

See the supporting document for [6.3 of the Plain Language Checklist](#).

### **Sentences use narrative style and avoid excessive cross-referencing**

#### **Narrative style**

If a person or thing is mentioned in a provision, readers will assume that a later reference to the same person or

thing is a reference to the one mentioned before. This rule is sometimes known as narrative style.

Narrative style makes sentences shorter and simpler. It removes excessive cross-references that may irritate readers. Legislation using this style has a more engaging tone because it is less legalistic and formal.

This means that you do not have to use a cross-reference when referring to someone or something identified earlier in a provision, unless using a cross-reference would avoid ambiguity.

See the supporting document for [6.4 of the Plain Language Checklist](#).

#### **Avoiding excessive cross-references**

Excessive cross-references are problematic because—

- text that contains a large number of cross-references can be hard to read and understand. Readers need to jump backwards and forwards to understand the text. It interrupts the flow of the text and adds complexity
- readers need to retain a lot of external information if they are ‘bounced’ between sections. This may lead to misinterpretation
- cross-references add to our work. Cross-references need to be checked and updated as the document is amended.

However, some cross-references are essential. A cross-reference may be needed to link sections together or to remove ambiguity.

Other cross-references may be useful (although not essential). For example,—

- a signpost to another section may help a reader to understand the complete picture
- a cross-reference may remove the need to repeat lengthy material.

Generally, include a cross-reference only if it is essential or helpful.

Cross-references may add precision. However, it is worth remembering that “Precision is admirable but over precision is painful” (*Thornton’s Legislative Drafting* (5th ed) page 71).

See the supporting document for [6.4 of the Plain Language Checklist](#).

**Sentences use conventional word order**


Using a conventional word order in legislation is critical. At best, an unconventional word order is distracting for readers. At worst, it creates ambiguity.

You should always remember to reread your draft with your plain language hat on. Does the draft have a natural flow?


The basic word order in English is: **Subject + Verb + Object (who does what)**. This word order is the key to active writing. See the supporting document for [6.2 of the Plain Language Checklist](#).

**Sentences don't split verb forms unnecessarily**

Avoid inserting clauses or phrases between the subject of a sentence and its (main) verb.

 The Minister may, if satisfied that the applicant has sufficient funds, issue a licence to the applicant.

.....

 The Minister may issue a licence to the applicant if the Minister is satisfied that the applicant has sufficient funds.

See the supporting document for [6.6 of the Plain Language Checklist](#).

**Sentences use present tense**

The present tense is the tense we use most often day to day. It is the simplest and strongest form of the verb. It indicates that the action is taking place now, in the present, relative to the writer. Occasionally, of course, you may need to use other tenses, but use them only when necessary for accuracy.

The present tense makes your writing simpler, more direct, and more forceful. The more you use the conditional or the future tense, the harder your audience has to work to understand your meaning.

See the supporting document for [6.7 of the Plain Language Checklist](#).

**Sentences use punctuation appropriately and consistently**

Good punctuation helps a reader to properly understand your message.

The following are 3 guidelines for using punctuation:


- use punctuation sparingly and for a proper purpose. A sentence with a lot of punctuation may be a sign of complexity
- follow conventional rules
- be consistent.

**Sentences avoid suspense—Get to main point early**

Indicate the topic of the sentence at the start. Let the reader know early on what the subject matter of the sentence is.

This is not as straightforward as it sounds. The order in which you place the elements is a matter for your judgement, but you should be trying to put what the reader needs to know (whatever you think that is) as early as possible.


The structure known as the “sandwich” usually offends against the guideline of getting to the main point early. A common form of sandwich is—

 If—


- (a) the Council has served notice ...
- (b) the time specified in the notice has passed ...
- (c) the Council considers that the licence-holder ...

the Council may suspend the licence.

The same sentence without the sandwich is just as bad—

 If the Council has served notice ... , the time specified in the notice has passed ... , and the Council considers that the licence-holder ... , the Council may suspend the licence.

The legal idea in the previous example is relatively straightforward. Front-loading the sentence with conditions is unnecessary. A simple alternative is “The Council may suspend the licence if...”.

 The Council may suspend the licence if—


- (a) the Council has served notice ...
- (b) the time specified in the notice has passed ...
- (c) the Council considers that the licence-holder ...

**Blocks of text are no more than 4 lines long**

This guideline is designed to avoid long slabs of unbroken text.


Readers find large blocks of text daunting. Keeping blocks of text to 4 lines or less helps you to maintain a helpful, engaging tone.

Four is not a magic number, but it is a useful guide to when a readability problem is more likely to arise.

 (1) The purposes of this subpart are to promote an informed market, and to deter insider conduct, market manipulation, and secret dealings in potential takeover bids, by ensuring that participants in financial product markets have access to information concerning the identity and trading activities of persons who are entitled to control or influence the exercise of significant voting rights in a listed issuer.

If you draft a provision involving a block of text with more than 4 lines, it should act as a trigger to examine—

- the overall length and complexity of the provision
- whether it may be helpful to the reader if you break the provision into 2 or more provisions
- whether paragraphing would enhance readability and clarity (see the supporting document for [3.4 of the Plain Language Checklist](#)).

 (1) The purposes of this subpart are to—

- (a) promote an informed market; and
- (b) deter insider conduct, market manipulation, and secret dealings in potential takeover bids.

(2) The purposes are met by giving market participants information about the identity and trading activities of persons who may control or influence significant voting rights in a listed issuer.

**Are sentences focused on one topic?**

*Each sentence contains a distinct idea*

*Try to keep one thought per sentence. If you do this, it is easy to keep control of your sentence length and complexity.*

*(M Asprey Plain Language for Lawyers (4th ed, Federation Press, 2010) page 124)*

Each sentence (subclause) should relate to the main theme of the section. The main theme should come first, in subclause (1).

Many legislative sentences contain 3 key ingredients that together make up a distinct idea:

- the **who**—this is the person or thing that is the subject of the sentence
- the **what**—this is the legal action or legally significant impact that will result from the operation of the law
- the **when**—this is the circumstances that must be present and the conditions that must be met for the law to operate.



**Key tip**

- before you start to write a sentence, identify the **who**, the **what**, and the **when**. This will give you clarity about the idea that the sentence will communicate.

The who, the what, and the when of a legislative sentence are often subject to a modifier. A modifier is a word or phrase that adds extra information to a noun or verb. Too many modifiers add complexity to the main idea:

*The more modifiers there are, the more complicated the sentence becomes. Frequently a sentence becomes hopelessly involved because the writer has tried to include all the modifiers in one sentence ... in many cases it is better to write separate sections or subsections.*

*(EA Driedger The Composition of Legislation (2nd ed, Department of Justice, Ottawa, 1976) page 5)*

Older Acts, in particular, often contain sentences that go on and on. The concepts appear one after the other in a stream, with only commas to separate them. These sentences often contain a number of points, some of which are related. This makes the sentences difficult to read and understand.



All sums paid or payable to any party in pursuance of the contract before the time when the parties were so discharged (in this Act referred to as the time of discharge) shall, in the case of sums so paid, be recoverable from him or her as money received by him or her for the use of the party by whom the sums were paid, and, in the case of sums so payable, cease to be so payable:

provided that, if the party to whom the sums were so paid or payable incurred expenses before the time of discharge in, or for the purpose of, the performance of the contract, the court may, if it considers it just to do so having regard to all the circumstances of the case, allow him or her to retain or, as the case may be, recover the whole or any part of the sums so paid or payable, not being an amount in excess of the expenses so incurred.

