

NSW Parliamentary Counsel's Office

Policies relating to Plain Language and gender-neutral expression

Policy relating to Plain Language

Adoption of Policy

The Parliamentary Counsel's Office has embraced the principles of Plain Language since the early 1980s and formally adopted Plain Language as a policy in 1986 for all legislation. The implementation of Plain Language principles is a matter of continuing activity in the Office, affecting both the language and the appearance of legislation.

Applying the Policy—principles of Plain Language

The definition of Plain Language adopted by the Office is as follows:

“Plain Language is clear intelligible English. It is not simplistic English. It does not involve any loss of precision.”

In the legislative context, the principles of Plain Language aim for clarity in the language of legislation, in the structure of the legal ideas contained in legislation, and in the physical layout and presentation of legislation. The use of Plain Language in legislation is intended to remove barriers to communication and so make the law more accessible. It is important to recognise that the proper use of Plain Language principles does not mean any loss of precision and does not result in the introduction of any uncertainties.

Legislation should be able to be understood with a minimum of effort by its users. To this end, drafters should always try to draft with the needs of intended users of legislation in mind. This is the first principle of effective plain legal drafting. Further principles relate more specifically to effective communication through logical and practical organisation of material, simple sentence construction, careful choice of words and practical physical design. These principles, and associated guidelines, include the following:

Organisation

Material should be organised in a way that assists and makes sense to the reader.

- Information should be divided into manageable and related pieces, and placed in a logical sequence (for example, by placing the substantive before the procedural, the broadly applicable before the narrowly applicable, the general before the specific, the rules before the exceptions). Fundamental information should not be obscured by minor provisions.
- Headings should be informative and help explain the structure, scope and effect of legislation.
- Unnecessary information (including unnecessary internal cross-referencing) should be eliminated.

Design

Legislation should be physically designed so that it is clear and easy to understand.

- Type faces and sizes should be easy to read. Blocks of capital letters (for example, in headings) should be avoided.
- White space should be used liberally. Line length should not be excessive.
- Navigational aids, such as a table of contents and running headings, should be used. The numbering system should be clear and easy to follow.
- Subsections and paragraphs within sections should be systematically indented to highlight the hierarchies in the structure of information.
- Examples, tables, diagrams and flow charts may be used as needed to help explain the text.

Sentence structure

Sentences should be structured in a way that allows information to be easily absorbed. Complex sentence structures should be avoided as far as possible.

- Sentences should be short in length. Generally, a sentence should not exceed 5 lines in length (in the current B5 format used for NSW legislation) and should express one central idea.
- Modifying elements should not be complex, should be placed as near as possible to the sentence element they modify, and kept to a minimum.
- Intrusive phrases and clauses, especially between the subject, verb, and object, should be avoided.
- The present tense should be preferred, as should the active to the passive voice, verbs to noun phrases, and positive to negative expression. Layered negatives should be avoided.
- Ambiguity should be eliminated.

Choice of words

Language in legislation should be as clear and direct as possible while remaining precise and technically correct.

- Archaic words, jargon, French and Latin terms, sexist language, unnecessary technical expressions and complex language should be avoided, and simple, concrete and familiar words preferred. If technical terms are necessary, they should be explained, where this is feasible. Some Latin and other technical terms in legislation may have a special meaning for the principal audience to which the legislation is addressed. It may not be necessary to explain these terms in these circumstances.
- Unnecessary words should be eliminated, although there may be occasions when additional words may assist the reader.

Interpretation Act provisions

The *Interpretation Act 1987* assists in simplifying legislation in a number of ways. A requirement for the “purposive construction” of legislation has been adopted, so that greater reliance can be placed on more simple indications of legislative intention. The Act also deals with certain commonly occurring matters, and matters of a general nature, that do not need to be constantly repeated in other Acts.

Adoption of Plain Language is an ongoing process

It is recognised that the adoption of Plain Language is an ongoing process and that not every document will necessarily be a perfect embodiment of Plain Language.

