

# **Drafting in Australia, New Zealand and Ontario: An Informal Survey**

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## **Introduction**

This survey was conducted in November 2001. The edited results as presented here, with minor changes, were cleared by all respondents before the end of December.

Those participating in the survey have all had considerable experience in the office for which they responded. In two instances, the respondents were the heads of the office; in three or four other instances (that I know of), the responses were also cleared by the head, though I did not require this.

However, a disclaimer is necessary. Some rather subjective views are expressed. It is to be emphasized that these, together with any assertions of fact, are the views and beliefs of the respondent concerned, and do not necessarily reflect an official office position. In addition, the survey results address the situation at the end of 2001 (except in the case of Ontario, where I have taken the liberty of supplementing the respondent's remarks using my experience while working here).

Finally no responses were received from the Office of Legislative Drafting in the Commonwealth Attorney-General's Department, Canberra (which drafts Commonwealth subordinate legislation), though bracketed responses are given to a few questions based on my own knowledge.

Distribution of these results at the conference of the Canadian Institute for the Administration of Justice Drafting Conference, September 12 - 13, 2002, Ottawa constitutes their initial publication. I may wish to publish them later in a journal or other forum, with some further analysis of some of the issues raised about drafting style.

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Finally, I wish to express my gratitude to the participants for their willing expenditure of time and effort in responding to the survey and to my draft summaries of results, and in supplying supplementary materials. I take full responsibility, of course, for any misrepresentations of their views, or any errors of fact.

Key to tables:

ACT	Australian Capital Territory Parliamentary Counsel's Office
CwltH OLD	Commonwealth Office of Legislative Drafting (drafts Commonwealth subordinate laws)
CwltH OPC	Commonwealth Office of Parliamentary Counsel
NSW	New South Wales Parliamentary Counsel's Office
NT	Northern Territory Office of the Parliamentary Counsel
Qld	Office of Queensland Parliamentary Counsel
SA	South Australia Parliamentary Counsel's Office
Tas	Tasmania Office of Parliamentary Counsel
Vic	Victoria Office of Chief Parliamentary Counsel
WA	Western Australia Parliamentary Counsel's Office
NZ	New Zealand Parliamentary Counsel Office
Ontario	Ontario Office of Legislative Counsel

## Results

### 1. Vertical relationships

<b>1.1 Which department is the drafting office in? Or does it have an independent statutory status? (give brief details)</b>	
ACT	Department of Justice & Community Safety
Cwlth OLD	[Attorney-General's Department]
Cwlth OPC	Independent statutory office within Attorney-General's portfolio <i>Parliamentary Counsel Act 1970.</i>
NSW	PCO is a separate PS department
NT	Chief Minister's Department
Qld	Independent statutory office within Premier's portfolio, w. administrative links to Department of Premier & Cabinet <i>Legislative Standards Act 1992 [LSA], s 5.</i>
SA	Attorney-General's Department
Tas	Department of Premier & Cabinet
Vic	Independent office within Premier's portfolio, w. administrative links to Department of Premier & Cabinet
WA	Department of Justice
NZ	Office of Parliament independent of public service, under control of Attorney-General or Prime Minister (if no A-G) <i>Statutes Drafting and Compilation Act 1920</i>
Ontario	Ministry of the Attorney-General

