

**COMMONWEALTH DISTANCE TRAINING COURSE  
IN  
LEGISLATIVE DRAFTING**

**SECTION 2**

**How do we draft titles, preambles  
and words of enactment?**

## How do we draft titles, preambles and words of enactment?

### PREVIEW

This Section deals with largely technical features of bills that appear at the beginning of legislation. In most systems the bill must carry a long title that describes the effect of the instrument, a short title by which it may be cited and an enacting formula that indicates its origins and authenticity. We also look at preambles, though these are less used today in most places than in the past.

### Section Objectives

In this Section, the objectives are to enable you:

- to find out local practice on these matters;
- to examine and put into practice the techniques for producing well drafted features of these kinds.

### Essential Questions

In this Section, we look separately at four features, most of which are regarded as necessary. Preambles are found less frequently; but you need to understand when they can be of value.

The following topics and questions are considered in this Section.

#### 1. LONG TITLES

- *What purposes do long titles serve?*
- *How should a long title be drafted?*

#### 2. PREAMBLES

- *What purposes does a preamble serve?*
- *When might a preamble be used?*
- *How should a preamble be drafted?*

#### 3. WORDS OF ENACTMENT

- *What purposes do words of enactment serve?*
- *How are words of enactment dealt with?*

#### 4. SHORT TITLES

- *What purposes does the short title serve?*

- *How should a short title be selected?*
- *How should a short title be drafted?*

### **Studying this Section**

Your aim in this Section is to become familiar with these devices and in particular how they are dealt with in your jurisdiction. It is important that you follow the local practice correctly. These are not difficult issues, so it should be possible to complete this Section fairly speedily.

## 1. Long titles

A long title is an essential feature of any Bill being drafted for introduction into the Legislature. They are not found in subsidiary legislation, nor in decrees or similar instruments made by the legislative authority in non-Parliamentary systems (e.g. a Military Council).

### What purposes do long titles serve?

- **as a procedural device**

The long title was originally devised for Parliament's benefit when considering the Bill. This is still one of its purposes in a number of jurisdictions. For it sets the bounds to the Bill; amendments "beyond the scope" of the long title will be ruled out of order. Before any such amendments may be considered, Parliament must formally agree to the amendment of the long title. As a result, the long title can be used to restrict the range and, therefore, the number of amendments that may be introduced. You may be asked to do this where a Bill is likely to excite a lot of opposition. But as a matter of drafting routine, make sure that all the provisions of *every* Bill are within the scope of its long title.

Not all countries apply procedural rules of this kind. Amendments are generally allowed even though they are not strictly within the scope of the long title. In that case, long titles serve a different purpose.

### Activity Box 1

Check the Standing Orders of your Legislature, and note in the space provided any procedural rules in connection with long titles and their effect upon debates.

- **as an explanatory and interpretative device**

The long title is more typically used as a way of informing both Parliament and the ultimate users what the Act sets out to do. But since it is enacted, and subject to amendment, courts treat it as an intrinsic interpretative aid (see **Module 2, Section 2**). It provides a guide to the scope of the Act, when there is ambiguity or uncertainty in the meaning of its substantive provisions.

The drafter's prime objective is not to provide an aid to deal with ambiguity, but rather:

- to describe the principal ways in which the Bill will have effect upon existing law;
- to indicate the central features, or legal mechanisms employed, in the legislative scheme underlying the Bill.

The policy objectives underlying the Bill are not usually stated in the long title; they are to be inferred from the nature of the changes in the law that the long title says are to be made. Long titles set out "the purposes" of legislation only in this limited sense of stating the ways in which the Act will have effect upon existing law.

### Example Box 1

**An Act** to make further provision for the tenure of judicial office; to constitute a Judicial Commission for Utopia, to confer on the Commission functions with respect to judicial education and complaints against Judges and other judicial officers; to provide for their suspension, removal and retirement in certain circumstances; and for connected purposes.

The *purpose* of this Act appears to be to strengthen the independence of the judiciary, at the same time making it more accountable for the way it carries out its functions. But the long title concentrates upon the major legal changes instituted by the law that will achieve that purpose.

### COMPLETE EXERCISE BOX 1 AND THEN COMPARE YOUR ANSWER WITH ANSWER BOX 1.

#### ● as a descriptive device

Some jurisdictions have gone further in limiting the long title, by using it merely to state succinctly the general subject matter of the Act. This approach assumes that there is a homogeneous theme throughout the Act.