It should also be appreciated that there are degrees of Plain Language, and while the Office agrees that legislation should be expressed in as plain a form of language as possible, there are a number of ongoing factors that contribute to complexity, including the following:

- policies that are to be implemented by legislation are often themselves very complex (although it is recognised that even complex policy can be presented in a clear and user friendly way),
- the drafter has to keep in mind at least at least 3 audiences (Parliament itself, the public or section of the public to whom the legislation is directed, and the courts and legal system) each with differing requirements,
- the complexity of the surrounding written and unwritten law on a particular subject makes it very difficult and time-consuming to introduce concepts in a different form,
- a Plain Language document generally takes longer to produce than a document that is not in Plain Language

Policy relating to gender-neutral expression

Adoption of Policy

New South Wales was the first Australian jurisdiction to adopt gender-neutral language in legislation. In 1983 the Attorney General approved a proposal from the Parliamentary Counsel's Office that in the preparation of future legislation preference would be given to the use of gender-neutral language. The Policy was formally announced by the Governor on 16 August 1983 and has been strictly applied in the Office ever since.

Applying the Policy

In applying the Policy:

- The following gender-neutral terms are preferred if a general reference inclusive of both sexes is required:
 - person (rather than man, woman)
 - the person (rather than him, her)
 - the person's (rather than his, her)
 - spouse (rather than husband, wife)
 - child, person under the age of...(rather than boy, girl)
- No assumption is made in legislation that particular occupations or activities are exclusively carried on by men or women. Gender-neutral terms for occupations, activities and other things are preferred where these are readily available and sensible, for example:
 - worker (rather than workman)
 - administrator (rather than administratrix)
 - staffed, crewed (rather than manned)
 - chairperson, presiding member, president, convenor, moderator (rather than chairman)
- Sex-based pronouns are to be avoided when the referent may not be of that sex. Techniques for avoiding the traditional use of male pronouns include the following:
 - repeating the noun
(eg A person may seek office if ~~he~~ the person has taken the action necessary to qualify for the ballot.)
 - omitting the pronoun
(eg A member of the Tribunal may resign ~~his~~ office.)
 - converting a noun to a verb form
(eg If a person ~~makes his payments~~ pays by cheque...)
 - using a relative clause
(eg An applicant who has been licensed in another State must submit the required fee. [instead of] If an applicant has been licensed in another State he must submit the required fee.)
 - using the plural
(eg ~~A public official~~ Public officials must withdraw from any matter in which ~~he has~~ they have a conflict of interest.)
 - using "they", "them" and "their" to refer to a singular noun
(eg A person need not complete a new application if ~~he has~~ they have previously applied for a position.)
 - using masculine and feminine pronouns (although repeating the noun is preferable)
(eg The Minister may impose any condition ~~he~~ he or she thinks fit upon the grant of consent.)

These techniques are not all suitable in all contexts. Some of these techniques (for example repeating the noun or using masculine and feminine pronouns) may produce awkward or artificial sounding sentences unless they are used in moderation. In some cases a simple substitution of words will not be possible and some originality is required to re-express a particular matter.

- The following provisions of the *Interpretation Act 1987* are noted:
 - section 8 (a) of the Act provides that in any Act or instrument “a word or expression that indicates one or more particular genders shall be taken to indicate every other gender...”
 - section 19 (2) of the Act provides that “The office of chairperson, chairman or chairwoman may be referred to by whichever of those words is appropriate in relation to the particular holder of that office.” This enables, for example, a chairman to be referred to as a chairperson. Conversely, it enables a chairperson to be referred to as a chairman or chairwoman if the incumbent desires this.
- It is recognised that the terms of the Policy do not require the use of neutral words in inappropriate cases, for example:
 - any laws that are to be uniform with laws of the Commonwealth or other States (following decisions of the Standing Committee of Attorneys-General or other similar decisions),
 - in some amendments to existing legislation where a change of language might produce a glaring inconsistency or a problem of interpretation,
 - where, by reasons of nature, a distinction between men and women, fathers and mothers, etc, is necessary.

Program to remove gender-specific language in older legislation

In 1994, the Office started a specific program to accelerate the removal of gender-specific language in Acts that were enacted before 1983. This staged process involved directly amending Acts by way of the *Statute Law (Miscellaneous Provisions) Bills* that are usually passed in each parliamentary sitting. The project was largely completed in 1997. The removal of gender-specific language in subordinate legislation has been dealt with incidentally by the scheme for staged repeal of subordinate legislation required under the *Subordinate Legislation Act 1989*.

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