



**CROWN LAW OFFICE**  
*Te Akinanga o te Ture*

# **Solicitor-General's Legislative Drafting Directives for the Cook Islands**

As at 1 June 2012

To all Government departments and Crown agencies of the Cook Islands

These directives are issued to ensure a consistent approach to the legislative process in the Cook Islands. They must be read in the following context—

- legislation is the prerogative of the Government and Parliament:
- the legislative programme is not determined by Government departments or Crown agencies acting independently:
- all Bills to be drafted for the Cook Islands must have the prior approval of Cabinet:
- all instructions for legislative drafting must have the prior approval of, and be sent to the nominated drafter by, the Crown Law Office.

### **Introduction**

Well-drafted, easily understood, and legally sound legislation is a cornerstone of a well-functioning democracy, legal system, and society. Drafting legislation is a technical and specialist skill.

Every Bill drafted for the Cook Islands must have the prior approval of Cabinet, and input from the Solicitor-General and other relevant Government departments and Crown agencies, because—

- all major matters of policy should be put before Cabinet, and no commitments may be made by a Minister on any matter that has not been approved by Cabinet (see Part 1, paragraphs 8 and 10 of the Manual of Cabinet Procedures); and
- Cabinet deals with all issues of national policy and legislation (see Part 3, paragraph 1(d) of the Manual of Cabinet Procedures); and
- all Cabinet Memorandums must be approved and supported by a Minister (see Part 3, paragraph 14 of the Manual of Cabinet Procedures); and
- all Cabinet Memorandums must be screened and reviewed by the Central Agencies Committee before they are submitted to Cabinet (see Part 3, paragraphs 8 and 17 of the Manual of Cabinet Procedures); and
- comments must be obtained from the Public Service Commissioner before a Cabinet Memorandum is submitted to Cabinet (see Part 3, paragraph 19 of the Manual of Cabinet Procedures).

### **Process to follow**

All instructions for legislative drafting must have the prior approval of the Crown Law Office. You should read and be familiar with the Guide to Preparing Instructions for the Drafting of Legislation. The Crown Law Office will send you a copy of the Guide upon request.

Every Government department and Crown agency that intends to draft a Bill, or have a Bill drafted, for the Cook Islands must provide the Crown Law Office with a timetable setting out—

- when Cabinet approved the policy that gives rise to the Bill and to the drafting of the Bill:
- when the first draft of the Bill will be completed:
- when the second draft of the Bill will be completed:
- when the draft Bill will be sent to the Crown Law Office for review:
- when the draft Bill will be sent to the relevant Minister and to Cabinet for approval for introduction to Parliament:
- when the Bill is to be introduced to Parliament:
- if there is a deadline that must be met, the date before which the Bill must come into force and the reason why the Bill must come into force before that date.

Sufficient time must be provided in the drafting timetable to allow the Crown Law Office to undertake a full review of a draft Bill, and for amendments to be made to the Bill to address any

comments the Crown Law Office may make. We recommend that a minimum of 4 weeks be allowed for this process; longer if the draft Bill is long or complex.

In creating this timetable, we strongly recommend that you be realistic and allow as much time as possible for each stage of the drafting process. Drafting legislation is a complex, time-consuming exercise and it inevitably takes longer than anticipated. You must also allow time for—

- Cabinet to approve the introduction of the Bill to Parliament (see the timing requirements in Part 3 of the Manual of Cabinet Procedures; and
- the Bill to be translated into Maori (see Article 35(2) of the Constitution of the Cook Islands); and
- the long Title of the Bill to be published in the Cook Islands *Gazette* (see Standing Order 221 of the Standing Orders of the Parliament of the Cook Islands); and
- copies of the Bill to be distributed to all Members of Parliament (see Standing Orders 221 and 222); and
- one day's notice to be given (see Standing Order 224) before a Public Bill is introduced to Parliament (and 7 days' notice for a Private Bill).

To the extent that they are applicable, all of the requirements and procedures above also apply to the drafting of regulations or other subordinate legislation.

### **The directives**

Every enactment drafted for the Cook Islands must comply with all of the directives set out in this document. Any enactment that does not comply will be rejected by the Crown Law Office and will not be introduced to Parliament or made by the Queen's Representative. If there is a reason why any directive, or part of a directive, cannot be complied with, this must be brought to the attention of the Solicitor-General before the enactment is sent to the Crown Law Office for review or, in the case of Directive A, before a person is engaged to draft legislation for the Cook Islands.

Every Government department and Crown agency that obtains assistance in having legislation drafted for the Cook Islands must ensure that these directives form part of the contract entered into for the provision of the drafting services. When assessing the work required, please pay particular attention to Directive E — any draft regulations required must be drafted and provided along with the final draft of the Bill. This will be relevant to the level of funding provided and must be set out in the contract.

Please contact the Crown Law Office if you want further information about how to ensure that these matters are properly covered in a contract entered into for the provision of drafting services.

The directives are as follows—

#### **Directive A — Professional Capabilities of Persons Drafting Legislation for the Cook Islands**

Every person who drafts legislation for the Cook Islands must meet the requirements of Directive A (see page 6)

#### **Directive B — Cook Islands legislative templates**

All legislation drafted for the Cook Islands must be drafted using the Cook Islands legislative templates (see page 7)

#### **Directive C — Style Requirements for Cook Islands Legislation**

All legislation drafted for the Cook Islands must meet the style requirements set out in Directive C (see page 14)

**Directive D — Drafting Principles and Content Requirements for Cook Islands Legislation**

All legislation drafted for the Cook Islands must meet the drafting principles and content requirements set out in Directive D (see page 19)

**Directive E — Draft Regulations Must Accompany Draft Bill**

If a draft Bill requires regulations to be made, the draft regulations must be provided together with the final draft of the Bill (see page 25).