Section 3(2) of the Frustrated Contracts Act 1944

This sentence was rewritten as 3 separate sections in sections 60(3) to 62 of the [Contract and Commercial Law Act 2017](#).



**Key tip**

If you want to break up a long sentence, look for—

- **modifiers (extra information) that can be moved to a separate section**
- **commas or brackets. A plethora of commas or brackets is a sign that the sentence is too complicated. Commas or brackets often contain a distinct idea that you can easily move into a separate sentence. For example, the concept “(in this Act referred to as the time of discharge)” in section 3(2) of the Frustrated Contracts Act was moved into section 60(3) of the Contract and Commercial Law Act.**

See [Is the structure and layout of the document clear and logical?](#)

**Each sentence avoids mixing conditions and exceptions**

In this context,—

- a condition is a description of the circumstances in which a legal rule applies or a statement of something that must be done before a legal rule operates
- an exception is a description of the circumstances in which the legal rule does not apply.

Mixing conditions and exceptions in one sentence adds complexity for readers. It requires them to make a mental switch from when a legal rule applies to when it doesn't.



(1) An animal owner must treat the animal with love and affection if it is a cat (other than a Persian cat) that is cute and cuddly.



(1) An animal owner must treat the animal with love and affection if it is a cute and cuddly cat.

(2) This section does not apply to a Persian cat.



**Key tip**

- lengthy or complicated conditions or exceptions obscure the main rule. You should consider including these in a separate sentence.

**Each sentence avoids relative clauses that compromise clarity**

A relative clause provides information that relates to a noun or noun phrase.

**Defining—use “that”**

A defining relative clause restricts the meaning of a noun or noun phrase to a particular person, animal, thing, or category by providing essential information about the noun it modifies. If a defining relative clause were removed, the meaning of the sentence formed by the remaining words would change. It is PCO style to use “that” for defining relative clauses.

**Non-defining—use “which”**

A non-defining relative clause provides additional information about a noun but does not modify or restrict it. If a non-defining relative clause were removed, the meaning of the sentence formed by the remaining words would not change. It is PCO style to use “which” for non-defining relative clauses.

- choosing the wrong one**

Your choice of relative clause type can alter the meaning.

- too many in a sentence**

Avoid using more than 1 relative clause in a sentence. More than 1 will make for a very long sentence and is more likely to be confusing.

- awkward mismatches**

Relative clauses are about relating. To be effective, they should always come immediately after the person, thing, or concept they are describing or defining. When relative clauses drift away from their noun, it can cause major comprehension headaches for readers.

# Words

**Use the simplest words to convey meaning**

*The golden rule is to pick those words that convey to the reader the meaning of the writer and to use them and only them. (Ernest Gowers Complete Plain Words (London, 1986) page 3)*

Wherever possible, use simple and familiar words unless they do not accurately express the intended meaning. The following is a list of words that can often be replaced by the plainer equivalents shown:

Fancy	Plain	Fancy	Plain
appoint	decide/fix	assist	help
attempt	try	balance	rest
confer	give	data	information
deceased	dead	effected	made/done
endeavour	try	expiration	end
facilitate	help	furnish	give/state/show
grant	give	initiate	begin/start
location	place	mitigate	lessen
obtain	get	permit	let/allow
prior	earlier	prior to	before
purchase	buy	quantum	amount
request	ask	retain	keep
subsequent	later	subsequent to	after
substituted	replacement	sufficient	enough
tender	offer	utilise	use
vendor	seller		

Some of the most common and apparently innocuous words that we use in legislation are in fact fraught with difficulties. Many have been the subject of judicial comment. You need to be aware of the history and background of these words. See [Problematic words](#) for a discussion of the following words and how to avoid the pitfalls associated with them:

Problematic words	
all/each/every	have regard to/take account of
and/or	less than/more than
any	may/must/shall
after/before/from/within (a period)	notwithstanding/subject to
at/on/with/by/before/after/from/within (a period)	present/lay (as in before the House of Representatives)
being/not being	provisions of
case	sitting days
comprise/compose	such
country/state	where/if
deem	which/that
except/unless	whose, of which
existing	

For more problematic words, or more about the above, see—


- the [ACT Words and Phrases Guide](#)
- M Asprey *Plain Language for Lawyers* (4th ed, Federation Press, 2010) chapters 9, 11, and 13.

Using the simplest word to convey meaning does not mean that you may use jargon in legislation. Jargon is inconsistent with the professional tone that you should aim for. For example, gaming machines are still called gaming machines, not pokies.

You may use acronyms in legislation, either for the sake of brevity or because the acronym is the commonly used term for the subject. You will need to clearly explain any acronym, preferably in the interpretation section.

 **FMA** means the Financial Markets Authority established by Part 2 of the Financial Markets Authority Act 2011.

If the acronym is used in explanatory text or in a limited number of sections that will be read together, explain the acronym by putting it in bold in parentheses immediately after the first time the full name or title is used.

 The Environmental Risk Management Agency (**ERMA**) is established for the purpose set out in ...

## Use gender-neutral language

Gender-neutral language is important because it makes our writing accessible and relevant to everyone.

From a constitutional perspective, the law should treat all persons equally, regardless of their gender.

Equally, legislation needs to communicate effectively to all those to whom it applies, regardless of gender. Effective communication to users is important to enabling it to achieve the desired regulatory outcomes.

Gender-neutral language also has other legal benefits as it enables legislation to apply easily to both natural persons and other “legal persons” (eg, companies).

To assist with the range of drafting practices of many years, under [section 16 of the Legislation Act 2019](#), words in legislation denoting a gender include every other gender. The purpose of section 16 is to ensure that legislation is not arbitrarily narrow in its application. However, this is a backstop provision and does not affect the benefits of a gender-neutral drafting practice. See the supporting document for [8.2 of the Plain Language Checklist](#).

## Use consistent terms

You will confuse readers if you use different terms for the same concept or object. For example, if you use “consumer”, continue to use this term throughout the legislation. If the legislation refers to “customer” or “client” as well, readers may wonder whether this is the same type of person.

Inconsistent terminology may cause interpretation problems. The courts may assume that if Parliament has departed from the consistent usage of a particular term, Parliament intends for the term to have a different meaning.

See [Reducing complexity](#) for more information about how inconsistency can cause complexity.

### Use verbs rather than nouns (“consider” rather than “give consideration to”)

In legislation, the verbs of most sentences will—

- prohibit something (must not/may not)
- require something (must do)
- enable something (may do)
- declare something (this is).

Combining “must” and “may” with strong verbs (as opposed to nominalisations) will produce direct legislative writing.

A nominalisation is a noun derived from a verb. In formal writing, strong verbs (eg, “consider”) are often replaced by a nominalisation plus a weak verb (eg, “give consideration to”). The result is more wordy, less direct writing. Removing nominalisations will make your writing shorter and crisper.