### Example Box 2

An Act relating to Gun Courts

An Act respecting the tenure of judicial office

An Act to give effect to the African Charter of Human and Peoples' Rights

The drawback of this style is that the long title serves no distinctive purpose in the Act. It offers little more than a repetition of the short title (see below). But long titles in this form could become more common if greater use is made of purpose clauses (**Section 5**, below).

However, this style is used, almost universally, for one type of legislation - Acts that have as their sole purpose the amending, consolidating, repealing, or repealing and re-enacting, of earlier legislation (or any combination of these). The long title then merely states that existing law is affected by one or other of these processes.

### Example Box 3

An Act to amend the Judicial Officers Act 1987.

An Act to repeal and re-enact, with amendments, the Employment Act 1980.

An Act to consolidate the Housing Act 1976, and certain related provisions, with amendments to give effect to the recommendations of the Law Commission.

An Act to repeal the Gun Court Act 1974.

If any of these Acts contained other substantive matters, e.g. transitional provisions, the title might continue:

An Act to repeal the Gun Court Act 1974, and *for connected purposes*.

### How should a long title be drafted?

#### Activity Box 2

Examine carefully how long titles are printed in your legislation. In particular check the format, the font size and the use of capitals, semi-colons between different purposes and a final full stop.

Add a typical precedent illustrating these features to your collection of documents.

You may draft a title when you start on the Bill, though it can equally well be left until your work is more advanced. Treat this as a working draft only. The final version can be finalised only after the contents of the Bill are settled.

If your Parliament's Standing Orders so require, draft the title to indicate all the main effects upon the existing law which the Act is intended to bring about. But, in any case, it is good practice to ensure that all the contents are covered by the title.

Include all the principal innovations that the Bill makes, and do so in generalised terms, as "an Act to [do something]". Use generic terms (i.e. refer to classes of case - which means that plurals without "any" or "the" are appropriate), unless referring to specific matters.

### Example Box 4

An Act to licence second-hand dealers.

An Act to provide for the rules of evidence in courts; to authorise the administration of oaths, and the performance of notarial acts, by representatives of overseas countries and by representatives of the Crown overseas; and for connected and incidental purposes.

A number of expressions are in common use (in addition to those for amending or repealing Acts (**Example Box 3**)) for indicating the new arrangements which the Act will make:

"to provide for [as to] [regarding] [with respect to] .....";  
"to make further [better] provision for .....";  
"to authorise .....";  
"to enable .....";  
"to establish .....";  
"to prohibit .....";  
"to restrict .....";  
"to regulate ..... by .....".

Precedents can be very helpful in extending your repertoire of expressions.

Choosing the most appropriate term should confirm in your own mind the principal legislative devices that your substantive rules use to give effect to the legislative proposals. Choice of words is as important here as elsewhere. Although long titles do not comprise complete sentences:

- they must still be grammatically correct;
- they should not use abbreviations (e.g. "etc.");
- they should not use superfluous, inaccurate or misleading expressions.

Since long titles are part of the Act, its interpretation provisions (and the Interpretation Act) apply and can be relied upon. But in the interests of clear communication, always consider whether a fuller form than a definition term may make a purpose in the long title clearer. It will be read before the definitions have been looked at.

### Example Box 5

Even though the Bill contains a definition of "Commission" to mean "the Commission for Racial Equality", the long title should state:

An Act to establish the Commission for Racial Equality.

Where the Bill has several main functions:

- identify each of them in the long title;
- start with the principal one, and then follow the order in which the Bill deals with them (which is typically the descending order of importance).

If your Bill has several Parts, consider whether each has a distinctive function that should be stated in the title. In that case, their order should follow the order of the Parts.

If there are *subsidiary* matters included in the Act not directly covered by the statement of the principal purposes, refer to them by some catch-all phrase as:

"for related [connected] [incidental] purposes".

In some jurisdictions, the practice is to add "for other purposes". However, this suggests that there may be a matter of importance in the Bill that has not been referred to, which is not the case if you use one of those just mentioned. In any case, avoid archaic phrases such as "connected therewith" or "with the matters aforesaid".

Since the structure and the contents of the Bill may change as the drafting progresses, your initial draft of the long title may require modification. Confirm it or revise it in the final stages of drafting.

## 2. Preambles

### What purposes does a preamble serve?

A preamble is a preliminary statement that explains why legislation is needed, in contrast with the long title which states the main legal changes the Bill is to make to fill that need. It typically contains a "recital" of the circumstances that made legislation necessary (i.e. the mischief which it is designed to remedy) and reasons why it is considered expedient to enact the legislation now and in this form. Preambles are used today rather less than in the past; many drafters consider them to be redundant. These matters can be better dealt with by purpose clauses (**Section 5**).

