

Appendix E

Parliamentary Counsel Office Drafting Style Changes

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The Parliamentary Counsel Office adopted a series of changes in drafting style in legislation effective from 1 January 1997. The changes were set out in *A Guide to Working with the PCO*, pp 65-68. This appendix sets out six of the relevant changes, with the original notes, and relates them to the Privacy Act 1993.

Existing practice

Proposed practice

1 Dropping “of this Act” etc. to make shorter cross-references within a document, eg.

section 2 of this Act	to	section 2
subsection (1) of this section	to	subsection (1)
paragraph (a) of this subsection	to	paragraph (a)
regulation 2 of these regulations	to	regulation 2
etc.		

Notes: *Discretion should be used about dropping the extra words if this might result in uncertainty (eg. if the provision being referred to is not clear from the context). This change will apply across the board, (eg. it will also apply when a new section is being inserted into an existing Act).*

Privacy Act: The formulation “of this Act” appears at various places (see, for example, sections 1, 2, and 7) as does the phrase “of this subsection” (see, for example, sections 2(2), 3(3), and 8(1)). Within the information privacy principles the phrase “subclause (1) of this principle” appears in various places (see, for example, information privacy principles 3(2), 3(3) and 3(4)).

2 Numbering Parts in Arabic instead of Roman, eg.

Parts I, II, III, IV, etc	to	Parts 1, 2, 3, 4
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Privacy Act: The twelve Parts of the Privacy Act are currently identified by Roman numerals.

3 Numbering Schedules 1, 2 instead of First, Second, etc, eg.

First Schedule	to	Schedule 1
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Note: *If referring to a First Schedule in existence before 1997, for example, continue to refer to it as the First Schedule, not Schedule 1.*

Privacy Act: The Privacy Act’s eight schedules are currently labelled First, Second, etc.

4 Alternatives for “shall” in appropriate cases, eg.

This Act shall bind the Crown	to	This Act binds the Crown
The Minister shall ensure	to	The Minister must ensure
There shall be a Commissioner called ...	to	There is a Commissioner called ...

Note: *To indicate the fact of establishment in this case consider whether the marginal note should read “Establishment of Commissioner”. Also, the definition of Commissioner could read “... means the Commissioner established by section 00”.*

The Commissioner shall be appointed by ...	to	The Commissioner is appointed
The Commissioner shall be a Crown entity	to	The Commissioner is a Crown entity
The functions of the Commissioner shall be sections 16 to 19 of this Act shall apply	to	The functions of the Commissioner are sections 16 to 19 apply
shall not	to	does not

Notes: *If the situation requires a “shall”, the word may still be used. This change will apply across the board, (eg. it will also apply when a new section is being inserted into an existing Act full of “shalls”).*

Privacy Act: Each of the above examples of the use of “shall” appear in the Privacy Act. Perhaps of particular note is the fact that each of the twelve information privacy principles uses the word “shall” at least once (two of the principles use “shall” twice, one uses “shall” four times and principle 7 uses “shall” five times).

5 Authority to drop unnecessary “except as provided”/“subject to”/ “notwithstanding” formulations if appropriate, eg.

(2) Subject to subclause	to	(2) The Guild is exempted from ...
(3) of this clause, the Guild is exempted ...		(3) The exemption granted by subclause
(2) is subject to the condition that...	to	(3) [That exemption] [<i>or, if more than one exemption, the exemption in subclause (2)</i>] is subject to the condition that ...

Privacy Act: Examples in the Privacy Act include sections 8, 6, 60 and 126.

6 Analysis

Include the text of Schedule headings in the analysis.

Privacy Act: The present analysis does not list the Act’s eight Schedules.