These directives are dated 1 June 2012. The directives are updated as when and needed. Please ensure that you are using the most up-to-date version of the directives. You can check this by calling the Crown Law Office on 29 337.

These directives have been approved by the Attorney-General, the Government, and the Clerk of Parliament.

Meitaki maata

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# SOLICITOR-GENERAL’S LEGISLATIVE DRAFTING DIRECTIVES FOR THE COOK ISLANDS

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## **DIRECTIVE A**

### **Professional Capabilities of Persons Drafting Legislation for the Cook Islands**

*Every person who drafts legislation for the Cook Islands must meet the requirements of this directive*

Legislative drafting is a specialist legal skill. It takes many years of experience and training to be good at it. The fact that a person is a lawyer does not mean that they are qualified or able to draft legislation for the Cook Islands. Most lawyers have no experience or skills in legislative drafting.

In order to ensure that all Cook Islands legislation is of an appropriate standard, every person who drafts legislation for the Cook Islands must—

1. hold a recognised legal degree; and
2. have a minimum of 5 years' experience working as a legislative drafter; and
3. prior to being engaged to draft legislation for the Cook Islands, provide a list of—
  - all past employers where he or she has worked as a legislative drafter; and
  - all large or complex legislation that he or she has drafted, and state the extent of his or her involvement in the drafting of each piece of legislation (for example, as the sole drafter, a co-drafter, or a contributor in some other way); and
4. if requested, provide copies of legislation that he or she has drafted and evidence of his or her involvement in its drafting.

Further, ideally every person who drafts legislation for the Cook Islands will also—

1. have experience in drafting legislation for small states; preferably the Cook Islands or a country with similar governance and legislative processes and institutions; and
2. be familiar with the legal subject matter of the legislation to be drafted; and
3. be familiar with the laws of a Commonwealth country; and
4. be willing to render additional assistance if called upon to achieve final enactment of the legislation drafted, even if that assistance is requested after contracted tasks have been completed.

If there is any doubt or concern about whether a person who is to be engaged to draft legislation for the Cook Islands meets any of the first 4 criteria above, this must be brought to the attention of the Solicitor-General before that person is engaged.

## **DIRECTIVE B**

### **Cook Islands Legislative Templates**

*All legislation drafted for the Cook Islands must be drafted using the Cook Islands legislative templates*

The Cook Islands has its own format for its Bills and for its regulations. They are based upon New Zealand formats, but are tailored to the specific requirements of the Cook Islands. This includes requirements set out in the Cook Islands constitution and the Standing Orders of Parliament.

Two legislative templates have been established in Microsoft Word 2010. One sets out the format for Cook Islands Bills. The other sets out the format for Cook Islands regulations and other forms of subordinate legislation. Every Bill and every regulation drafted for the Cook Islands must be drafted using the Cook Islands legislative templates. Any Bill or regulation that is not drafted using the Cook Islands legislative templates will be rejected by the Crown Law Office and will not be introduced to Parliament or made by the Queen's Representative.

The latest versions of the templates were released on 1 June 2012. The templates are updated as and when needed. Please ensure you use the most up-to-date version of the templates. You can check this by calling the Crown Law Office on 29 337. The Crown Law Office will send you a copy of the templates upon request.

#### ***Using the legislative templates***

##### **General**

The layout of a Cook Islands Bill is set out in the legislative template for Bills. It includes—

- a number of sections and Schedules that most (but not all) Bills are likely to require; and
- Part 2, which demonstrates the various levels that may be used in a Bill and their correct names and formatting; and
- Part 3, which demonstrates the style and formatting conventions for an amending Bill; and
- an administrative information block (which is always located at the very end of a Bill, after any Schedules that may be required).

Please ensure that each section and Schedule is actually required and is correct for the purposes for which you want to include it before retaining it in the final draft of the Bill.

The layout of a Cook Islands regulation is set out in the legislative template for regulations. It includes—

- a number of regulations and a Schedule that most (but not all) regulations are likely to require; and
- Part 2, which demonstrates the various levels that may be used in a regulation and their correct names and formatting; and
- Part 3, which demonstrates the style and formatting conventions for amending regulations; and
- an administrative information block (which is always located at the very end of regulations, after any Schedules that may be required).

Please ensure that each regulation and Schedule is actually required and is correct for the purposes for which you want to include it before retaining it in the final draft of the regulations.

The steps you need to take to use the templates differ slightly depending upon whether you are using Microsoft Word 2010, 2007, or 2003 on your computer. Instructions for each of these are set out below, and are the same for both templates.

### **Enabling macros**

Depending upon the security settings on your computer, you may need to enable the macros when you open the template or a document created by using the template. If you need to do this, it will be apparent to you because a yellow banner, a grey box, or something similar will appear on the page when you open the template or document saying something like “Security Warning. Macros have been disabled”.

Regardless of the actual wording of this warning, click on “Enable Content”. This will enable the macros in the template or document to function.

This applies regardless of whether you are using Microsoft Word 2010, 2007, or 2003.

### **Save as a new document**

When you use a template to draft an enactment and save changes for the first time, you will be prompted to “Save As” to a new document. The template does not change.

### **Bringing up the style menu**

All of the drafting formats that can be used in a Cook Islands enactment are set out in a style menu from which you can select the format you want to use. No formats other than those set out in the style menu should be used in a Cook Islands enactment.

You will need to bring up the style menu the first time you create a document using the template. However, the style menu should open automatically each time you open the document after that.

#### *Microsoft Word 2010*

If you use Microsoft Word 2010, access the style menu as follows—

- click on the “Home” tab in the top row of the main Toolbar:
- in the “Styles” area of the Toolbar, click on the bottom down-arrow to the left of the words “Change Styles”:
- click on “Apply Styles”:
- in the “Apply Styles” box that appears, click on the “AA” button:
- the template’s style menu will appear:
- close the “Apply Styles” box.