### Activity Box 3

Read through the examples of preambles in **Documents 18** and **19**. Familiarise yourself with the following:

1. the position in the Act.
2. the type of content matter
3. the contrast with the long title in content
4. the style of expression (in particular in **Document 19**).

### When might a preamble be used?

The kinds of matters for which preambles are still found from time to time are the following:

- **private Bills**

In countries that have special procedures for private legislation, the Standing Orders of the Legislature may require a preamble to be used. This legislation is based on a petition, which the Bill uses the preamble to cite. The promoters of the Bill may also be called upon to "prove the preamble", that is, to adduce evidence and be examined in Parliament on the expediency of enacting the Bill for the reasons given in it.

### Activity Box 4

Note down whether a similar procedure is followed in your jurisdiction. Refer to any relevant Standing Order (or Rules of Business) of your Parliament.

- **public Bills**

In public legislation, preambles may be useful for the following:

- **Bills of constitutional importance**

Preambles are still to be found in the Constitution, or in Acts making major amendments to the Constitution, in Acts of significance in the governance of the country, or in Proclamations inaugurating major changes or decisions of moment. They typically contain high-sounding and rhetorical language, and little of legal importance.

### Activity Box 5

Remind yourself of the preamble, if any, in your Constitution. Does it match the description just suggested?

However, in some systems (e.g. Canada), they are used commonly to support the constitutionality of legislation when they are more explanatory than mere rhetoric. Since they are admissible in court, they may be accorded presumptive value and may influence judicial conclusions. They may also be used for political purposes as justifications for the legislative change.

- **Bills of international importance**

A preamble may record that the Bill is enacted to give effect to a named international agreement, in particular, legislation implementing multilateral treaties. (See **Document 19** in the *Materials Book*).

- **Bills of a historic nature**

A preamble may be used to record some notable event which has led to the enactment (see **Document 18**). They provide a record for posterity.

- **Bills concerned with personal or private interests only**

Again, the preamble may explain the reasons for the enactment, pointing out that it is enacted to deal with a matter affecting a particular interest group, in that way, e.g. giving effect to an agreement with Government.

There are three main reasons why preambles are less used today than in the past:

- since the preamble is concerned with policy considerations, it could become a focus of Parliamentary debate, which the promoters of the Bill would rather have directed to the substantive rules which give effect to the policy. Drafters are usually discouraged by their clients from providing further opportunities for general debate on the aims and policy of the Bill. At the same time, drafters have been asked to provide a preamble precisely so that debate can be deflected from the substantive provisions

- Parliament can be provided with the background and reasons for the Bill by other means, for example, an **Explanatory Memorandum**.
- if policy objectives need to be articulated in the Bill itself, it can be better done by a purpose clause (**Section 5, below**) in the body of the instrument. As an aid to interpretation, the preamble is reluctantly invoked by the courts since it stands outside the substantive rules. It is generally not referred to when the substantive rules are seen to be plain and unambiguous. A purpose clause is a better bet in this respect.

Preambles are even rarer in subsidiary instruments everywhere. But many jurisdictions have in practice stopped using preambles in legislation altogether, though they are still common in international instruments or may still be used by lawyers in legal practice.

### Activity Box 6

Find out, by looking in recent legislation or asking an experienced colleague, whether, and if so, when, preambles are used in Bills in your jurisdiction.

If preambles are in use, there should be a special reason for inserting one in the particular Bill. Provide one, not as a device to assist in interpretation of the legislation, but because there is a convincing need to explain in the legislation the setting in which the legislation came to be enacted. As Thornton concludes (p.197), they are better preserved for exceptional Bills.

### How should a preamble be drafted?

Typically, preambles contain a recital of the principal reasons for enacting the Bill:

- the first reason prefaced by "Considering that" or "Recognising that" or (more archaically) "Whereas", and those that follow by "and considering that" or "further recognising that" (or "and whereas");
- the last stating the conclusion to which the previously stated reasons lead, e.g.:  

and recognising that [whereas] it is expedient to [give effect to the Convention on Endangered Species]: .
- draft the reasons in the recital in descriptive terms that clarify the circumstances leading up to the legislation.

But you may be expected to use a rather more formal and ceremonial style for instruments of high importance (such as the Constitution) or when recording some noteworthy event. However, the rather pretentious styles of the past, which make much use of archaic words, such as "aforesaid", "said", "divers" and "desirous", are not necessary to produce a memorable sounding introduction to the Bill.

