

**COMMONWEALTH DISTANCE TRAINING COURSE
IN
LEGISLATIVE DRAFTING**

MODULE 5

- a) Topping
and**
- b) Tailing**

TOPPING AND TAILING

PREVIEW OF MODULE 5

At the beginning and end of a Bill, drafters conventionally include a number of provisions to perform mainly technical functions. Most of these do not contain substantive rules of law. They play important functions in establishing the authenticity of the instrument, in supporting its operation and use and ensuring that the new law is compatible with existing legislation. Module 5A deals with provisions usually found at the beginning of a Bill. Module 5B deals with others that are usually placed at the end.

Objectives for this Module

By the end of this Module, you should be able, when drafting a Bill:

- to draft provisions that appear as the preliminary provisions in Bills in your jurisdiction;
- to draft provisions that appear as the final provisions in Bills in your jurisdiction.

Studying this Module

We have divided this Module into two parts;

Module 5A: *Topping*

Module 5B: *..... and Tailing.*

In some jurisdictions, certain matters are treated as preliminary that, in others, are included among the final provisions. If you come from such a jurisdiction, relate what you learn here to your local conventions when drafting. However, we recommend that you start Module 5B only when you have completed Module 5A. You may have a problem in keeping track of what you have covered if you try to skip from one part to the other. By the end of the full Module you should have no difficulty in placing your new knowledge into the local context.

**COMMONWEALTH DISTANCE TRAINING COURSE
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Topping

Module 5A

TOPPING

PREVIEW OF MODULE 5A

Module 5A deals with a series of provisions that usually are found at the beginning of a Bill. It also deals, separately, with matters that are closely connected with two of the topics examined in the preliminary provisions - interpretation provisions and application provisions.

Objectives for Module 5A

By the end of Module 5A, you should be able, when drafting a Bill:

- to draft provisions that appear as the preliminary provisions in Bills in your jurisdiction;
- to provide appropriate definitions or other interpretation provisions for a Bill;
- to draft appropriate application provisions.

Studying Module 5A

This topic is divided into six Sections:

- Section 1:** Drafting preliminary provisions
- Section 2:** Titles, preambles, words of enactment
- Section 3:** Commencement and duration provisions
- Section 4:** Interpretation provisions
- Section 5:** Purpose clauses
- Section 6:** Application provisions.

Although you have come across most of these matters in the earlier Modules and Drafting Projects, Module 5A contains much that is new. This offers an opportunity both to put your present knowledge into a more systematic framework and to look in detail at some of the finer points.

There are a substantial number of Activities and Exercises. You will need a number of study sessions to complete it. The text is written so that you can make a convenient break after completing any of the Sections.

Your aim in this Section is to become familiar with the way preliminary provisions are dealt with in your jurisdiction and to compare the local practice with developments elsewhere. The **Materials Book** contains a small number of illustrative precedents, which you should examine in addition to the Examples in the text and the local material you gather in the course of your Activities. The Exercises are designed to enable you to consolidate what you learn.

**COMMONWEALTH DISTANCE TRAINING COURSE
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SECTION 1

What do we include in preliminary provisions?

What do we include in preliminary provisions?

PREVIEW

This Section describes shortly the conventional arrangement of preliminary provisions and technical apparatus that commonly appears at the beginning of legislation. Some of these are features that you must provide as a matter of course; others you can introduce to facilitate the use the instrument.

Section Objectives

This Section is designed to enable you to:

- to find out what matters are included in preliminary provisions in your jurisdiction;
- to become familiar with the kinds of editorial material that may accompany legislation.

Essential Questions

The following topics and questions are considered in this Section.

PRELIMINARY PROVISIONS

- *What matters are usually contained in preliminary provisions?*
- *In what order are preliminary provisions typically set out?*
- *What is a road map clause?*
- *What purposes does a road map clause serve?*
- *What other preliminary information may be printed with a Bill?*

Studying this Section

This is a short introductory Section that you should be able to complete quickly. The legislative features described are developed in the main in the subsequent Sections. However, one topic, “road map clauses”, introduces an innovative device that is used in legislation in some jurisdictions to help readers find their way around substantial or complex instruments.

The material on non-legislative information may require a little more attention as this is not elaborated elsewhere. In both cases, it is important to familiarise yourself with local practice.

Preliminary provisions

What matters are usually contained in preliminary provisions?

Drafting conventions about the use, and style, of preliminary provisions differ between Acts and subsidiary legislation. The following Sections are mainly concerned with Acts. We look at which preliminary provisions are typically found in subsidiary legislation in **Module 6, Section 2** (*How do we draft subsidiary legislation?*).

Certain provisions, typically treated as preliminary, must always be included in a Bill:

- the long title
- words of enactment
- the short title.

In some jurisdictions (in Australia, in the main), commencement provisions and purpose or objects clauses have also become standard. The other provisions discussed in this Section are used only when the circumstances of the particular Bill require, although the great majority of Bills today contain interpretation provisions.

In what order are preliminary provisions typically set out?

When all the matters in this Section are included as preliminary provisions in a Bill, they are typically set out in the following order:

- the long title
- preamble
- words of enactment
- the short title
- commencement provisions
- interpretation clauses
- purpose clause
- application clauses
- duration provisions
- road map clauses.

The long title, any preamble and the words of enactment come first and in that order, but the actual order of the others is dictated both by local convention and the needs of the particular instrument.

However, in some jurisdictions, some or all of the following are, by local convention, included as final, rather than preliminary:

- the short title;
- commencement provisions;
- interpretation clauses;
- application clauses.
- duration provisions.

The order of these too has to comply with the local house practice.