Alternatively, use the right click button of your mouse as follows—

- right click anywhere in the template:
- in the box that appears, click on “Styles”:
- in the second box that appears, click on “Apply Styles” (you can shortcut these first 3 steps by pressing Ctrl + Shift + S on your keyboard all at the same time):
- in the “Apply Styles” box that appears, click on the “AA” button:
- the template’s style menu will appear:
- close the “Apply Styles” box.

#### *Microsoft Word 2007*

If you use Microsoft Word 2007, access the style menu as follows—

- click on the “Home” tab in the top row of the main Toolbar:



- click on the down-arrow that is on the right hand side of the box in the “Styles” area of the Toolbar:
- click on “Apply Styles”:
- in the “Apply Styles” box that appears, click on the “AA” button:
- the template’s style menu will appear:
- close the “Apply Styles” box.

Alternatively, you can use shortcut keys to access the style menu from anywhere in the template as follows—

- press the Ctrl + Shift + S keys at the same time:
- in the “Apply Styles” box that appears, click on the “AA” button:
- the template’s style menu will appear:
- close the “Apply Styles” box.

### *Microsoft Word 2003*

If you use Microsoft Word 2003, access the style menu as follows—

- in the main Toolbar, click on the “AA” button to the left of the word “Hyperlink”:
- the template’s style menu will appear.

### **Selecting and using drafting formats from the style menu**

Once you have brought up the style menu, you can select the particular format you want to draft in. To do this,—

- place your cursor wherever you want to be in the document:
- press “Enter” so that you are on a new line:
- click on the format that you want from the style menu:
- start typing. The words will appear in the format that you have selected.

For example, if you want to insert a section heading, click your cursor in the appropriate place, press “Enter” so that you are on a new line, then click on “section heading” in the menu. When you start typing, it will automatically appear in the section heading format.

If you have drafted in a format that you subsequently want to change, place your cursor within the relevant text then click on the different format that you want to use from the style menu.

There is a shortcut built into the template. Each time you press “Enter”, the template will automatically select the format that you are most likely to require next. If this is the correct format, then you can simply start typing after you have pressed “Enter” and there is no need to choose the next format yourself.

For example, if you have just created a Part number and you then press “Enter”, the template will automatically select the Part title format for you because a Part title always comes after a Part number. If you press “Enter” after a Part title, the template will automatically select the section heading format for you because the format that you are most likely to require after a Part title is a section heading. And so on.

No formats other than those set out in the style menu should be used in a Cook Islands enactment.

### **Using the amendment drafting formats from the style menu**

You must use the amendment drafting formats from the style menu when drafting an amendment provision that is to be inserted into another enactment. This is to ensure that the table of contents

and the numbering of the enactment that you are drafting are unaffected by the amendment provision.

If you are drafting an amendment section, use the “Amdt section heading” format. The section will then auto-number in amending format.

If you are drafting a stand-alone provision that is less than an amendment section (for example, a subsection, a paragraph, and so on), use the “Amdt orphan subsection/para/subpara” format. Auto number does not operate in this amending format.

Part 3 of each of the legislative templates demonstrates the use of the amendment drafting formats from the style menu.

### **“Clean pasting” — copying and inserting material from other documents**

If you copy material from another document and insert it into the enactment you are drafting, there is a strong likelihood that you will also insert the formatting from the other document. This may result in the formatting in your draft enactment going wrong. To avoid this, it is important that you always “clean paste” material from other documents into the enactment you are drafting.

If you accidentally insert material without clean pasting it, it is best to undo that action (by either pressing the undo button (the button with a reverse arrow on it) or by pressing Ctrl + Z) and reinsert the material using clean paste.

#### *Microsoft Word 2010 and Microsoft Word 2007*

If you are using Microsoft Word 2010 or Microsoft Word 2007, you can clean paste material from another document by doing the following—

- copy the material you want to insert into the template in the usual way (for example, by highlighting the text with your mouse and then pressing Ctrl + C on your keyboard at the same time);
- place your cursor in the template in the place where you want to insert the copied material;
- if you are not already in it, click on the “Home” tab in the top row of the main Toolbar;
- click on the down-arrow under the “Paste” button in the “Clipboard” area of the Toolbar;
- in the “Paste Options” box that appears, click on the button that contains the capital “A”;
- the copied material will automatically be inserted. Any formatting rules that were in the copied material will have been removed;
- apply the appropriate template formatting to the pasted text.

Alternatively, you can clean paste material from another document by doing the following—

- copy the material you want to insert into the template in the usual way (for example, by highlighting the text with your mouse and then pressing Ctrl + C on your keyboard at the same time);
- place your cursor in the template in the place where you want to insert the copied material;
- right click with your mouse;
- in the box that appears, click on the button that contains the capital “A” (Keep Text Only) under “Paste Options”;
- the copied material will automatically be inserted. Any formatting rules that were in the copied material will have been removed;
- apply the appropriate template formatting to the pasted text.

### *Microsoft Word 2003*

If you are using Microsoft Word 2003, you can clean paste material from another document by doing the following—

- copy the material you want to insert into the template in the usual way (for example, by highlighting the text with your mouse and then pressing Ctrl + C on your keyboard at the same time):
- place your cursor in the template in the place where you want to insert the copied material:
- when you opened the template, a small grey box called “LegTools” will have appeared. If the “LegTools” box is not visible, click on “View” in the main Toolbar, then select “Toolbars”, then select “LegTools”. A small grey box called “LegTools” will appear:
- in the “LegTools” box, click on “Paste Clean”:
- the copied material will automatically be inserted. Any formatting rules that were in the copied material will have been removed:
- apply the appropriate template formatting to the pasted text.

