

Chapter 7

Structuring Legislative Drafts

7.1 Sentences

Each distinct legal proposition should be comprised in a single sentence. In legislative terms this means a **section or subsection**. If a legal proposition is contained in more than one subsection, each should have a close enough relationship to provide a unity of purpose. The following example would not comply with this convention:

Appointment and duties of film censors

5. (1) The Minister may appoint as many film censors as the Minister considers necessary.

(2) The film censors are to perform the duties assigned to them in accordance with general directions given to them by the Minister.

(3) No film is to be shown unless there is in force in respect of it a certificate of censorship granted by a film censor under section 8.

As can quickly be seen, subsection (3) introduces a quite different subject matter.

The length of a sentence needs to be dictated by the following considerations:

- readers cannot normally digest more than 4 to 5 lines of unbroken text without re-reading (see the first example in section 6.4); and
- sentences over that size need to be broken into paragraphs.

On the other hand:

- several short sentences (of less than 2 lines) may be difficult to relate together; and
- extensive linking may get in the way of understanding the content (see section 7.4).

7.2 Paragraphs

7.2.1 Particular uses

(a) Tabulations, listing a series of attributes, contents, duties, etc.:

A dealer must maintain a register in which is recorded:

- (a) the prescribed particulars of goods acquired;
- (b) the name, address and business of the person from whom the goods are acquired; and
- (c) the date and time of acquisition.

(b) Developing an underlying theme in an orderly way (in the following case, duties of the dealer with regard to goods acquired):

A dealer who, except from another licensed dealer, acquires goods specified in the Second Schedule:

- (a) must retain possession of the goods for at least 30 days;
- (b) must not alter the condition or appearance of the goods during that time; and
- (c) in the case of precious stones removed from jewellery after 30 days and sold, must record the weight and description of each stone that is over the prescribed size.

(c) Reducing repetition (in the following example preventing the repetition of 'A dealer must display'):

A dealer must display:

- (a) in a conspicuous place at the dealer's premises, a copy of the licence; and
- (b) at the entrance to those premises, a prescribed sign.

(d) Reducing ambiguity (e.g. where an unstructured sentence leaves a dangling modifier – see Chapter 6):

The Minister may make grants to public or charitable:

- (a) hospitals;
- (b) schools; or
- (c) research institutions.

(e) Making context clauses more readable:

If:

- (a) the complainant does not appear at the time and place appointed for the hearing of a charge; and
- (b) the court is satisfied that the complainant had notice of that time and place,

the court must acquit the accused unless, for reasons to be recorded, it decides to adjourn the case.

However, care needs to be taken not to over-paragraph and **to ensure that introducing or concluding words apply to each of the paragraphs in a sequence**. Each paragraph must be able to be read as flowing grammatically from the introducing words. Likewise, any concluding words must flow grammatically from each paragraph.

In some jurisdictions it is regarded as bad style to draft concluding words after a paragraph series, so that the paragraphs become 'sandwiched' between other words of the sentence, but there seems no good reason to avoid this format unless it can be seen to cause possible difficulty in understanding.

7.2.2 Misuse of paragraphs

The following are common examples of misuse:

(a) breaking the grammatical structure:

A person using the library:

- (a) must not damage a book in any way, and if the person does so he or she is liable for the cost of its repair;
- (b) must return a book borrowed within the specified period.

(b) including in one paragraph words intended to apply also to some or all of the other paragraphs:

A dealer must display:

- (a) in a conspicuous place at the entrance to his premises, a copy of his or her licence;
- (b) a prescribed signboard.

(c) the introductory words do not apply to each of the paragraphs that follow:

Nothing in this section authorises the Minister to delegate:

- (a) a power to issue warrants;
- (b) to make proclamations; or
- (c) any function, the delegation of which is expressly forbidden by law.

(d) words following the final paragraph do not apply to each of the paragraphs:

If a person:

- (a) other than from a licensed dealer obtains; or
 - (b) other than to a licensed agent disposes;
- of goods specified in the Second Schedule, that person commits an offence.

(e) lack of a vital linking word:

A person who:

- (a) comes into possession of;
 - (b) disposes of,
- stolen goods commits an offence.