<b>1.2 Do you draft bills or parliamentary amendments for private members (or senators etc)? Give brief details of any drafting arrangements (e.g. has the government given a general undertaking, or is authority to draft given only on a case-by-case basis?)</b>	
ACT	Yes for both. Successive Chief Ministers have given general authority. No specific authority needed. Govt work ultimately given priority (but internal priorities discussed with each non-govt party separately), but in practice we manage to meet the demand from private members in almost all cases.
Cwlth OLD	n/a [subordinate legislation only]
Cwlth OPC	Nothing in <i>Parliamentary Counsel Act 1970</i> to prevent it. But Govt work takes priority. Drafting on case by case basis authorised by Govt.
NSW	Yes for both. general undertaking. But maximum limit set on core drafting hours for each private member/party/group; also drafting must not interfere with Govt program. See 'Handbook for the Drafting of Non-Government Legislation'.
NT	Yes [for both], general undertaking.
Qld	Yes for both. OQPS statutory function to draft for private members on request (LSA, s 6). No Govt authority required.
SA	Yes for both. No Govt authority required. (SAOPC Guide for private members provided.)
Tas	Bills for private members on case-by-case basis authorised by Premier. General authority given for Upper House private members' amendments
Vic	Yes for Bills, with Premier's specific approval (though requests for approval are rare). Yes for amendments, no specific authority necessary.
WA	No. But occasional specific authority for amendments.
NZ	Member's bills (members who are not Ministers), local bills (for local authorities – geographically confined), private bills (for individuals, trusts, corporations for private benefit). Generally, members draft own bills (often with assistance of legislative counsel in the Office of the Clerk of the House of Reps); PC usually drafts local & private bills. PC generally drafts amendments to all categories of non-Government bills. (See Mark Gobbi "Neglected Orphans or Trojan Horses?" Paper presented to Drafting Forum, Melbourne, 1-3 August 2001.)
Ontario	Drafting for private members separate OLC function as law clerk of the Assembly.

<p><b>1.3 Is primary or subordinate legislation you draft subject to routine scrutiny by a parliamentary committee for encroachment on civil liberties, review of administrative decisions, etc? Are there any statutory constraints of this nature?</b> [some details of parliamentary power to disallow subordinate legislation have been added by NH]</p>	
ACT	Yes for Bills, subordinate laws & subordinate instruments designated ‘disallowable’. Assembly Committee for both. No statutory constraints. Criteria decided by Assembly. Regulations disallowable, as are other ‘disallowable instruments’ (e.g. fee determinations) ( <i>Legislation Act 2001</i> ch 7).
Cwlth OLD	[Yes for Regulations & Ordinances (Senate Standing Committee on Regulations and Ordinances). Criteria decided by Senate. Regulations and ordinances disallowable under <i>Acts Interpretation Act 1901</i> , s 48]
Cwlth OPC	Yes for Bills (Senate Standing Committee for the Scrutiny of Bills). Criteria decided by Senate.
NSW	Yes for subordinate legislation (Regulation Review Committee under <i>Subordinate Legislation Act 1989</i> ) [Statutory rules disallowable— <i>Interpretation Act 1987</i> , s 41].
NT	Standing committee for scrutiny of regulations, but inactive. No committee for Bills. [Regulations disallowable— <i>Interpretation Act</i> Pt VII, div 2.]
Qld	Yes for Bills and subordinate legislation. Scrutiny of Legislation Committee under <i>Parliamentary Committees Act 1995</i> – ‘fundamental legislative principles’ under LSA, s 4. LSA also provides a function of OQPC to advise about application of principles, and requires that explanatory note briefly comment on application of principles (also provides for issue of guidelines on application to drafting of ‘exempt instruments’ (subordinate instruments other than subordinate laws). [Subordinate legislation disallowable— <i>Statutory Instruments Act</i> , s 50.]
SA	No for Bills. Yes for regulations – Legislation Review Committee, under <i>Subordinate Legislation Act 1978</i> . Criteria decided by Cttee. (Sample report provided.). [Subordinate laws disallowable under <i>Subordinate Laws Act 1989</i> , s 6.]
Tas	No for both. Regulations disallowable by either house under <i>Acts Interpretation Act 1931</i> , s 47. [However, <i>Subordinate Legislation Committee Act 1969</i> , s 3 establishes joint Standing Committee on Subordinate Legislation. Section 8 sets out guidelines for committee to report on subordinate legislation.]
Vic	Yes for Bills & regulations. Joint Scrutiny of Acts & Regulations Cttee, under <i>Parliamentary Committees Act 1968</i> , s 4D (criteria in Act). [Statutory rules disallowable