Here are some common nominalisations:

Strong verb	Nominalisation plus weak verb
to apply	to make an application
to comply	to ensure compliance
to consider	to give consideration
to deliver	to effect/make delivery
to hear	to conduct a hearing
to discover	to make a discovery
to investigate	to conduct an investigation
to consult	to undertake consultation
to pay	to make payment
to provide	to make provision
to state	to make a statement



... shall give consideration to the multicultural character of New Zealand society...



must consider the multicultural character of New Zealand society.

### Use definitions that are helpful and are not contrived to create artificial concepts

We use definitions to give a standard meaning to words or phrases that occur throughout the legislation or part of the legislation. They are useful because they avoid having to repeat explanations and lengthy text, and they provide meaning and clarification.

To make definitions helpful to the reader, use them only when necessary and to—

- give **meaning** to a word that is different from its commonly understood meaning
- give **precision** to a word, such as when it is vague or intended to have only one possible meaning
- **limit** or **extend** the meaning of a word
- avoid excessive **repetition** or **overlong** text in a document
- allow the use of an **acronym** or **abbreviation**
- keep concepts used in the legislation **simple, consistent, and clear**.


Definitions must **not**—

- state the obvious or simply reiterate the dictionary definition
- give an artificial or unnatural sense to the defined word or otherwise be misleading
- be used elsewhere in the same document with a different intended meaning
- contain substantive content.

See the supporting document for [8.5 of the Plain Language Checklist](#).

## Use modifiers that are close to the words they modify

Take care placing modifying elements. The general rule is to place a modifier as near as possible to the sentence element it modifies. Misplaced modifiers create ambiguity. For example,—

 Every owner of gold bullion in *New Zealand* must ...

This should be reworded, depending on the sense, to one of the following:

 Every person *in New Zealand* who owns gold bullion must ...


or

Every person who owns gold bullion held *in New Zealand* ...

## Avoid unnecessary words or wordy phrases


An obvious way to shorten sentences is by eliminating redundant words. Some phrases that have traditionally been used in legislation can be replaced by single words or shorter phrases.

Generally speaking, you should not use “of this Act” (or regulation, notice, determination, etc) in internal cross-references.

 section 2 of this Act

 section 2


However, in some situations you will need to specify which Act (or other legislation) you are referring to.


 An application for an order under section 105 of the Sentencing Act 2002 must, after the commencement date, be dealt with as if it were an application made under section 107 of *this Act*.



**Key tip: “there are”**

You should avoid using the false subject “there are” or “there is”. These words are often unnecessary.

 if *there are* any conditions that do not comply

 if any conditions do not comply

Traditional	Suggested equivalents
as to whether	whether
by reason of	because
in lieu of	instead of
in like manner as	as / in the same way
in relation to / in respect of	for / to / about / concerning
in the event that	if
is allowed to / is permitted to	may
is void and of no effect / does not have any force or effect	has no effect
meets the requirements of	complies with
otherwise than	except
pursuant to	under / in accordance with
take such steps as are appropriate	take appropriate steps
with the permission of the Minister	with the Minister’s permission

## Avoid over-use of noun strings

A noun string is a row of nouns or adjectives. For example, “special education delivery programme outputs”.

Each word in a noun string adds meaning to the last noun in the row. That means all but the last word are turned into adjectives.

A noun string can be difficult to read. A reader may think that they have found the main noun, when the word is just describing something else. The relationship between the words in a noun string is often unclear.

It is fairly easy to fix a noun string. Try leaving out any nouns or adjectives that you don’t really need or follow these steps:

- move the last noun to the front or near to the front
- change 1 or more of the nouns or adjectives into a verb
- add small words to clarify the relationships between the words.

See the supporting document for [8.8 of the Plain Language Checklist](#).

## Avoid double and triple negatives

When you write a sentence containing 2 negatives, they often cancel each other out. Your sentence sounds negative but is actually positive and still requires a mental switch from negative to positive.

Double and triple negatives can easily mislead readers. They should be avoided where possible.

See the supporting document for [6.3 of the Plain Language Checklist](#).

## Avoid archaic language

Archaic words are those that belong to an earlier period and are no longer in common use (eg, aforesaid, beforementioned, hereinafter, and heretofore).

Avoiding archaic words helps to keep the words you use familiar to your readers. It also contributes to a professional, helpful, and engaging tone (rather than an old-fashioned, pretentious tone).

See the supporting document for [8.10 of the Plain Language Checklist](#).

## Avoid ambiguous words or phrases

See [Problematic words](#).

See also the supporting document [Mismatched sentence parts](#).

## Problematic words

### All, each, or every

These words are often used where they would be better omitted or replaced by “a”, “an”, or “the”. For example,—



An elected member holds office for 3 years.

*not*



All elected members hold office for 3 years.

The use of “all”, “each”, and “every” should be restricted to contexts in which their core meaning is needed. “All” may be appropriate if the emphasis is on the collective, and “each” or “every” if the emphasis is on the individual (but avoid “each and every”).

### And, or

Use “and” to connote togetherness (conjunction) and “or” to mean that you can take your pick (disjunction). This reflects our ordinary usage of “and” and “or”.

“And” has been judicially construed in a disjunctive sense, and “or” in a conjunctive sense, so you should take care when choosing. Consider the context carefully, and if the chance of ambiguity exists, eliminate it. If necessary, restructure the sentence.

In definitions you may generally use either “and” or “or”. Either of the following formulations is acceptable, and they mean the same thing:



**animal** means dogs, cows, and sheep



**animal** means dogs, cows, or sheep

Another reason why “and” and “or” are not in fact as discreet as they first appear is because “and” in a positive statement turns to “or” in a negative one. For example, “The committee may accept oral submissions and submissions recorded on video” turns into “The committee may not accept oral submissions or submissions recorded on video”. In this case, the “or” is really doing the job of an “and”.

Here is a list of extra words you could use to clarify the meaning of an “and” or an “or”:


- A or B or both
- .....
- A or B but not both
- .....
- Any 1 of the following: A: B: C
- .....
- Any 1 or more of the following: A: B: C
- .....
- Each of the following, together or separately: A: B: C
- .....
- All of the following together but not individually: A: B: C

The last 4 options above work well in a paragraphed subclause. Both the lead-in words and the individual paragraphs will end with a colon. You have avoided using “and” or “or”, but the meaning is completely clear. The most common forms of this technique in the PCO are the expressions “all or any of the following” or “1 or more of the following”. They have the same effect.

The expression “and/or” should never be used. Although it may appear to be a shorthand way of saying “any or all of the following”, its meaning is frequently ambiguous. You should work out exactly what you mean and say it using as few (but no fewer) words as you need.

**Any**

“A” or “an” is usually just as effective as “any” and free from ambiguity. “Any” may be ambiguous because it is capable of carrying the same meaning as “every” in some contexts. In the following example, it is not clear whether the Minister must consult 1 organisation or every organisation:

 The Minister must consult any organisation that appears to the Minister to represent a substantial number of citrus growers.

***At, on, with, by, between, before, after, from, or within (a period)***

Great care must always be exercised in using these terms, and you must always have a proper appreciation of their effect in particular situations.

[Section 54 of the Legislation Act 2019](#) sets out rules for interpreting various terms in relation to the start and end of periods of time, unless a contrary intention appears.

See also [section 27 of the Legislation Act 2019](#) for rules about when legislation commences.