### **Table of contents**

The table of contents has been created so that it will automatically update.

### *Microsoft Word 2010 and Microsoft Word 2007*

If you are using Microsoft Word 2010 or Microsoft Word 2007, you can update the table of contents by doing the following—

- place your cursor in the table of contents:
- press the “F9” button on your keyboard:
- select “Update entire table”:
- click on “OK”.

The table of contents and all section and page numbering (see below) will have been automatically updated.

### *Microsoft Word 2003*

If you are using Microsoft Word 2003, you can update the table of contents by doing the following—

- when you open the template, a small grey box called “LegTools” will appear. If the “LegTools” box is not visible, click on “View” in the main Toolbar, then select “Toolbars”, then select “LegTools”. The “LegTools” box will appear:
- in the “LegTools” box, click on “Update Text”.

The table of contents and all section and page numbering (see below) will have been automatically updated.

### **Schedules**

To create a Schedule, take the following steps—

- place your cursor wherever you want to be in the document:
- press “Enter” so that you are on a new line:
- insert a page break by pressing Ctrl + Enter on your keyboard at the same time, or by clicking on the “Insert” tab in the top row of the main Toolbar, then in the “Pages” box (in Microsoft Word 2003 this is in the option called “Break”), click on “Page Break”:
- in the style menu, choose “Schedule number”. Insert the Schedule number in the format, “Schedule 1”:
- press “Enter”:
- in the style menu, choose “Schedule heading” (or just start typing as the template will automatically select the Schedule heading format for you when you press “Enter”):

- press “Enter”:
- in the style menu, choose “Numbered Schedule section” or “Unnumbered Schedule section” as appropriate (or just start typing as the template will automatically select the numbered Schedule section format for you when you press “Enter”).

### **Section, Part, and Schedule numbering**

Section numbering automatically updates when you insert a new section. This also happens for subsections, paragraphs, and so on within a section (although if you are using the “Single subsection” formatting, the formatting of the first subsection will need to be changed to “Numbered subsection”).

However, the numbering for Parts and Schedules does not automatically update. You need to number each Part and Schedule sequentially yourself. For example, if you insert a new Part between existing Part 1 and existing Part 2, you will need to change the existing “Part 2” to “Part 3”. The template will not do this for you.

For information on using the amendment drafting formats from the style menu to ensure that the numbering of a draft enactment is unaffected by an amendment provision for insertion in another enactment, see **Using the amendment drafting formats from the style menu** above.

### **Version tracking**

A function has been inserted in the template to keep track of versions. You can see it on the top right hand corner of the first page. When you draft an enactment, you should insert your name in the “Drafted by” line.

When you save the enactment and close it, the “Last edited by” and “Last save time” lines will automatically update. You do not need to fill in this information. The template sources it directly from the computer you are using.

If you want to retain a particular version of an enactment, you need to save it as a different document in the usual way by pressing “File” then “Save As” and completing the usual process of naming and choosing where to save the document before pressing “Save”.

## ***Changes to format of a Bill to reflect constitutional requirements and Standing Orders***

The legislative template for Bills is based upon a standard non-constitutional Government Bill. The format of a Bill may need to be altered to reflect the requirements of the Constitution of the Cook Islands or the Standing Orders of the Parliament of the Cook Islands.

### **Enacting formula for constitutional amendment**

If a Bill will repeal, amend, modify, or extend the Constitution of the Cook Islands or contains a provision that is inconsistent with the Constitution, the enacting formula of the Bill must be amended so that it states—

“BE IT ENACTED by the Parliament of the Cook Islands in session assembled in accordance with the provisions of Article 41(1) of the Constitution of the Cook Islands and by the authority of the same as follows—”.

### **Appropriation Bills**

All appropriation Bills (including Bills that amend an appropriation Bill)—

- contain a message to the Sovereign as part of enacting formula; and

- must comply with Standing Order 305 of the Standing Orders of the Parliament of the Cook Islands.

### **Private Bills**

Every Private Bill must contain—

- an express provision declaring it to be a Private Act (see Standing Order 282(1)); and
- a preamble setting out the facts on which the Bill is founded, the circumstances giving rise to the necessity for it, and, if the objects of the Bill could be attained otherwise than by legislation, why legislation is preferred (see Standing Order 282(1) and (2)).

## **DIRECTIVE C**

### **Style Requirements for Cook Islands Legislation**

*All legislation drafted for the Cook Islands must meet the style requirements set out in this directive*

Every country has its own style requirements for legislation. All legislation drafted for the Cook Islands must meet the style requirements set out in this directive.

#### ***General***

##### **Consistency**

Use words, phrases, and styles consistently within a piece of legislation. For example, if a licence is “granted”, do not later refer to it as being “issued”.

If you are using a phrase throughout a piece of legislation, do not change that phrase unless it is necessary and for a specific reason.

##### **Use positive statements rather than negative ones**

Use positive statements as they are usually more direct and straightforward than negative statements. In particular, avoid multiple negatives in 1 sentence.

*Examples:*        use “a person aged 17 or over” instead of “a person who is not under the age of 17”  
                      use “a person must not ...” instead of “no person may ...”

#### ***Language and words***

##### **Plain English**

All legislation must be drafted in plain English. The aim in drafting legislation is to communicate clearly, simply, and effectively, not to make it sound fancy or legalistic. Therefore, use short, simple, and direct sentences, and always use a simple, everyday word rather than a fancy or legalistic one.

##### **New Zealand English**

All legislation must be drafted using the New Zealand form of English, not American. Accordingly, words must be spelt with an “s” rather than a “z”, use “colour” rather than “color”, and so on.