### 3. Words of enactment

#### What purpose do words of enactment serve?

Precise words are required in Bills to show the authority by which the legislative power is exercised. These are known as "words of enactment", "the enacting formula" or "enacting provisions". The forms used in Acts are different from those in subsidiary legislation. The equivalent authorising words in subsidiary legislation are dealt with in **Module 6, Section 2**.

This formula states that the Act has completed the proper law-making process. It is an essential element in all common law jurisdictions, each of which has its own distinctive words of enactment. These may be simple or elaborate. The required formula is frequently prescribed by law, e.g. in the Constitution or the Interpretation Act (cp. the **model Interpretation Act 1992, sections 6 & 10 and Schedule 1**).

Alternative words of enactment may be specified for use for specified classes of Acts (usually to indicate that a special Parliamentary procedure has been followed for Bills of constitutional significance, e.g. amendment of the Constitution). In cases where legislation is silent, the words are a matter of convention, and new forms may be more easily adopted.

#### Example Box 5

ENACTED by the Parliament of Fiji -

BE IT ENACTED by the National Assembly of the Federation of Nigeria and by the authority of the same as follows:-

THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows:-

The Legislature of New South Wales enacts:

#### Activity Box 9

Note down the precise words of enactment used in your jurisdiction. You looked for these when working on **Module 2, Section 2** (*How do we work under the Interpretation Act?*)

#### How are words of enactment dealt with?

The words, by convention, are placed immediately before section 1, that is, after the long title, the commencement date, and the preamble, if any. Follow the exact formulae in use in your jurisdiction. If different formulae are used for different purposes, make sure that you are using the correct one. Typically, words of enactment are omitted from Acts reprinted in a Revised Editions, as they have performed their function.

## 4. Short titles

### What purposes does a short title serve?

Naming titles are found in all Acts (“short title”) and subsidiary legislation (“title”) that consists of regulations, rules or similar legislative instruments. (They are not usual in proclamations or orders merely declaring, applying or exempting cases from the parent Act). Common law jurisdictions use forms of the short title that have much in common. The title may appear in a separate section, but it is often contained in the first subsection of a section that also deals with commencement.

The short title is a *label* for the Act. Like any label, it is used both to indicate the contents and to make the container easy to find and to refer to.

### Example Box 6

#### Short title.

1. This Act may be cited as the Firearms Act 1993.

#### Title and commencement.

- 1.-(1) These regulations may be cited as the Elections (Local Government) Regulations 1975.
- (2) These regulations come into force on 1 January 1976.

Exceptionally, a short title can be referred to for the purposes of interpretation, but as a drafter, see it rather as serving to facilitate:

- **citation** (e.g. in other legislation, in legal documents and writings, and in court);
- **reference and retrieval** (e.g. from tables of legislation or an index).

Some jurisdictions have taken to using short titles deliberately to make political impact. Slogans and even puns have been incorporated with a view to drawing continuing attention to the political purposes of the legislation. The short title makes the legislation more memorable by using rhetorical, rather than descriptive, terms. Generally, these kinds of titles are sought by politicians, and are generally deplored and discouraged by drafters.

### Example Box 7

A New Tax System (Bonuses for Older Australians) Act 1999  
Roads to Recovery Act 2000 (*allocating funds for road improvements*)

### How should a short title be selected?

Your instructions may well contain a title under which the matter has been approved by the client Minister or the Cabinet. Although the choice of title is that of the Minister (or Cabinet) in the last analysis, typically Legislative Counsel’s advice will carry considerable weight. Try to choose one that will be both convenient and helpful. Put yourself in the place of users. They will be grateful if your short title shows these characteristics:

- it is *short*, even snappy;
- it provides an *accurate*, though generalised, indication of what they can expect to find in the instrument;
- it is *distinctive* and *unique*, and there is no likelihood of confusing it with titles to other legislation,
- it is *easy to speak aloud* (e.g. in court), and to remember.

### Example Box 8

Avoid a tongue-twisting title, such as the following:

Seaside Sale of Seashore Shells Act 2004

#### ● single subject Bills

If you are drafting a Bill that is to contain all the principal provisions on a general subject, use a simple expression, even single word, that describes that subject. If the subject concerns a class of persons, do not add an apostrophe (') after the person, unless it is to be followed by an item that *belongs* to the person. Otherwise, you give the impression that the *Act* belongs to the person!

### Example Box 9

Customs Act 1994; Housing Act 1995; Motor Vehicles Act 1996; Road Traffic Act 1997; Marriage Act 1998; Firearms Act 1999.