***After, before, from, or within (a period)***

In many cases it is better to define exactly the period concerned. For example, a period may be expressed to begin **on** or **with** a specified day and to end **on** or **with** (the close of) another day.

When fixing the beginning of a period, it is better to use **after** than **from**. For example, say that a period begins **after** a specified day, rather than **from** the specified day. This is because **from** is often used in everyday speech to include the specified day.

For the same reason, and despite [section 27 of the Legislation Act 2019](#), in a commencement provision, it is better to state that the legislation comes into force **on** a particular day rather than that it comes into force **from** a particular day.

If you use “within” to fix a period, it is usually clearer to fix the beginning of the period exactly. When doing so, avoid using “within X days **of**” a specified day, since it may be unclear to readers whether the specified day should be included or excluded when calculating the period (although section 54 of the Legislation Act 2019 clarifies the point). You can instead use “within X days **after**” the specified day to exclude it, or “within X days beginning **with**” or “within X days beginning **on**” the specified day to include it.

[Section 54 of the Legislation Act 2019](#) does not give a meaning to all temporal expressions. Many of these have been interpreted in decided cases. For example, the words “at least” or “not less than” are regarded as indicating that a clear or full period of time must expire between the starting and finishing days (see *In re Railway Sleepers Supply Co.* [1885] 29 Ch D 208; *T v J* [2000] 2 NZLR 236). The expression “at least” may be contrasted with the expression “within”, which excludes the starting day under section 54.



**Key tip**

- you should try to stay within the bounds of section 54 of the Legislation Act 2019, and where this is not possible, to be as clear as possible about the intended inclusion or exclusion of days.

To illustrate, 2 provisions that have proved problematic are reformulated in terms defined by section 54.

This is the first provision, which has been interpreted as excluding both the starting and the finishing events (*T v J* [2000] 2 NZLR 236)

A document signifying consent by a mother of a child to an adoption shall not be admissible unless the child is **at least** 10 days old at the date of the execution of the document.

The provision could be reformulated along the following lines:

A document signifying a mother’s consent to the adoption of her child is not admissible if it is signed **before** the 11th day **after** the birth of the child.

A document signifying a mother’s consent to the adoption of her child is not admissible unless 10 or more days have elapsed **between** the date of the child’s birth and the date on which the document is signed.

The second illustrative provision has been interpreted as excluding the starting event and including the finishing event (*Cerissi Design & Marketing Ltd 6 d v Australian Rugby Union Ltd* [1997] 3 NZLR 208):

The application must be made within 10 working days of the date of service of the demand.

The word “of” is now covered by section 54. But this provision may be clearer to ordinary readers if it is reformulated along the following lines:

The application must be made in the period that ends **on** the 10th working day **after** the date of service of the demand.

Or you could say:

The application must be made **within** 10 working days **after** the date of service of the demand.

**Being, not being**


Do not use “being” and “not being” to join relative clauses. For example,—

A person who is 70 years or over, being a person who has a driver licence.

Join the 2 clauses with “and” instead. For example,—

A person who is 70 years or over and has a driver licence.

Sometimes a “being” provision helps to make sense of a complex provision by enabling qualifying phrases to be put in parentheses. For example, in regulation 17(2)(n) of the Electricity Regulations 1997,—

 (n) work done on low voltage fittings, where—


(i) the work consists of—

(A) the replacement of a fuse link with a fuse link or plug-in miniature circuit breaker of an appropriate rating; or


(B) affixing a fitting (*being a plug, an adaptor, a cord extension socket, or an appliance connector*) of an appropriate rating to a flexible cord that is designed to have such a fitting affixed to it; and

**Case**


Older legislation often refers to the “case” in which something applies. It is usually better to use “if”.

 In a case to which section 5 applies, ....

---

 If section 5 applies, ...

It is fine to use “case” to show that one paragraph applies, whether or not 1 or more others do too.

 (a) if ... , ...


(b) if ... , ...

(c) in any case, ...

**Comprise, compose**

A whole comprises the parts of which it is constituted, but the parts do not comprise a whole. Thus New Zealand comprises 2 large islands and a number of smaller ones. It is not correct to say that 2 large islands and a number of smaller ones comprise New Zealand.

Do not confuse “comprise” with “compose”. While compose does mean “make up, constitute”, you must use a preposition if you use “compose”. For example,—

 A body corporate both *comprises* x members and is *composed of* x members.


**Country**

Sometimes there is confusion as to whether we should refer to “countries” or “States”. The proper word at international law is usually “State”.

**Deem**

The word “deem” has been frequently used in legislation. Its purpose was to create a legal fiction.


“Deem” has traditionally been used when something is to be what it is not, or if something was not to be what it is. For example,—

 A person who has received an offer of compensation is deemed to have accepted the offer unless the person registers an objection within 30 days after receiving the offer.


People who are not familiar with legislation find “deem” confusing. Words like “regarded”, “taken”, or “treated as” have much the same effect as “deem” and can, in many cases, be used instead of “deem” or “deemed”.

Careful consideration should be given in each particular case. As a rule, “deem” should only be used to create a legal fiction, and even then it should be avoided if there is a sensible alternative way of achieving the same result. For example, “deem” is often appropriate in validation provisions because of the need to convey the notion that the illegal action has been made lawful, but that it was initially illegal (otherwise people might take it as a sign that Parliament has condoned the illegal action and that they can do it again!).

An example of an alternative way to create a legal fiction without using “deem” is—

 It is declared that every consent to which this section applies is, and always has been, as valid and effectual as if the power to give it had been lawfully delegated to the officer who purported to give it.

Never use “deem” if it bears the meaning of “think” or “consider”. In the following example, the use of “deem” is **not** appropriate:


 Nothing in this Act shall be deemed to affect a right to compensation under any other law.

The provision should be expressed as, “Nothing in this Act affects ...”, or more directly, “This Act does not affect ...”.

**Except, unless**

If a provision is expressed to apply “except” in specified circumstances or “unless” something happens, consider whether there is provision for the consequences if that circumstance does occur or that something else does happen. That is, when the provision no longer applies.

A complementary provision may be necessary:

 A mortgagee who exercises a power to sell mortgaged property must not become the purchaser of the mortgaged property except,—

- (a) in accordance with section 166, at a sale of land or goods through the Registrar; or
- (b) in accordance with an order of a court made under section 168.

**Existing**

This word requires an unambiguous reference to a fixed point in time. A definition may be desirable.

**Have regard to, take account of**

PCO practice is to regard the phrase “take into account” as imposing a stricter requirement than “have regard to”. Drafters generally use “take into account” if the intention is to require the decision-maker to address each matter and give it some weight. Drafters generally use “have regard to” if the intention is to require the decision-maker to consider each matter and to allow the decision-maker to disregard any matter that the decision-maker considers irrelevant.