##### **Gender neutral language**

All legislation must be drafted using gender neutral words and in a gender neutral manner unless the subject matter requires otherwise (for example, when a law applies to only 1 gender).

##### **Do not use “shall” or “will”**

The words “shall” and “will” must not be used. Instead, use 1 of the following words, as appropriate—

- “must” — if it is mandatory; or
- “may” — if it is permissive; or
- “is” — if it is declaratory; or
- nothing at all, if no word is needed.

##### **Do not use “notwithstanding”**

The word “notwithstanding” must not be used. Instead, use “despite”.

### Other words and expressions that must not be used

Latin phrases must not be used. Instead, use the English equivalent.

Archaic words and expressions must not be used in Cook Islands legislation. Examples include—

<ul style="list-style-type: none"><li>• aforesaid</li><li>• foregoing</li><li>• hereafter</li><li>• hereby</li><li>• herein</li><li>• hereinafter</li><li>• hereinbefore</li><li>• hereof</li><li>• heretofore</li><li>• it is hereby declared that</li><li>• that is to say</li></ul>	<ul style="list-style-type: none"><li>• the said</li><li>• thereafter</li><li>• thereby</li><li>• therefor</li><li>• therefrom</li><li>• therein</li><li>• thereof</li><li>• thereon</li><li>• thereunder</li><li>• therewith</li><li>• such</li></ul>
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### Do not use and/or

The phrase “and/or” must not be used. Use “and” or “or”, or an alternative like “one or more of the following”. Be precise in the language you use so that the meaning is clear.

### Punctuation

#### Punctuation before paragraphs, subparagraphs, and subsubparagraphs

An em dash must be used in text before paragraphs, subparagraphs, and subsubparagraphs, and also before the final line of a sandwich section (although sandwich sections should be avoided whenever possible — see **Avoid “sandwich” sections** below). There must be no space between the last word or punctuation and the em dash.

An em dash looks like this “—”. It is as wide as the letter “m”. To insert an em dash, press Ctrl + Alt + the minus sign on the number-pad of your keyboard, all at the same time.

*Example:* “This section applies to—

- (a) text; and
- (b) text.”

Do not use an en dash (which is as wide as the letter “n” and looks like this “–”).

#### Punctuation of paragraphs, subparagraphs, and subsubparagraphs

Every paragraph, subparagraph, and subsubparagraph in a list must end in the same way, as follows—

- use “; or” at the end of every paragraph if it is a list of alternatives; or
- use “; and” at the end of every paragraph if everything in the list is applicable; or
- use “:” at the end of every paragraph if it is both an “or” and an “and” list, ie, it is a situation where 1, some, or all of the things in the list may be applicable. In this case, you should make this clear by ending the stem from which the list begins with a phrase like “... one or more of the following”.

#### Punctuation of definitions

A defined term must be in **bold** and does not have quote marks around it. If there is a list of definitions, there is no punctuation at the end of each definition, except for the full stop after the final definition.

For more information about definitions, see **Definitions** below.

### **Serial commas must be used**

To avoid ambiguity, a serial comma (also known as the Oxford comma or Harvard comma) must be used before the final item in a list of 3 or more items. In the following example, the serial comma is the comma inserted after the word “cat”.

*Example:* “A person must not feed a dog, cat, or goat.”

### **Capital letters**

A capital letter must be used only if the word in question is a proper noun, ie, a name used for an individual person, place, country, or title. Words like “regulations” do not have a capital letter unless it is used as part of a proper noun. If in doubt, use a lower case letter.

Unless it is a proper noun, the first word in every paragraph, subparagraph, and subsubparagraph must be a lower case letter.

*Example:* “This section applies to—  
    (a) text; and  
    (b) text.”

## **Structure**

### **Definitions**

All definitions must be placed in alphabetical order in 1 interpretation section at the beginning of an enactment unless—

- a separate section is required to define a term due to the complexity of the definition. In this case, a definition must also be inserted in the interpretation section at the beginning of the enactment stating “[**defined term**] has the meaning given to it in section X”; or
- a definition is used in only 1 provision in the enactment, in which case it should be located as the last subsection in that provision and state “In this section, [**defined term**] means [insert definition]”; or
- there are 1 or more definitions that are used in only 1 Part of the enactment. In this case, an interpretation section for that Part may be inserted as the first section in that Part stating—

“In this Part,—  
    [**defined term**] means [insert definition]  
    [**defined term**] means [insert definition].”

For the ease of readers, if an enactment uses a word or term that is defined in the Constitution of the Cook Islands or the Acts Interpretation Act 1924, the definition section must contain a definition stating “[**defined term**] has the meaning given to it by [Article 1 of the Constitution of the Cook Islands/section 4 of the Acts Interpretation Act 1924]”.

Double-check to ensure that all definitions are necessary and are actually used somewhere in the enactment.

For more information about definitions, see **Punctuation of definitions** above.



### **Section headings**

A section heading must give a short, accurate description of the subject matter of the section. This will ensure that the contents page is as useful as possible for readers of legislation.

### **Use narrative style to avoid excessive cross-reference**

Use the narrative style in a section to avoid referring to something identified earlier in the section. However, do not use it if it would cause ambiguity.

In the following example, the provision is dealing with only 1 type of licence. It is safe to assume that the references to an application and an applicant are references to the application referred to in subsection (1). Therefore, you do not need to say “the application under subsection (1) must be ...” or “a person who makes an application under subsection (1) who is ...”.

*Example:*           “(1) A person may apply to the Registrar for a licence to ...  
                          “(2) The application must be in triplicate.  
                          “(3) An applicant who is under 16 years must lodge a fourth copy of the  
                          application ...”