Second-hand Dealers Act 2002 (which must not have an apostrophe)

Second-hand Dealers' Premises Act 2003 (where an apostrophe is essential)

#### ● amending and repeal Bills

Most short titles for single subject Acts have now been pre-empted (as your Revised Edition of Laws will show). But you will often be asked to prepare legislation that amends (or repeals and re-enacts) the Acts bearing those titles. Reflect the language of the original short title in the short title of your Bill, so that:

- users know that they are dealing with the same subject;
- all the legislation will be indexed together, by reference to the first word.

A Bill to repeal and re-enact should have the same short title as the Act it replaces except for the necessary change of the year.

### Example Box 10

Marriage (Amendment) Act 1981  
Marriage (Amendment) Act 1995  
Marriage (Amendment) (No.2) Act 1995  
Marriage (Repeal) Act 2004

● **Bills on the same subject**

If the legislation on a general topic is divided between a series of Acts, the same title for two or more Acts is not helpful, even if the titles include different years. In such a case, provide:

- distinctive, but linked, titles for each new Bill;
- an indication in them of the aspect of the subject with which they deal.

Beginning with the same substantive word conveys the common element and ensures that these Acts will be indexed together.

**Example Box 11**

Evidence (Criminal Proceedings) Act 1980  
Evidence (Civil Proceedings) Act 1981  
Evidence (Computerised Records) Act 1997

However, in one category of case, using much the same title is advisable. Certain legislation is enacted at regular intervals, often annually, for much the same purposes each time. Using the same title, differentiated by the date only, brings out clearly the common element.

**Example Box 12**

Appropriation Act 2004  
Supplementary Appropriation Act 2004  
Finance Act 2004  
Finance(No.2) Act 2004

**How should a short title be drafted?**

Your local house-style governs most of the practices to adopt. Follow it consistently in all new legislation. The following are guidelines for good practice:

- the year must be the year of *enactment*, not the year when the legislation is drafted or introduced into Parliament.
- the title actually begins after the definite article "the"; so do not give that word a capital letter.

- make the first substantive word of the title, if possible, a distinctive one which enables users to recognise the subject matter of the legislation. (This helps to track it down in a subject index).
- begin each word of the title (other than an article or preposition) with a capital letter.
- punctuation, other than the final full stop, is rarely needed. As we have seen, do not add an apostrophe to the word immediately before "Act". A comma between "Act" and the date is unnecessary.
- bracketed phrases as parts of short titles are generally not needed. Use them only if they serve a useful purpose, as in **Example Boxes 10** and **11**. Confine them to the following cases, where:
  - the Bill solely amends or repeals an earlier Act;
  - the Bill deals with a matter already the subject of other legislation, but is concerned with a specific aspect only;
  - the subject matter is of a general nature but is confined to a limited geographic area or group of people;
  - the legislation is one of a series of subsidiary instruments made under the same Act, but dealing with a different aspect.

### Example Box 13

Rented Housing (Capital Territory) Act 1990.  
Evidence (Forensic Examination) Act 1987  
Bankers (Northern Ireland) Act 1928  
Contracts (Married Women) Act 1945

Pool Competitions Act 971  
Pool Competitions (Fee for Registration) Order 1971  
Pool Competitions (Licence Fees) Order 1971  
Pool Competitions (Fees for Licence Renewals) Order 1971

- use a double set of brackets only when it is necessary to reproduce brackets from linked legislation.

### Example Box 14

Rented Housing (Capital Territory)(Amendment) Act 1993

In some jurisdictions, distinctive printing is used for the short title (e.g. italics or bold) to draw attention to it. Again, follow your house-style.

### Example Box 15

This Act may be cited as the *Second-hand Dealers Act 1971*.

This Act may be cited as the **Second-hand Dealers' Premises Act 1990**.

### Activity Box 10

Copy down *exactly* an example of a short title used recently in your jurisdiction for each of the following types of legislation. Check punctuation as well as words and figures.

1. An Act:

2. an amending Act:

3. an Appropriation Act (i.e. an Act granting public funds for designated heads of public expenditure):

4. a subsidiary instrument containing regulations:

## How do we draft titles, preambles and words of enactment?

### REVIEW

You have been studying largely technical features of bills that appear at the beginning of legislation. However, with the exception of preambles, these are standard components that have to be provided in accordance with local practice. Accordingly, make sure that you know how these features should be dealt with.

At the end this Section, you should feel confident that you have achieved the objectives we set, which were to enable you:

- to find out local practice on these matters;
- to examine and put into practice the techniques for producing well drafted features of these kinds.

Check your progress by reference to the topics and questions that you considered in this Section.

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Continue now with the next category of preliminary provisions - commencement and duration provisions- that give rise to different considerations.