7.3 Grouping provisions in an Act

For the conventional arrangement of an Act, see Figure 7.1 at the end of this chapter. This will need to be modified or adapted according to the type of Act being drafted. For example, an amending Act would be unlikely to have most of the preliminary provisions and not all legislation will need all of the miscellaneous and final provisions.

7.3.1 Devices for grouping provisions in an Act

For convenience reference is made to 'an Act', but exactly the same considerations apply to subsidiary legislation:

(a) Divisions larger than a section (the use of these devices is not standardised in Commonwealth drafting, and variations sometimes apply in different jurisdictions, and even to statutes drafted in different decades within the same jurisdiction):

Chapters:

Typically found in the Constitution and very long pieces of legislation such as a Criminal Procedure Act or Companies Act;

Parts:

Standard devices for referring to groups of sections dealing with the same theme;

Divisions:

Used in longer legislation as sub-groupings either of Chapters or of Parts; and

Headings or sub-divisions:

Sub-groupings within Parts.

When grouping provisions within an Act, legislative counsel needs to consider the length and complexity of the legislation. Clearly the longer the legislation the more likely will be the need for divisions greater than a section; there is no point in so dividing a short Act whose effect is clear.

(b) Sections and divisions of sections (the following are conventional Commonwealth designations):

Sections [designated as 1. 2. 3. etc.] each containing a separate legal proposition;

Subsections [designated as (1), (2), (3), etc.] each having a unity of purpose with others in that section;

Paragraphs [designated (a), (b), (c), etc.] each of which constitutes an element of the proposition advanced in a section or subsection;

Subparagraphs [designated as (i), (ii), (iii), etc.] each of which constitutes an element of the proposition advanced in a paragraph; and

Sub-subparagraphs [usually designated as (A), (B), (C), etc.] a lower level still which should be needed only exceptionally.

7.3.2 Headings and section notes

In most jurisdictions these are treated as editorial rather than legislative (i.e. they do not form part of the formal text for the purposes of construction). They should be brief (a single word will often suffice) and accurate

summaries of the contents of a section or group of sections. Exceptionally, the abbreviation ‘etc.’ (which should never be used in the body of the text of rules) may be used. Thus, rather than:

Duty of the Commission to keep accounts

Persons may not object to supplying information, documents or things to the Commission

It would be better to draft, respectively:

Accounts

Supply of information, etc.

7.4 Linking devices

7.4.1 Linking within a sentence

This is to indicate a connection with persons or things already referred to:

If a person has instituted proceedings under this Act, nothing in this section prevents the withdrawing of those (note, not “such”) proceedings by or at the instance of that person.

In some jurisdictions ‘the’ would be substituted for each of the underlined words.

7.4.2 Linking between one sentence (i.e. section or subsection) and another

Often the relationship indicated by the linking expression is clear and direct:

Section 6 does not apply to the proprietor of a newspaper who has a policy of insurance in respect of damages that may be awarded...

The persons referred to in subsection (1) are not eligible for re-election if..

A function of the Board set out in section 4...

A licence granted under this Part...

However, confusion sometimes exists between two very common expressions that indicate a relationship between sentences:

‘**subject to**’ and

‘**notwithstanding**’ (or its more modern equivalent ‘**despite**’).

The difference between them needs to be clearly understood:

5. Subject to section 4, the Authority may grant a licence to a person who...

This indicates that **the provision referred to is the dominant one**, i.e., to some extent section 4 overrides section 5. In practice, this usually means that section 5 constitutes an explanation, extension or refinement of the rule in section 4.

On the other hand:

5. Despite section 4, the Authority may not grant a licence to a person who...

indicates that **the provision in which this expression appears (i.e. section 5) is the dominant one**. This usually means that it constitutes an exception to, or exemption from, the provision referred to.

7.4.3 Provisos

A device, much used in the past, has been the creation of a **proviso** or provisos ('provided that...' or the even more cumbersome 'provided always that...') to a section or subsection.

The device has been used mainly for cases where an exception or qualification to a general proposition is to be created. However, it is often used in other senses, for example to explain or elaborate on a proposition:

A legal practitioner must pay an annual fee according to the scale set out in the Schedule:

Provided that this section does not apply to a practitioner who is not in actual practice.