	under <i>Subordinate Legislation Act 1994</i> , s 23.]
WA	No for Bills. Yes for subsidiary legislation – Joint Standing Committee on Delegated Legislation. [Subsidiary legislation disallowable under <i>Interpretation Act 1984</i> , s 42.]
NZ	Yes for both. Before Bills introduced/regs made, Minister advises Cabinet about compliance with basic legal & constitutional principles, compliance with <i>Bill of Rights Act 1990</i> and <i>Human Rights Act 1993</i> , Treaty of Waitangi, international obligations & standards & existing law. Bill of Rights team in the Ministry of Justice vets Bills (for A-G) for compliance with Bill of Rights Act before they are introduced (MoJ increasingly doing so for regs). Crown Law Office vets MoJ Bills (for A-G). All Bills referred to a select committee after introduction, which considers, inter alia, human rights and administrative law impact. Regulations Review Committee considers regulation-making powers, as well as human rights/admin law issues for all regulations. [Regulations disallowable— <i>Regulations (Disallowance) Act 1989</i> .]
Ontario	Standing committee under <i>Regulations Act</i> , s 12 [reports on scope and method of exercise of delegated legislative power but without reference to the merits (s 3). No statutory provision for disallowance of regulations by Assembly].

## 2 Horizontal relationships

<b>2.1 What do you draft? (Bills, regulations, other subordinate instruments, explanatory material for publication or tabling with Bills etc)</b>	
ACT	Bills (and Assembly Amendments), regulations, court rules, some other instruments (e.g. Financial Management Guidelines) on request. No explanatory memoranda, but advise on content if requested. Settle instruments on request.
Cwlth OLD	[Commonwealth subordinate legislation]
Cwlth OPC	Bills and amendments of Bills
NSW	All the above, including environmental planning instruments and court rules. Draft Bills for Law Reform Commission reports.
NT	Bills, regulations, by-laws for councils, universities etc, explanatory material for publication/tabling with Bills.
Qld	Bills, subordinate legislation (other than 'exempt' subordinate legislation ie local govt etc), other instruments on request. LSA s 7 (a) – (f).
SA	Bills, regulations, proclamations, some commissions & notices, comment on Governor's decisions under planning legislation. Draft Explanation of Clauses (attached to 2nd reading speech) for Bills.
Tas	Bills, regulations, rules, by-laws, other subordinate laws, NOT municipal by-laws.
Vic	Draft Bills & settle regulations (draft some too). Settle explanatory memoranda and proclamations. Occasionally draft other instruments.
WA	Bills and subsidiary legislation (including regulations, proclamations, orders in council, some by-laws & notices). Some subordinate legislation NOT drafted by PCO e.g. local laws of local govt.
NZ	Bills, regulations, slips (amendments to bill by select committee), 'Supplementary Order Papers' (parliamentary amendments prior to 3 <sup>rd</sup> reading) and various special orders & notices. Clause analysis in explanatory note for Bills; explanatory note as a whole for regulations.
Ontario	Bills and all subordinate legislation, and motions for amendments, but not other instruments.

<b>2.2 Who gives instructions? (e.g. legal areas of client agencies/legislation areas of client agencies/operational areas of client agencies/private contractors of client agencies)</b>	
ACT	All of the above. Occasionally take instructions from private law firms or contractors.
Cwlth OPC	All of the above. Occasional instructions from private consultants (e.g. law firms)
NSW	Government legislation – legislation & policy units of govt depts. Non-govt legislation – MP or member’s assistant.
NT	Legal & policy officers. One instance private sector instructions (quality low)
Qld	All of the above. Private members – member or senior adviser for opposition shadow.
SA	Policy and sometimes operational officers from client agencies. Some legally qualified. All instructions from the public sector.
Tas	Legislation areas and operation areas of client agencies
Vic	All of the above, and Ministerial advisers too, sometimes. Very occasionally instructions are received from law firms working in tandem with a departmental instructor.
WA	Senior public servants (sometimes legal areas of clients). Sometimes from Ministers or their offices. Private contractors only if working in tandem with departmental instructor.
NZ	Administering agencies, mostly legal officers, sometimes policy advisers. Occasionally from Minister responsible.
Ontario	Legal branch of client Ministries (government drafting). Private members or their assistants (private members’ drafting)



