NSW GOVERNMENT | Parliamentary Counsel's Office

DP2: PCO plain language policy

Introduction

1. This document is *DP2: PCO Plain language policy* (NSW Parliamentary Counsel's Office, 1st Ed, May 2017). It is a drafting practice document of the NSW Parliamentary Counsel's Office (**the PCO**).

2. The purpose of this document is to set out the Policy of the PCO concerning the use of plain language in legislative drafting. It represents the official view of the PCO on the topic. See DP1: Using PCO drafting practice documents under the heading "PCO drafting practices" on the Legislation information page of the NSW legislation website (www.legislation.nsw.gov.au).

Adoption of policy

3. The PCO 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 PCO, affecting both the language and the appearance of legislation.

Applying the policy— principles of plain language

4. The definition of plain language adopted by the PCO is as follows:

   "Plain language is clear intelligible English. It is not simplistic English. It does not involve any loss of precision."

5. 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.

6. 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

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

   • 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

8. Legislation should be physically designed so that it is clear and easy to understand. In particular:

- Typefaces and sizes should be easy to read. Blocks of capital letters (for example, in headings) should be avoided.

- Line length and section length should not be excessive.

- Navigational aids, such as a table of contents, 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.

- Headings to sections or subsections should be as informative as possible.

Sentence structure

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

- Sentences should be short in length. Generally, a sentence should not exceed 5 lines in length and should express one central idea.

- A section or subsection may contain more than one sentence.

- The division of a sentence into unnecessary paragraphs and

subparagraphs ("shredding") should be avoided.

- 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

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

- 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

11. 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. The [Legislation information](#) page of the [NSW legislation website](#) sets out relevant provisions that apply to the interpretation of legislation under the heading "How to read legislation".

Adoption of plain language is an ongoing process

12. 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.

13. It should also be appreciated that there are degrees of plain language, and while the PCO 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 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.