Neither the Corporation nor an officer of the Corporation is liable for damages on account of an act done or statement made under this Act:

Provided that the act or statement was done or made in good faith.

Because of its slightly archaic structure (provisos are rarely if ever used outside legislation or legal documents generally), and its inconsistent usage, the use of this device is discouraged. Alternatives to provisos can **always** be created by using words or expressions such as 'but', 'however', 'nevertheless' or 'except', or by restructuring the sentence. The two examples above would be better written:

A legal practitioner must pay an annual fee according to the scale set out in the Schedule; [but] [however] this section does not apply to a practitioner who is not in actual practice.

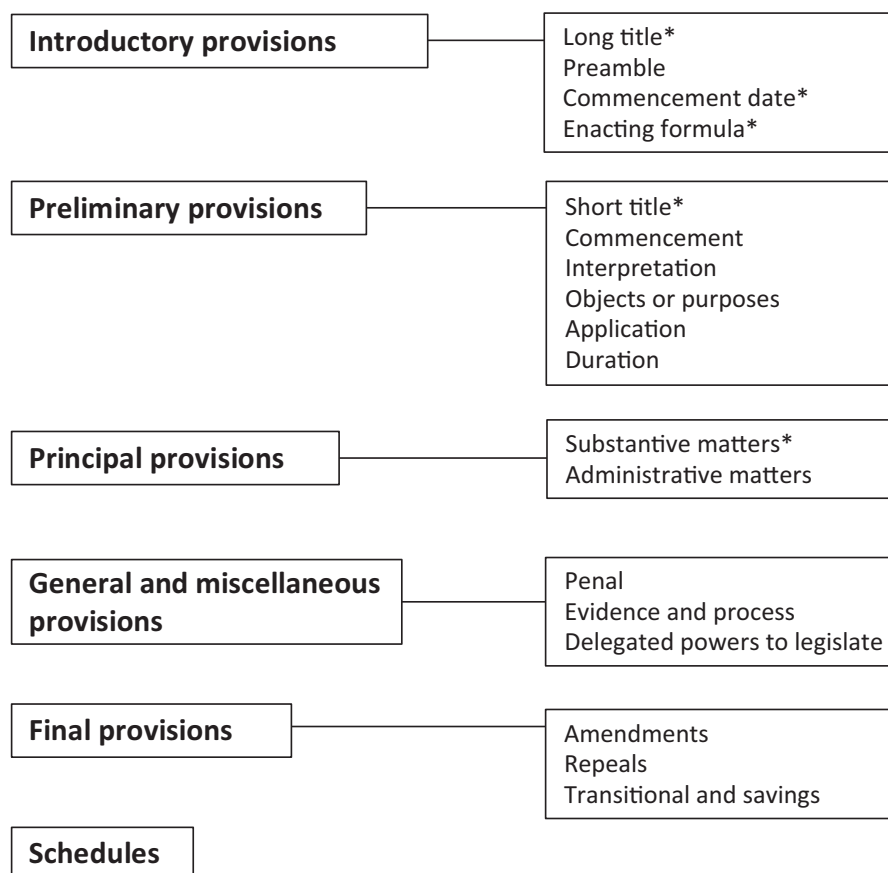
or

A legal practitioner other than one who is not in actual practice must pay an annual fee...

Neither the Corporation nor an officer of the Corporation is liable for damages on account of an act done or statement made in good faith under this Act:

Where inclusion of the required information would make the sentence too long or complex, then the information should be drafted as a new sentence (usually a further subsection or the equivalent in subsidiary legislation).

Figure 7.1 Conventional Commonwealth Arrangement of a Bill



Only those provisions marked with an asterisk will be required as standard ones in any Bill.

In some jurisdictions (e.g. the UK, Nigeria and South Africa), some or all of the above preliminary provisions (short title, commencement and interpretation) are placed with the final provisions.

This arrangement also applies, from preliminary provisions on, to major subsidiary legislation (i.e. Regulations and Rules so called; see Chapter 15), except that there the short title is usually known as the 'citation'.