<b>2.3 Do you offer any training for instructors and legislation officers?</b>	
ACT	We ran a series of full-day instructors' courses in 1999 (very popular) – looking to revive them in 2002. Public Access to Law project briefing given late 2001 around the public service & to Assembly, Supreme Court etc.
Cwlth OPC	1-day Legislation Process Course, covering the drafting process in detail.
NSW	Handbook for drafting non-govt legislation (see above), and 'Handbook for the Drafting of Government Legislation'. Addresses to groups. No formal training.
NT	Handout for agencies. Policy/legislation staffing stable (few one-off instructors).
Qld	None currently offered.
SA	6-monthly seminar for instructors. In-house seminars for particular agencies etc on request (about 4 per year). Prepare publications to assist instructors, in particular Handbook for instructors.
Tas	No
Vic	1-day and ½ day courses for instructors & legislation officers in 2001. Very popular (had to double originally planned number). [See <a href="http://www.ocpc.vic.gov.au">www.ocpc.vic.gov.au</a> , via 'other documents' to 'training topics' and 'Legislative process – an OCPC perspective'.]
WA	IPAA (Institute of Public Affairs & Administration?) course on how to draft – a WA OPC senior counsel presents a session. Document on website about getting legislation drafted.
NZ	Comprehensive curriculum-based training for new drafters (under review). Each new drafter assigned a mentor and a trainer. Guide to Working with Parliamentary Counsel's Office for agencies. Teams meet with agencies to discuss best practices.
Ontario	When asked.

### 3 Drafting management

<b>3.1 What is your current office structure (for drafters)?</b> PC=Parliamentary Counsel; Asst =Assistant; Princ. =Principal; D=Deputy; FPC=First PC; FAPC=First Asst PC; SA=Senior Assistant; LDO=Legislative Drafting Officer; LO=Legal Officer; LWOP=Leave without pay; Prof=Professional Officer; CPC=Chief PC; VPS=Victorian Public Service [Grade]	
ACT	14 drafters - PC, 2 DPC, 6 Princ. Asst PC (L2), 5 Asst PC (L1) = 14 drafters [incl 1 p/t Asst. PC, 1 p/t Princ. Asst. PC]
Cwlth OPC	28 drafters (on deck) - FPC, 2 Second PC, 7 FAPC, 6 S Asst PC, 17 Asst PC = 33 drafters [incl 1 FAPC another agency PSA Pt IV, 1 SAPC on LWOP, 2 APC on LWOP, 1 APC on temp. transfer = 28 drafters effectively]
NSW	20 drafters - PC, DPC, 2 X Senior Asst PC, 2 X Asst PC, 3 X Senior LDO, 1 X Senior LO, 8 X LO (IV-VI), 2 X LO (I – III) = 20 drafters
NT	6 drafters -PC, DPC, 1 X Prof 4, 2 X prof 3, 1 X prof 1 = 6 drafters
Qld	26 drafters -PC, 3 DPC, 4 FAPC, 7 Senior Asst PC, 11 Asst PC = 26 drafters [incl 1 p/t FAPC]
SA	13 drafters - PC, DPC, 3 Senior Asst PC, 2 Asst PC, 6 LO = 13 drafters [inc LOs p/t =nt 5 f/t LOs]
Tas	8 drafters - CPC, DCPC, 3 Senior PC, 1 PC, 2 Asst PC = 8 drafters [incl 1 p/t SAPC]
Vic	14 drafters - CPC, DCPC, 2 Asst CPC, 7 counsel VPS-5, 1 counsel VPS-4, 2 counsel VPS-3 = 14 drafters
WA	14 drafters - PC, DPC, 12 Asst PC + 15 support staff = 14 drafters
NZ	24 drafters - CPC, DPC, 16 PC, 3 Asst PC, 2 consultants, 1 counsel. Asst compiler of statutes = 24 drafters. Manager support services, co-ordinator info services, 4 legal publications officers, librarian, computer support officer, co-ordinator management support, management support officer, messenger, co-ordinator secretarial services, 5 secretaries, receptionist.
Ontario	14 drafters + 2 translation counsel Chief Legislative Counsel, Deputy Legislative Counsel, Registrar of Regulations, 11 other counsel, 5 production assistants Director French Legislative Services, 4 translators, 4 linguistic advisers, 2 translation counsel, 3 production assistants. Manager Publishing Services, 2 supervising legislative eds, 10 legislative editors, 2 production assistants, 2 systems officers. = 14 drafters + 2 translation counsel