In *R v CD* [1976] 1 NZLR 436, which concerned the phrase “take into account” in section 5 of the Costs in Criminal Cases Act 1967, Somers J said:

*The first question ... is what is meant by the words “shall have regard to”. I do not think they are synonymous with “shall take into account”. If the appropriate matters had to be taken into account, they must necessarily in my view affect the discretion under s 5(1) and it is clear from s 5(2) that the matters to be regarded are not to limit or affect that discretion. I think the legislative intent is that the court has a complete discretion but that the seven matters, or as many as are appropriate, are to be considered. In any particular case, all or any of the appropriate matters may be rejected or given such weight as the case suggests is suitable. I propose to examine the matter on that footing.*

*R v CD* supports the view that “take into account” imposes a stricter requirement. However, in *Te Runanga O Raukawa Inc v The Treaty of Waitangi Fisheries Commission* CA 178/97 (which concerned the phrase “have regard to”), the Court of Appeal (per Tipping J) commented on the fineness and general unhelpfulness of the distinction drawn in *R v CD*. For judicial discussion on this topic, see—


- *R v CD* [1976] 1 NZLR 436, 437:
- *New Zealand Co-operative Dairy Co Ltd v Commerce Commission* [1992] 1 NZLR 601, 612:
- *Te Runanga O Raukawa Inc v The Treaty of Waitangi Fisheries Commission* CA 178/97:
- *Solicitor-General v Moore* [2000] 1 NZLR 533, 543:
- *Bleakley v Environmental Risk Management Authority* [2001] 3 NZLR 213, 35.

**Less than, more than**


To provide for “less than X” and “more than X” has the effect of excluding X itself and leaving it unprovided for. Use “not exceeding/exceeding” or “less than/at least” instead. “Above/below” and “over/under” should be similarly avoided.

**May, must, or shall**

“May” should be used where a power, permission, benefit, or privilege given to some person may, but need not, be exercised, ie, where exercise is discretionary. For example,—

 The District Court Judge may impose any other conditions on the person’s release that the Judge considers necessary.



“Must” should be used where a duty is imposed that must be performed. For example,—

 Before questioning a person who is entitled to the questioning safeguards, a police officer must enquire whether the person wishes to consult a lawyer.



Although “shall” is used to impose a duty or a prohibition, it is also used to indicate the future tense. This can lead to confusion. “Shall” is less and less commonly used, partly because it is difficult to use correctly. “Shall” is now rarely used in New Zealand legislation (for a rare example, see [a Royal Warrant for The New Zealand Armed Forces Award](#)).

“Must” should be used in preference to “shall” because it is clear and definite, and commonly understood.




“Shall” and “must” are often used unnecessarily in declarative expressions in an attempt to capture a sense of authority and obligation. In this situation, the present tense is often more appropriate. For example,—

 A parent is entitled to appear.  
 A parent *shall be* entitled to appear.



---

 It is lawful.  
 It *shall* be lawful.


---

 Only a person who is a resident is eligible.  
 A person is eligible only if resident.  
 A person *must* be a resident to be eligible.


---

 No person *may* do x, y, and z.  
 No person *shall* do x, y, and z.

Occasionally “will” is an appropriate substitute for “shall”. For example,—

 A seafarer with monocular vision serving in departments other than the deck department will pass the minimum standard in accordance with the Masters and Mates (Foreign Going and Coastal Qualifications) Regulations 1993 if ...

---

 A seafarer with monocular vision serving in departments other than the deck department shall pass the minimum standard in accordance with the Masters and Mates (Foreign Going and Coastal Qualifications) Regulations 1993 if ...

**Notwithstanding, subject to**

Each provision of legislation must be read in its immediate context and in the context of the legislation as a whole. This is based on the decision in *Greenshields v The Queen* [1958] SCR 216 in which Locke J stated as follows:

*The broad general rule of construction of statutes is that a section or enactment must be construed as a whole, each portion throwing light, if need be, on the rest.*  
 (page 225)

Another decision along the same lines is *Hampson v Department of Education and Science* [1990] 2 All ER 513, in which Lord Lowry stated as follows:

**... an expression which is prima facie neutral must be looked at in both its immediate and its more remote context.**

**(page 518)**

See also the statement made in relation to this matter in *Driedger on the Construction of Statutes* (3rd ed, 1994):

**Each provision or part of a provision must be read both in its immediate context and in the context of the Act as a whole. When words are read in their immediate context, the reader forms an impression of their meaning. This meaning may be vague or precise, clear or ambiguous. Any impressions based on immediate context must be supplemented by considering the rest of the Act, including both other provisions of the Act and its various structural components.**

**(pages 245–246)**


However, if provisions in an Act or in different Acts are or may be inconsistent with each other, the expressions “notwithstanding” and “subject to” have been frequently used in the past to clarify which one prevails. These expressions should now be avoided if possible.


A more direct way to indicate that a particular provision is to override another is: “This section applies despite anything in section 00” or “This section prevails over section 00”.

If a provision is to give way to another, this can be achieved by saying: “Section 00 overrides this section”. In some cases, it may be necessary to spell out more precisely the relationship between the provisions by stating the reason one takes precedence over the other. Simply stating that one overrides the other can still leave doubt as to why it does.

“Subject to” should never be used when the intended meaning is “in accordance with”. These phrases do not have the same meaning: the first denotes a conditional relationship and the second compliance.


“Notwithstanding anything in this Act” (or a variation of this) is a formula quite often used in New Zealand statutes. For example,—

 Notwithstanding anything in any other enactment ...

 Notwithstanding the provisions of subsections (1) and (2) or section 60(2), but subject to subsection (2A) and section 60(3) ...

Similar formulas are—


 Except as provided in this Part ...


 This Part of the Act shall apply notwithstanding anything in any other Part of this Act ...

Although these formulas may indicate that the provisions containing them are intended to prevail, they often do not indicate which provisions are to be overridden. The difficulties that such formulas create are—


- the uncertainty or even impossibility of application
- an incomplete communication of the legal effect of the provisions
- the probability that users will be misled
- the possibility of implied or express repeal by a subsequent provision
- the possibility of a broader application than that intended.

A more straightforward way of clarifying the relationship between different elements of an Act must be found. The use of affirmative rather than negative statements, and specific identification of the affected provisions is one possibility. For example,—


 Payment must be made within 21 days, except in the circumstances described in subsection (1).

 Part 3 of the Financial Markets Conduct Act 2013 prevails over sections 10 to 15 of this Act when ...


Do not begin a sentence with the phrases “Subject to” or “Except as provided”. Put the qualifier in a separate section or subclause. For example,—

 Subsection (1) is subject to subsection (3).  
or

---

 Subsection (1) is subject to section 14 of the Supreme Court Act 2003 (which provides that ...).  
or

---


 However, subsection (1) does not apply if subsection (3) applies.

**Present, lay**


Use “present to” for a requirement to present a report or paper to the House of Representatives (SO 381). Note that some old precedents still use the old term “lay before” the House of Representatives. These precedents should not be followed in this respect.

**Provisions of**

Older legislation often refers to, eg, “the provisions of section x”. References to “provisions” is usually unnecessary.

 This section is subject to the provisions of section 5.

---

 This section is subject to section 5.

**Sitting day, sessions**

Old precedents refer to a requirement to lay a report or paper before the House of Representatives by the end of a parliamentary session. It is now preferred practice to refer instead to a requirement to present a report or paper not later than [x] sitting days after [...].


Check that the number of sitting days chosen corresponds, roughly, to an appropriate period. For example, 12 sitting days would now correspond, at a time when the House was sitting each week, to 1 month. At other times, it might correspond to a much longer period).

A second method of making reports or papers available is often specified as an additional requirement (eg, publication in the Gazette or some other method).