Activity Box 1

In the spaces provided, note whether the listed provisions are placed in the preliminary or final provisions in your jurisdiction, and the order (1 to 5) in which they are usually used.			
Provisions	Bills		Subsidiary legislation
Short title/title*			
Commencement			
Interpretation			
Application			
Duration			

* This term is used with respect to subsidiary instruments, as typically, they have no long title.

What is a road map clause?

A road map clause is a statutory provision designed to help users find their way around legislation. It describes the organisation of the statute, or specific provisions, and where particular matters are dealt with. The expression is new to legislation (it may have been first applied in Australia).

It is different from a Table of Arrangement or an index. Those help a reader track down where particular provisions to be found. The road map gives directions where to go in the legislation for particular matter and so makes the travelling easier. A similar function is performed by a **Readers' Guide** (see **Document 24** in the *Materials Book*.) As a new drafter, you are unlikely to have occasion to use this device for a while. But you may find it useful to collect precedents for the future.

What purposes does a road map clause serve?

A clause of this kind is designed to help readers:

- understand how the Bill is structured;
- find provisions that deal with important features of the legislative scheme;
- learn how particular parts of the scheme fit into the overall framework of the Bill.

It is useful, therefore, for legislation of considerable length and complexity (in general, this means Bills, rather than subsidiary legislation). Examples are a Companies Act and Income Tax Acts. Road maps can help readers find connected provisions that are not immediately identifiable as such. They can be used to draw attention to definitions that are distributed between a series of interpretation clauses in a long Act.

Example Box 1

Location of definitions

3.-(1) Section 4 contains definitions of expressions used throughout the Act (including Part IX).

(2) Section 56 contains definitions of expressions used only in Part IX.

(3) Some sections also contain, at the end, special definitions for the purposes of those sections.

What are the entry controls for goods?

6. In brief outline, the entry controls for goods are as follows:

- (a) section 15 renders goods arriving from overseas subject to quarantine control;
- (b) incoming goods are subject to inspection under section 31 before they leave the ship or aircraft on which they arrived;
- (c) all movement of goods that are subject to quarantine control is under the control of quarantine officers;
- (d) section 37 provides for the release from quarantine of goods that are not found to be quarantinable;

Another example is **Document 23** in the *Materials Book*.

Activity Box 2

In the space provided, note down the references to any road map clauses you have come across in your own legislation or that of another jurisdiction.

What other preliminary information may be printed with a Bill?

Four types of introductory material may be provided at the beginning of a Bill. None has legislative effect. When provided, they precede the preliminary legislative provisions.

- **the date of commencement or assent**

Conventionally, preliminary provisions include a date, on a separate line, immediately below the long title. The entry typically appears in square brackets. In some jurisdictions, this is the date of assent; in others, it is the date of commencement. If the date of commencement is the date of assent, it is known when the Act is printed and can be included. If the Act comes into force at a later date, the space has to be left blank. If Act is reprinted, e.g. in a Revised Edition, the commencement date is inserted then.

- **an Explanatory Memorandum**

This sets out the objects and reasons for the Bill and is presented to the Legislature to inform the members about the aims of the Bill and its individual clauses. It is not typically printed as part of the published *Act*. However, in some countries it is published, either separately or alongside the Act, and may be referred to in order to help interpretation. But its principal function is to enable users to gain a fuller understanding of what the legislation is about. There is a trend to provide, by means of “Explanatory Notes”, very much fuller explanations than in the past. This practice is described in **Document 4** in the *Materials Book*.

- **an Arrangement of Sections**

This lists, in their legislative order, the headings, section numbers and section notes used in the Act. It is typically provided only for those Bills of some length. It is in effect a table of contents, though it is variously described: alternative headings are “Table of Provisions” or “Analysis”. Its preparation is likely to be your responsibility when drafting the Bill. These tables can be constructed automatically using appropriate word-processing software, thereby reducing the possibility of discrepancies between the entries as they appear in the text and as they appear in the table.

- **a Readers' Guide**

This is a recent innovation pioneered in Australia. Such a guide is typically provided in a long and complex Bill, to give guidance about its structure and organisation. This enables users to find their way more rapidly through its provisions. An example is included as **Document 24** in the *Materials Book*.

These aids to understanding are not statutory provisions. They are editorial features. But as part of your drafting duties you must check them before the Bill finally goes for printing both as a Bill and later as an Act.

Activity Box 3

In the space provided,

1. Note down the kind of date that is inserted in your legislation as preliminary information, and how it is written:

2. Tick if the following are used in primary legislation in your jurisdiction:

Explanatory memoranda:

Arrangements of sections:

Readers' Guides:

What do we include in preliminary provisions?

REVIEW

In this Section you have been introduced to a range of preliminary provisions and editorial information that may accompany Bills. You also have seen that the one of some of them is still developing, road map clauses.

At the end of the Section, you need to feel confident that you have achieved the stated objective, which was to be able:

- to find out what matters are included in preliminary provisions in your jurisdiction;
- to become familiar with the kinds of editorial material that may accompany legislation.

Read through the questions you have been considering again (these are set out below) to make sure that you have met the Section objectives.

Topics Covered	Page Reference
PRELIMINARY PROVISIONS	
● <i>What matters are usually contained in preliminary provisions?</i>	1
● <i>In what order are preliminary provisions typically set out?</i>	1
● <i>What is a road map clause?</i>	2
● <i>What purposes does a road map clause serve?</i>	2
● <i>What other preliminary information may be printed with a Bill?</i>	4

The following Sections look more closely at provisions that conventionally appear at the beginning of legislation, and in particular how they might be drafted.