<b>3.2 Is drafting split into groups (e.g. on the basis of client agencies, particular legislation or primary/subordinate legislation)? Are drafters placed with client agencies for particular work, or for particular periods (e.g. OPC taxation office placements)?</b>	
ACT	<p>No drafting groups as such. 2 DPC each draft or allocate work around the whole office for half our client agencies, and have management (not necessarily settling) responsibilities for half of the drafters.</p> <p>No outposting, and none contemplated. But (as for SA) particular drafters who develop expertise in a particular area (e.g. by drafting primary legislation) tend to attract further work in that area.</p>
Cwlth OPC	Not generally, and not internally – but drafters are occasionally outposted (in recent times only for the Corporations and Tax rewrites).
NSW	No
NT	No – everyone drafts everything.
Qld	3 drafting groups, allocated to different departments. No outposting.
SA	No drafting groups, no outposting & none contemplated. But drafters who develop expertise in a particular area (e.g. by drafting primary legislation) tend to attract further work in that area.
Tas	No drafting groups, no outposting. But drafters who develop expertise in a particular area tend to attract further work in that area.
Vic	No drafting groups, no outposting.
WA	No allocation by client agencies, no outposting.
NZ	3 teams on agency basis. Rotation uncommon, but occasionally drafters take work from other groups (interest/necessity for workload). Revenue legislation drafted in revenue office (not by PC staff).
Ontario	Each lawyer has a portfolio of clients (but these are reassessed from time to time). No outposting.

<b>3.3 At what level do you recruit, in general? Only at legal 1 equivalent (ie recent graduates, or lawyers with little or no drafting experience)? Or horizontally into upper legal 1/legal 2 levels (lawyers with drafting experience or equivalent)?</b>	
ACT	Asst PC's have a broad-banded Legal 1 classification. Most recruits would start at the bottom of the range, but with suitable experience a recruit can be placed higher. We also sometimes recruit experienced drafters from outside at Principal Asst PC level (Legal 2), and may do so at executive level too (PC & DPC).
Cwlth OPC	Usually lawyers with no drafting experience at Asst PC1 [entry] level; top increment APC1 soon to be raised to attract lawyers with useful non-drafting experience. Higher level positions may be filled by experienced drafters from outside, but in practice most promotion is internal.
NSW	[entry level] LO (I-III). Typically honours grads with 1 year or more experience private practice/PS/Judge's associate (no drafting experience).
NT	'Catch as catch can'. Train from entry level up. Even if trainees leave, they generally stay for approx. 3 years & move to NT govt law jobs, so training not wasted.
Qld	May occur at any level (merit-based).
SA	Last several years it's proved best to recruit lawyers with some private practice experience (e.g. last 3 recruits with 5, 3 & 6 years' private experience).
Tas	Usually only have been able to recruit at entry level.
Vic	1985-2000 only at entry level. Recently 2 VPS5s (senior counsel) advertised externally (1 filled by interstate drafter).
WA	At any level. At senior levels, experience in another drafting office essential.
NZ	Generally from legal divisions of agencies, with lots of experience with policy/legislative process (e.g. provision drafting instructions). Occasionally drafters recruited from private practice, with legal drafting exp'ce, particularly with useful law speciality (e.g. commercial).
Ontario	Recently recruited 2 'senior' lawyers with suitable experience. Currently no entry-level 'trainee' drafters on staff.