### **Use simple cross-references**

If a section refers to another section in the same Act, or to a Part or Schedule in the same Act, do not say “of this Act” unless this is necessary to avoid ambiguity. For example, if a section refers to another section in the same Act as well as to a section in another Act, the phrase “of this Act” may be required for clarity.

If a section refers to a subsection, paragraph, subparagraph, or subsubparagraph in the same section, do not say “of this section” unless this is necessary to avoid ambiguity.

*Example:*           “Subsection (3) applies despite subsection (2)(b).”

A reference to a section, subsection, paragraph, subparagraph, or subsubparagraph must refer to the biggest element first unless a specific reference to a smaller element is necessary to avoid ambiguity.

*Example:*           Say “This section applies despite section 14(2)(b)” instead of “This section applies despite paragraph (b) of subsection (2) of section 14”.

### **No more than 5 subsections**

Ideas should be structured into small groups, and there should be only 1 idea in each section. Avoid using more than 5 subsections if at all possible. If more than 5 subsections are necessary, split them into 2 smaller sections if this is feasible.

### **Avoid subsubparagraph level**

Avoid going to subsubparagraph level if at all possible. If you are going to this level, it probably means your sentence is too complex and should be restructured.

### **Avoid “sandwich” sections**

Avoid using “sandwich” sections, ie, a legislative sentence that has a “filling” of paragraphs. They are an unnecessarily complicated sentence structure. They also offend against the principle of getting to the main point early and are therefore difficult for readers to read and understand.

Sandwich sections can almost always be stated in a simpler format. For example, the following sandwich section could be simply restructured to read “A Council may suspend a licence if ...”:

*Example:* “If—  
(a) a Council has served notice; and  
(b) the time specified in the notice has passed,—  
the Council may suspend the licence.”

### **Numbering conventions for amendments**

If an amending enactment inserts a new provision between 2 existing provisions, the new provision must be given the number of the first provision plus a letter of the alphabet.

*Example:* If 3 new sections are inserted between existing sections 6 and 7, the new sections will be 6A, 6B, and 6C.

If 3 new sections are inserted between existing sections 6A and 6B, the new sections will be 6AB, 6AC, and 6AD.

If 3 new paragraphs are inserted between existing paragraphs (a) and (b), the new paragraphs will be (aa), (ab), and (ac).

If 3 new paragraphs are inserted between existing paragraphs (aa) and (ab), the new paragraphs will be (aab), (aac), and (aad).

The repeal of a provision leaves a gap in the numbering.

## **DIRECTIVE D**

### **Drafting Principles and Content Requirements for Cook Islands Legislation**

*All legislation drafted for the Cook Islands must meet the drafting principles and content requirements set out in this directive*

The effectiveness of legislation is often dependent upon whether or not certain matters are provided for in the legislation. All legislation drafted for the Cook Islands must meet the content requirements set out in this directive.

#### ***General***

##### **Application of the Constitution of the Cook Islands**

All Cook Islands legislation must comply with the Constitution of the Cook Islands. Many provisions of the Constitution are relevant, but, in particular, note the effect of—

- Article 35(2) and (4), which require Bills to be in both the English and Maori languages; and
- Articles 37(7) and 41, which restrict the manner in which Parliament may repeal or amend the Constitution; and
- Articles 39 and 46, which give authority to the Cook Islands Parliament to make laws and provide that New Zealand Acts made after a particular point in time do not apply in the Cook Islands, unless a Cook Islands Act provides otherwise (see the transitional provision in Article 80 also); and
- Article 40, which provides that no property may be compulsorily taken without compensation and provides procedural rights; and
- Article 42, which concerns the introduction of Bills into Parliament by any member of Parliament; and
- Article 43, which requires a recommendation of the Queen’s Representative before Parliament proceeds upon any Bill that imposes tax or a charge, or provides for expenditure of public money, or provides for the composition or remission of a debt due to the Crown; and
- Article 44, which requires the Queen’s Representative to assent to a Bill before it becomes law and sets out related procedures; and
- Article 45, which specifies when Acts come into operation; and
- Part IV, which establishes the High Court of the Cook Islands and the Court of Appeal of the Cook Islands, and provides for the appointment of Justices of the Peace (see the transitional provisions in Articles 82 and 83 also); and
- Article 48, which provides that each Division of the High Court may hear and determine matters as specified in an enactment; and
- Part IVA, which concerns fundamental human rights and freedoms and the construction of law to protect those rights and freedoms; and
- Part V, which contains a number of legislative requirements concerning the public revenues of the Cook Islands (see the transitional provision in Article 86 also); and
- Part VI, which concerns the Cook Islands public service and contains a number of administrative and judicial procedures; and
- Article 76A, which concerns who is treated as being a permanent resident of the Cook Islands; and
- Article 77, which provides for the continuing application of the existing law in the Cook Islands; and

- the list of offences in the Second Schedule, which disqualify a person from being a member of Parliament.

#### **Application of the Standing Orders of the Parliament of the Cook Islands**

All Cook Islands legislation must comply with the Standing Orders of the Parliament of the Cook Islands. Many provisions of the Standing Orders are relevant, but, in particular, note the effect of—

- Standing Orders 3 and 219(1) and (2) concerning the division of Bills into Government Bills and Private Member’s Bills, and Public Bills and Private Bills, and who may introduce each of those; and
- Standing Orders 219(4), 227, and 228 — all Bills must be distinguished by titles and divided into successive sections consecutively numbered, and every section must have a section heading; and
- Standing Order 219(5) — matters which in the opinion of the Speaker have no proper relation to each other must not be included in the same Bill; and
- Standing Orders 219(6), 221, 233, and 273 — every Bill must contain a Long Title; and
- Standing Order 219(6) — Bills must not contain anything that is foreign to the Long Title; and
- Standing Order 220 — every Bill must be accompanied by an explanatory note stating the objectives of, and the reasons for, the Bill; and
- Standing Order 305, which specifies certain requirements for Appropriation Bills.