**Such**

“Such” can be ambiguous in its point of reference. It can also produce a “starchy” effect when overused.


“Such” can often be either omitted or replaced with “the”, “a”, “that”, “all”, “every”, or a variant. For example,—

 ... all other organisations the Minister thinks appropriate.  
or

---


 ... every other organisation the Minister thinks appropriate.

---


 ... such other organisations as the Minister thinks appropriate.

**Where, if**

“Where” is commonly used to suggest place (eg, the street where you live). It also refers to situations or sets of circumstances, which may be actual or hypothetical. For example,—

 The complainant is not required to state his or her address or occupation in court, except where leave is given under paragraph (c).

“Where” has also been traditionally used to introduce a conditional clause but in that case “if” is preferable:

 This section applies if the conviction subsisted when the statement in question was made.

“Where” and “if” should not be overused at the beginning of sections and subsections. The use of “where” and “if” can frequently be avoided by rearranging the material in a particular provision. For example,—

**If a receiver sells property in the exercise of a power of sale, the receiver must account to the owner of the property for any surplus that remains after satisfying the claims of the chargeholder.**


If “if” were omitted, this would become—

A receiver who sells property in the exercise of a power of sale must account to the owner of the property for any surplus that remains after satisfying the claims of the chargeholder.

**Which, that**

In defining relative clauses, without commas, use “that” (ie, if readers need all of the information in the sentence).


In non-defining relative clauses, with commas, use “which”.

 The recommendations that were put forward have been accepted.

“that were put forward” = defining relative clause

“that” = relative pronoun, “that” functions as a pronoun/subject

---

 The recommendations, which were finished only yesterday, have been accepted.

“which were finished only yesterday” = non-defining relative clause


“which” = relative pronoun

The defining relative clause defines the recommendations that we are talking about.

The non-defining relative clause does not define the kind of recommendations we are talking about—this is indicated by the commas and the use of “which”.

**Whose, of which**

Although “whose” refers to persons, it may be used for objects to avoid awkward constructions requiring “of which”. For example,—

 Blueberry fruit, whose seedlings were supplied by Michigan State University, has grown vigorously in silt loam.

## Accuracy

### What to check in your draft legislation

You should check the following:


- spelling and grammar
- punctuation and capitalisation
- cross-references
- consistency.

### Punctuation

Punctuation provides a signpost to sentence structure. A great deal has been written about it, but for the purposes of this manual it is probably sufficient to repeat the 4 rules set out in *Thornton’s Legislative Drafting* (5th ed) page 37—

- punctuate sparingly and with purpose
- punctuate for structure and not for sound
- use conventional punctuation
- punctuate consistently.

One way in which New Zealand legislation is punctuated differently from most other New Zealand published writing is that we follow the rule that in a series of 3 or more terms with a single conjunction, use a comma after each term except the last. This is sometimes called the “serial comma”. It is used by Oxford University Press and is common in US writing.

 The director may cancel or suspend any licence, authority, or permit issued under this Part.

Drafters rarely use bullet points in legislation as they create difficulties for cross-referencing and subsequent amending. However, drafters do use them in the explanatory notes to Bills and secondary legislation, where the problems of cross-referencing and subsequent amendments do not arise. A rare example of bullet points in legislation is in [Part 1 of the Personal Property Securities Act 1999](#).

## **Consistency**

Use words and structure consistently within a piece of legislation.

For example,—

- if a licence is “granted”, do not later refer to it as being “issued”
- if you create a number of offences, use the same formulation for all of them, if possible
- if you refer to a notice being “given”, do not later refer to it being “sent” or “lodged”.

See [Reducing complexity](#) for more information about how inconsistency can cause complexity.

# Reducing complexity



# Introduction

Readers often say legislation is too complex. They can mean various things, including—

- they can't understand it because it's written badly
- they can't understand it because its subject matter is too difficult
- the regime is too complicated to comply with or enforce
- they don't like the legislation (because they don't like the policy!)

As a drafter, you cannot fix all of the above. A complicated subject area will never turn into a law that says “The cat must not sit on the mat”. Some complexity is unavoidable. For example, the New Zealand Law Commission, in its report [A New Interpretation Act To Avoid “Prolivity and Tautology”](#), noted even in 1990 that both the bulk and complexity of the statute book was increasing

**Each year around 4,000 new pages are added to the volumes of legislation-subordinate as well as primary. The figure about 10 years ago was similar, but 40 years ago it was 2,250. Much of it does of course replace earlier legislation, but the bulk of the statute book has undoubtedly been increasing.**

...

**The character of some legislation is also changing and reflects the increasing complexity of life in general and the growth in disputes and in litigation. There has been an increase too in the likelihood of controversy about the meaning and effect of relevant legislation.**

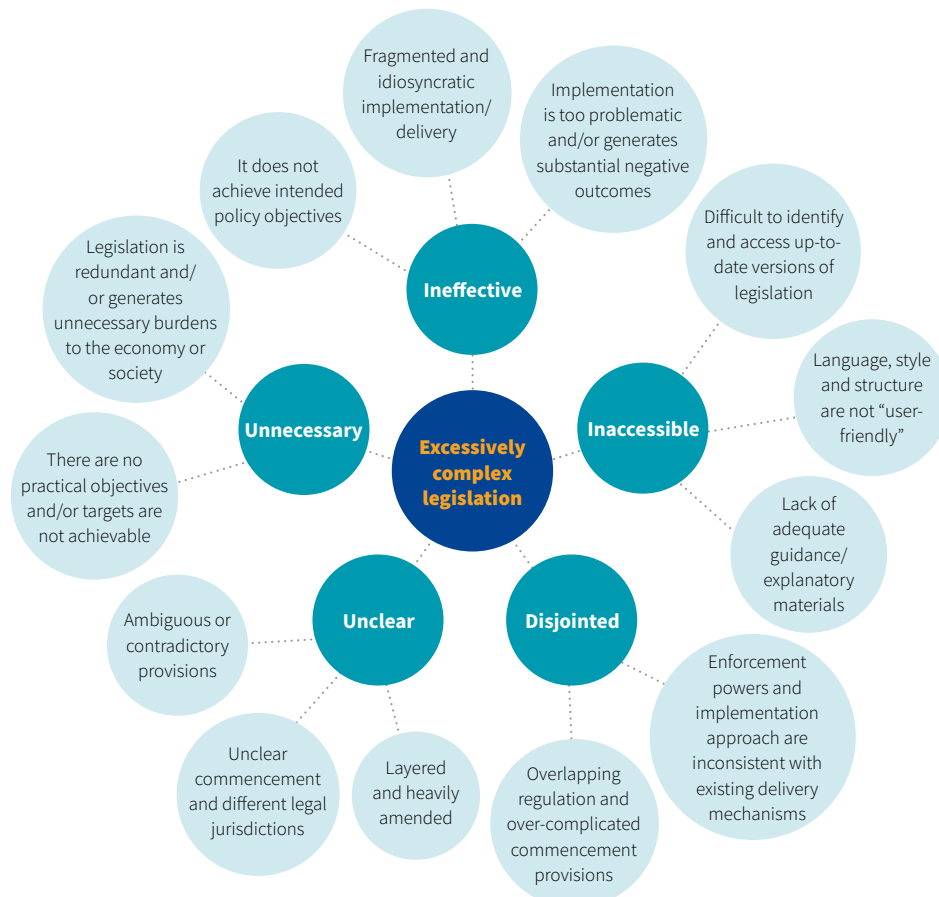
(page 2)

But you can take steps to reduce complexity, and certainly you should take steps to ensure that you do not add to its complexity.

This section is about the extra steps that complement advice elsewhere in this guide and the [Plain Language Standard, Checklist, and supporting documents](#). The rest of this section suggests other practical steps that you can take to reduce complexity.

In other jurisdictions (for example, Australia and the UK), reducing complexity has been the subject of much research, new safeguards, and effort. For material from those jurisdictions that supplements this guidance, see—

- [Reducing complexity in legislation](#) (Australian OPC)
- [When Laws Become Too Complex](#) (UK OPC)



# Concepts

## Large number of concepts

A reader will find legislation more difficult to understand if it involves a large number of concepts.

The policy or regulatory system may inherently involve a large number of concepts. But you should avoid adding to the complexity by adding unnecessary concepts. In particular, you should think about—

- removing rarely-used concepts
- reconciling or combining similar concepts
- avoiding chains of concepts.

### *Rarely-used concepts*

A definition may simplify a sentence by reducing its length. However, each definition will be a new concept. If the defined term is used only once or a few times, you should consider whether it is worthwhile.

There is a balance to be struck between simplifying a sentence by reducing its length and adding complexity by introducing a new concept.

See the supporting document for [8.5 of the Plain Language Checklist](#).

### *Similar-looking concepts*

A reader may become confused if legislation uses a number of similar, but subtly different, concepts.

Sometimes this can happen as legislation evolves through drafts or through the House.

It's important to step back from time to time and re-assess whether—

- the concepts can be reconciled. Are the differences really needed?
- the defined terms used for each concept are sufficiently distinctive
- each definition is really needed.

### *Chains of concepts*

Chains of inter-connected concepts are a common source of complexity. They bounce the reader around and require them to keep in mind too many ideas at once.

You should consider whether it would be better to fold the smaller concepts into a larger concept.

## Same word, different meanings

Complexity can arise if you use the same word or expression with different meanings in different parts of the legislation. For example—

- you have different definitions for the same word in different parts of the legislation; or
- you give a special definition to a word in one part of the legislation, while the word has its ordinary meaning in other parts; or'
- you have one definition for the word in the Act and a different definition for that word in secondary legislation made under that Act.

Readers may be confused if they forget which meaning applies to the word in the particular part that they are reading.

The general guideline is to avoid this complexity: “one expression, one meaning”.

However, you should apply this guideline with common sense. One consequence of the guideline is that you might need to come up with new defined terms. Ironically, this can also add complexity.

In each case, you need to exercise your judgement about which approach adds the least complexity. For example, the Financial Markets Conduct Act 2013 has 2 different definitions of “financial product”: one definition applies to most of the Act while the other applies only to Part 2. On balance, it was decided that 2 definitions for the same expression was less complex. Using different expressions would have been less intuitive to most readers.

## Poorly-defined concepts

Complexity can arise if—

- a concept is defined in vague terms
- there is a dissonance between the concept as defined in the legislation and the real world reality.

The following may increase the risk of this problem:

- you and the instructor do not have a meeting of minds on the concept
- the instructor has not fully thought through the boundaries of the concept

- policy differences are resolved by way of a vague compromise or by accepting ambiguity
- the concept has not been tested against the practices and understandings of the real world
- when the legislation is amended, a subsequent drafter does not fully understand how the concept works.

If a concept doesn't reflect the real world, the administering agency and users may need to adopt a workaround to make the legislation workable. Complexity may be compounded if the legislation is subsequently amended in an attempt to shore up the legislation in light of these realities.

To reduce the risk—

- follow the advice in [Stage 1: Understanding](#). For example, meet with the instructor early to discuss fundamental concepts and ask questions
- encourage the instructor to read drafts critically. This includes checking it against instructions, making sure it implements the policy, and checking that nothing is missing. The instructor should not just answer your questions
- encourage the instructor to test the draft against a range of practical scenarios
- encourage the instructor to consult operational staff and stakeholders. A public exposure draft is a useful way to flush out conceptual problems
- encourage the instructor to get a peer review from another member of their team or a senior colleague
- include a worked example in the legislation—this often flushes out issues
- follow the advice in [Stage 5: Scrutiny](#). For example, scrutinise concepts with your “fudge detector”.

## Inconsistent language

Inconsistency of expression is another source of potential complexity.

One case that illustrates the problems of inconsistency is *Down v R* [2012] NZSC 21. The case concerned an infringement offence regime and whether a conviction could be imposed for the infringement offence in question.

In that case, the Supreme Court noted

*[35] The importance of infringement notice procedures in the criminal justice system warrants a careful, systematic and consistent legislative approach to their*

*establishment. For this reason, I started my consideration of the present case in the hope that if I made a sufficiently careful analysis of all the statutes which provide for infringement notice procedures, I would be able to discern an underlying legislative pattern, which, once understood, would enable not only the present case, but also any similar cases under other statutes, to be resolved in a consistent and principled way.*

*[36] Having examined the statutes which are listed in the “infringement notice” definition in the Summary Proceedings Act, I came to the dispiriting conclusion that there are no relevant patterns which provide assistance in relation to the interpretation issues we have to address. Indeed, I am left with the view that those responsible for the drafting of these statutes have sometimes lost sight of the Summary Proceedings Act provisions. ... My review of the other statutes (that is, those which provide for infringement notice procedures but are not identified in the Summary Proceedings Act definition of “infringement notice”) has left me with the equally dispiriting conclusion that there is no clearly discernible rationale why some statutes have been listed and others not.*

## Balancing the risk of inconsistency against the benefits of making an improvement

Drafters are often faced with a conundrum: should I maintain consistency with existing legislation that is not plainly drafted or could otherwise be improved in a material way? In each case, you need to balance the risk of inconsistency against the benefit of the improvement.

In some cases, the connection between the existing legislation and your draft will be relatively inconsequential. In this case, the risk of an adverse inference from an inconsistency may be low and will be outweighed by the benefit of the improvement.

In other cases, the relationship between the existing legislation and the new will be much closer. In this case, continuing the “defect” might be the prudent course, especially if it is minor.

One other option might be to amend the existing legislation to line it up with the new approach. There is also a judgement call here as to whether the improvement is sufficient to justify the change.

## Complicated provisions

Sometimes a provision is unnecessarily complicated because the drafter—

- does not fully understand the real problem that the provision is intended to address
- includes irrelevant text from a precedent
- makes the provision do too much work.

### Understand the real problem

Sometimes an instructor gives instructions that are based on an assumption about the best way to implement their underlying policy. These instructions may not identify the real problem, but instead set out only how an unstated problem is to be remedied. This often results in a drafting approach that is unnecessarily complex.

The [PCO's templates for instructions](#) encourage instructors to “focus on proposed outcomes, not on the exact words to be used. Being wedded to ‘sacred phrases’ can hold the drafter back from finding better alternatives.”

The advice in [Stage 1: Understanding](#) will help you to unravel the underlying problem that the legislation will remedy.