#### **Cook Islands legislation must be prepared and made in accordance with the Manual of Cabinet Procedures**

The Manual of Cabinet Procedures sets out certain procedures that must be followed when preparing and making legislation. In particular, see Part 3 and Appendices 1 and 2.

#### **Cook Islands legislation must observe fundamental rights and principles**

All legislation drafted for the Cook Islands must reflect accepted principles of human rights and be consistent with all international conventions that apply in the Cook Islands, including—

- the Universal Declaration of Human Rights; and
- the Convention on the Rights of the Child; and
- the Convention on the Rights of Persons with Disabilities; and
- the Convention on the Elimination of All Forms of Discrimination Against Women; and
- the International Covenant on Civil and Political Rights; and
- the International Covenant on Economic, Social and Cultural Rights.

#### **Application of the Acts Interpretation Act 1924 (NZ)**

All legislation that is drafted for the Cook Islands must take into account the effect of the Acts Interpretation Act 1924 (NZ). The Act applies to all enactments unless the enactment provides otherwise or the context of the enactment requires a different interpretation.

All of the provisions of that Act are of relevance, but, in particular, note the effect of—

- the definitions of general application in section 4; and
- section 7 — words that are used in regulations made under an Act have the same meaning as in that Act and therefore do not need to be redefined in those regulations; and
- section 11 regarding the time at which an enactment comes into force; and
- sections 20 to 22 concerning the effects of repealing an Act; and
- section 24 concerning the citation of the authority under which an Order in Council or other subordinate enactment is made; and
- section 25 concerning time, distances, appointments, powers, etc.

### **Basing draft legislation on laws from other jurisdictions**

Taking a law from another jurisdiction and making minor changes to it in order to try and make it applicable to the Cook Islands will almost never result in the best outcome for the Cook Islands. This often creates more problems than it solves. All legislation drafted for the Cook Islands must be tailored to meet the specific needs, circumstances, and interests of the Cook Islands.

If legislation is drafted for the Cook Islands based upon the law of another jurisdiction,—

- it must be tailored to meet the specific needs and circumstances of the Cook Islands; and
- it must serve the national interests of the Cook Islands; and
- it must be amended so that it complies with the Solicitor-General’s Legislative Drafting Directives for the Cook Islands; and
- it must be agreed to by key stakeholders in the Cook Islands; and
- the drafter must clearly notify the Solicitor-General that it is based upon the law of another jurisdiction and identify that law.

### **Basing draft legislation on “model” laws**

Regional and international agencies often prepare model laws for adaptation by countries, particularly smaller ones such as the Cook Islands. However, using a model law as the basis of legislation for the Cook Islands may not result in the best outcome for the Cook Islands because—

- model laws usually have a very specific focus and approach that may not match the needs of the Cook Islands; and
- model laws are often written in very technical and legalistic language, making them hard to read and understand; and
- the format and substance of model laws will usually be inconsistent with the Solicitor-General’s Legislative Drafting Directives for the Cook Islands.

If a model law is to form the basis of a law for the Cook Islands, great care must be taken to ensure that each and every provision is properly applicable to the Cook Islands, and that every aspect of the drafting fully complies with Solicitor-General’s Legislative Drafting Directives for the Cook Islands.

### **Legislation must provide flexibility**

When drafting legislation for the Cook Islands, careful thought must be given to the full range of events likely to arise at any time, and the flexibility that can be provided for the Government to effectively regulate and respond to them.

Careful consideration must also be given to the need to avoid future legislative intervention by the Government if this can be addressed by more flexible arrangements.

For example,—

- if there is a list of technical matters in a Schedule to the Bill (for example, a list of agencies to whom the Bill applies), would it be appropriate for that list to be able to be amended by regulations?
- are the powers and functions provided by the Bill drafted widely enough?
- would it be appropriate for some powers to be able to be delegated?
- is the regulation-making power wide enough?
- if fees and charges need to be set, or a form needs to be prescribed, do this in regulations, not in the Bill.

### **Placing draft laws in the overall legislative context**

Care must be taken to ensure that new legislation drafted for the Cook Islands does not contradict or unnecessarily duplicate existing legislation. Each new law must be placed in its legislative context

amongst, and be aligned with, all existing laws of the Cook Islands, as well as all other draft legislation being considered by the Government.

In order to achieve this, a careful search of the Cook Islands statute book must be carried out in order to understand the legislative context in which the new legislation will operate and to make all consequential amendments that are required to align the new law with the existing laws of the Cook Islands.

Further, standard sections should be replicated whenever possible, provided that they are adequate and suitable. For example, standard sections for the creation of a statutory entity, appointing its members, setting its quorum and meeting procedures, providing that it must follow the general policy of the Government, and so on.

## ***Effect of legislation on Cook Islands Government***

### **Act to bind the Crown**

Unless it is inappropriate in the particular circumstances, every Bill drafted for the Cook Islands must contain a section stating that it binds the Crown.

### **General requirement to avoid government liability**

Care must be taken to ensure that legislation does not expose the Cook Islands Government to liability. It is generally not appropriate for legislation to impose obligations on the Government in a way that would mean that a failure by the Government to comply with the legislation could result in a claim against the Government. For example, only in the rarest of circumstances should a criminal prosecution be specified as being permissible against the Crown.

### **Indemnity provisions**

When drafting legislation, consider whether an indemnity should be provided for enforcement agencies and their officers, or to protect the Government generally from liability.

### **Avoidance of onerous requirements for public advertisement**

Careful thought must be given to any requirement imposed on the Government to publish or publicly notify any matter. Normally it will be sufficient for such publication or notice to be done or given on 1 occasion in the Cook Islands News newspaper.