### Don't just copy and paste precedents

A precedent may contain provisions that are irrelevant in your context. You should think carefully about whether all of the provisions in a precedent are necessary to implement the particular policy.

Don't just assume that a precedent must be OK because it is “on the books”. A precedent is a useful starting point but it cannot act as a substitute for thinking through what's required.

You should take care to align a precedent with the drafting style that is used in the rest of the legislation.

### Avoid making each provision do too much work

Complexity may be caused if a single provision attempts to deal with all matters, including rare or complicated matters.

To avoid this, take the following steps:

- stand back and think about what the main rule is. What do the majority of readers need to know?
- set out the main rule prominently. Most readers should be able to stop reading at this point
- set out the special rules or exceptions separately
- make sure the relationship between the main rule and the special rules or exceptions is clear. Sometimes it is helpful for the main rule to include a “see reference” to the special rules—but keep this as brief as possible.

## Indigestible detail

Legislation becomes more complex if it includes—

- too much detail
- detail in the wrong place.

As drafters, we are trained to look at policy proposals with a critical eye. We ask lots of questions to make sure all of the relevant combinations and permutations have been considered. We have a strong attention to detail and want our legislation to be comprehensive.

However, there is a danger of smothering the main rules with a mass of indigestible detail.

When you are thinking about the appropriate level of detail and where the detail should be placed, consider the following:

- to what extent are the details merely incidental or secondary to the main policy?
- are the details procedural or administrative in nature?
- do the details deal with remote or rare scenarios?
- what proportion of readers need to know the details?
- are the details necessary to give effect to the policy?
- are the details likely to change over time?

To avoid cluttering up the main rules, you should consider—

- moving the details to the end of the legislation or into a schedule
- leaving processes to be dealt with administratively or otherwise turfing out details that are not legislative
- whether incorporating material by reference is appropriate.

For example, the [Financial Markets Conduct Act 2013](#) separates out technical details as follows:

- exclusions are separated out into Schedule 1 of the Act. This is in contrast to the predecessor of that Act, the Securities Act 1978. The Securities Act included similar details in section 5, which obscured the main rules of that Act
- the content of disclosure documents (and other technical matters) is separated out into regulations. These regulations are over 600 pages long. Including this level of detail in the Act would have made it very difficult to navigate.

See [Approach to legislation—General versus detailed](#).

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## Amendments can affect coherence

The process of amending legislation can make it lose coherence. This often occurs when numerous amendments are made to an Act or piece of secondary legislation over time.

This problem goes beyond amendments to legislation. For example,—

- legislation may start with a clear and logical structure that is compromised by amendments made during the iterative drafting process
- the coherence of a Bill on introduction may be compromised by amendments made during the Parliamentary process.

### Future-proofing

You can reduce the risk of this problem by future-proofing. For example,—

- reduce the number of subsections or subclauses in each provision. [Item 3.5 of the Plain Language Checklist](#) suggests including no more than 5 subsections in each section (or 5 subclauses in each clause). This is only a guide. It is best to have fewer subsections or subclauses to leave room for growth
- use a [general principles drafting approach](#) to reduce the amount of detail and reduce the need to amend the details over time. However, remember to consider the risks of this approach before using it. For example, the approach is flexible but this can come at the cost of a lack of certainty
- repeal and replace the provision that is becoming overloaded with amendments
- in specific cases it may be appropriate to incorporate material by reference in secondary legislation. However, there are a number of pros and cons to this technique that need to be balanced. See [chapter 15.3 of the Legislation Guidelines](#) and sections 63 to 66 and Schedule 2 of the Legislation Act 2019.

# Complex policy and design

## Multiple legislation regimes that cover similar ground

Sometimes the statute book contains a number of regimes that essentially cover the same policy ground. Complexity (and anomalies) can be reduced if these regimes can be consolidated into a single coherent regime.

For example, New Zealand formerly had a number of regimes that regulated investments in schemes, including the Superannuation Schemes Act 1989, the KiwiSaver Act 2006, and the Unit Trusts Act 1960. The regimes shared an underlying policy objective of ensuring that appropriate governance arrangements applied to these investments. However, there were inconsistencies and anomalies across the regimes.

The Financial Markets Conduct Act 2013 reduced the complexity in this space by establishing a single set of governance arrangements that applied to all managed investment schemes.

## Extending legislation to cover a new case

Legislation may become more complex if its operation is extended beyond its original scope. This is especially so if the new policy has a purpose that is quite different from the purpose of the original legislation.

There are 2 basic approaches to this situation:

- make a series of small amendments to the existing text (the detailed amendments approach)
- insert text as a distinct block (the modular approach).

Sometimes the detailed amendment approach is problematic because the new case is too much of a “stretch” for the existing provisions. This approach may require additional exceptions to the current rules or additional requirements to try and make the existing scheme work for the new scenario.

On the other hand, the modular approach may create a plethora of slightly different provisions or schemes.

You should consider which of these 2 approaches produces the least additional complexity.

## Swamping the main rule with specific rules and exceptions

It is true that one size doesn’t always fit all. Sometimes specific rules are needed to ensure that the policy works well in a particular scenario. However, specific rules can add complexity, especially if a large number of special cases need to be dealt with.

A similar complexity problem arises when a large number of technical exceptions obscure the main rule. This often gets worse over time as new exceptions are added.

If specific rules or exceptions cannot be avoided, you should think about where to place these provisions so as to minimise any damage to the main rule. For example, consider moving the provisions to a separate subpart or a schedule.

## Adding unnecessary provisions to avoid doubt

Instructors and stakeholders often suggest changes that are designed to “clarify” or “confirm” that a provision has a particular legal effect. It sometimes appears easier to just add a provision “to avoid doubt”. However, unnecessary provisions can add complexity. Ironically, there is also a risk of new uncertainty if the “to avoid doubt” provision casts doubt on what the original provision was intended to mean.

If you are asked to add a provision in these circumstances, you should consider—

- whether further clarity is actually required. Is the instructor or other stakeholder being too risk-averse?
- if further clarity would be helpful, can the main rule be amended to remove ambiguity and uncertainty? Can other indications of meaning help (eg, the heading or an example)?

If the provision is worth including, it is usually best to just include it without the “to avoid doubt” preface.

## Preserving the old law—transitional arrangements to avoid

Transitional and savings provisions aim to—

- move from the old law to the new law in an orderly, fair, and efficient manner
- avoid retrospective effects.

There are 2 common approaches to preserving an existing legal position under the old law:

- provide for the old law to continue to apply indefinitely to the existing situation
- move the existing situation so that substantially equivalent arrangements apply under the new law.

The first approach can cause complexity if it preserves the old law for a long period.

For example, the Crown Minerals Act 1991 continues to apply various long-repealed Acts to privileges granted under those Acts. These Acts include the Petroleum Act 1937, the Mining Act 1971, and the Coal Mines Act 1979. This requires the administering department and other stakeholders to maintain ongoing expertise and systems relating to these repealed Acts. In a case like this, it may have been better to preserve the existing privileges by conferring equivalent privileges under the new legislation.

## Implementing in stages

Implementing a new regime in stages may require more complex commencement and transitional provisions.

This is a known area of high risk of error. If implementing a new regime in stages cannot be avoided, you need to take special care to ensure that the commencement and transitional arrangements are workable.



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