### **References to Ministers and departments**

Enactments should not refer to a specific Minister or department. Generic wording should be used to future-proof legislation so that it does not need to be amended if a Minister's portfolio changes or the department responsible for an Act changes. Use the following format, or something similar—

*Example:*        “**Minister** means the Minister of the Crown who, with the authority of the Prime Minister, is responsible for the administration of [this Act/[insert a particular subject area, e.g. “telecommunications”]]”.

*Example:*        “**department** means the department that, with the authority of the Prime Minister, is responsible for the administration of [this Act/[insert a particular subject area, e.g. “telecommunications”]]”.

## ***Offences, fines, and penalties***

### **Offences under an Act of Parliament must be in the Act**

Offences for a breach of an Act of Parliament must be set out in the body of the Act itself.

Regulations must not be used to prescribe offences for an Act. However, if there is a clear and specific regulation-making power in an Act, regulations made under that Act may prescribe offences for non-compliance with those regulations.

### **Format of offence provisions**

Offences must be prescribed in the following format, to the extent that it is applicable—

*Example:*        “A person who [insert elements of offence] commits an offence and is liable on conviction,—  
                  (a) in the case of an individual, to a fine not exceeding \$[insert amount], or imprisonment for a term not exceeding [insert length of imprisonment], or both;  
                  or  
                  (b) in any other case, to a fine not exceeding \$[insert amount].”

### **Elements of offense must be minimised**

Offences must be drafted to minimise the burden upon the Government of proving extensive and unnecessary elements of an offence.

### **Continuing offences**

In appropriate cases, a section may provide for additional fines to apply for every day that an offence continues.

### **Imposing fines and penalties**

There is no set formula for fixing the amount of fines or for determining the length of terms of imprisonment. These must be assessed on a case by case basis having regard to the nature and seriousness of the offence, and its relativity to other existing offences. The views of the Solicitor-General should be sought when considering the nature and extent of any prescribed penalty.

## ***Regulations and regulatory matters***

### **Regulation-making powers**

Nearly every Act will need to provide authority for regulations to be made under the Act. In the Cook Islands, the standard practice is for regulations to be made by the Queen’s Representative, by Order in Executive Council, on the advice of the appropriate Minister. Article 5 of the Constitution of the Cook Islands is relevant to this.

Every person who drafts an Act for the Cook Islands must ensure that (if required) it includes a general regulation-making power wide enough to authorise everything the regulations will need to provide for. The regulation-making power must specify each of the matters for which regulations can be made, and must end with a general provision that provides for “any other matters contemplated by this Act, necessary for its full administration, or necessary for giving it full effect”.

An example of a provision of this nature is set out in the legislative drafting template for Bills.

Every person who drafts regulations for the Cook Islands must ensure that the regulations fall within the authority given by the Act under which the regulations are to be made.

### **No prescribed forms, fees, or charges in Acts**

Forms, fees, and charges must not be prescribed in an Act. These matters need to be changed frequently, but amendments are not easily or quickly made to an Act. Instead, an Act must provide for forms, fees, or charges to be prescribed by regulations.

An example of a provision of this nature is set out in the legislative drafting template for Bills.

### ***Amending enactments***

#### **All amending enactments must amend the principal enactment**

All amendments made to an enactment must be made to the principal enactment, not to an enactment that amended the principal enactment. The sole exception to this is if an amending enactment that contains the provision or wording that needs to be amended has not come into force when the new amendment takes effect.

#### **All amendments must be drafted so they can be consolidated with principal enactment**

All amendments to Cook Islands enactments must be made by textual or direct amendment. This is done by specifying the alterations to be made to an enactment, whether by repealing or omitting existing text or provisions, or substituting or inserting new text or provisions. The outcome should be an enactment that is capable of being reprinted as a single text in consolidated form.

The style and formatting conventions for an amending Bill are set out in Part 3 of the legislative drafting template for Bills.

The style and formatting conventions for amending regulations are set out in Part 3 of the legislative drafting template for regulations.

#### **All amending enactments must be drafted in current style and format**

All amending enactments, and all amendments that are made to an existing enactment by an amending enactment, must be drafted in the style and format specified in these directives and set out in the legislative drafting templates, regardless of the style or format of the existing enactment. They must not perpetuate old-fashioned styles and formats.

All enactments will ultimately end up being drafted in the same style and format as, over time, they are amended, replaced, consolidated and repealed.

### ***Draft explanatory note must accompany draft Bill***

Every Bill must be accompanied by an explanatory note stating the objects and reasons for the Bill.

Every person who drafts a Bill for the Cook Islands must, as part of that legislative drafting work, also draft the explanatory note that is to accompany the draft Bill. The draft explanatory note must be provided at the same time as the final draft of the Bill.

A template has been established for explanatory notes. The Crown Law Office will send you a copy of the template upon request.



## **DIRECTIVE E**

### **Draft Regulations Must Accompany Draft Bill**

*If a draft Bill requires regulations to be made, the draft regulations must be provided together with the final draft of the Bill*

Many Acts of Parliament depend upon regulations being made in order for the Acts to operate properly. Accordingly, Acts are ineffective if regulations are not made. This often happens because legislative drafting instructions focus only on having a Bill drafted, and people who are engaged to draft legislation for the Cook Islands are funded only to draft a Bill. As a result, no work is undertaken in relation to regulations that are required under the Bill when it comes into force.

To avoid this, every person who drafts a Bill for the Cook Islands must, as part of that legislative drafting work, also draft the regulations that are to accompany the draft Bill. The draft regulations must be provided at the same time as the final draft of the Bill.

Please note—

- the further requirements in Directive D regarding regulations; and
- the requirements of the Regulations Act 1971–72.