<b>3.4 Are junior drafters ‘paired’ with particular senior drafters? Or are junior/senior pairs made &amp; broken on a job-by-job basis?</b>	
ACT	Not generally, but ‘mentoring’ relationships have recently been introduced in a number of situations (e.g. a drafter returning after over a year’s maternity leave). Generally, ‘pairs’ are made and broken on a job-by-job basis.
Cwlth OPC	1 or 2 Asst PC paired with 1 SES (executive) drafter for about 12 months at a time, not on a job-by-job basis.
NSW	Junior drafter closely supervised by senior drafter. Occasionally work in a team (taking routine etc aspects of larger project).
NT	No. Junior drafters run own projects as soon as they start (informal consultation with senior drafters, settling late in process, see below). Start simple, build up. Sounds like high risk, but it works (builds confidence, ownership of work). High retention rate (e.g. 2 latest juniors will probably stay until retirement).
Qld	Drafter & supervising drafter, job-by-job (for juniors, senior drafter assigned as supervising drafter).
SA	Junior/Senior pairings job-by-job
Tas	Junior/senior pairs as part of training process
Vic	Pairs (occasionally trios with executive component) made & broken on a job-by-job basis. Through 1990s, fixed pairings prevailed, but even so some cross-pairing occurred.
WA	Each draft has drafter & ‘reader’ (another drafter). Senior drafters can be assigned senior or junior readers [presumably junior drafters are assigned to senior readers].
NZ	Each junior has a mentor & a trainer. Review system for supervision (job by job). Seasoned drafters – peer review (job by job). Big bills worked on in teams, which may mix new & seasoned drafters.
Ontario	Not applicable at present. Both methods used in the past.

<b>3.5 Briefly describe the settling process for junior and more senior drafters' work. Is there any standard settling procedure for senior drafters' work (e.g. scrutiny by executive counsel?)</b>	
ACT	Asst PC's work is always settled by a senior drafter ('D2'). (The PC may act as 'D3' as well as another senior drafter.) All senior drafter's (including DPC) work is settled by a DPC or the PC ('D2'). Larger drafting teams are becoming more common (e.g. 2 Asst PCs or 2 senior drafters as D1 & D2, with the PC as D3). PC reads all Bills at some stage.
Cwlth OPC	Asst PC work is always settled by an SES (executive) drafter. SES drafting work is not settled. But SES work generally read and commented on by an Asst PC.
NSW	Junior drafters' work closely supervised. No draft leaves office unless seen by supervisor. Open door policy. All Bills (junior & senior drafters) reviewed by Bill Review Group (PC, DPC, SAPC).
NT	Settling close to finalisation (as late as post-Cabinet approval). No time to check each draft. OPC & DPC settle own work.
Qld	All drafts checked by someone [similar to ACT system]. At advanced stage, drafts are given to senior drafter with word search macro results. D2 then settles draft, in consultation with D1 as necessary.
SA	All drafters can settle regulations or proclamations (but junior drafters' work must be checked by a senior drafter). Junior drafters' work is settled by a senior drafter. PC, DPC and Senior Asst PC settle own work.
Tas	Apart from Asst PC, all drafters are responsible for settling their own work.
Vic	All Bills drafted or supervised by an executive officer. CPC reads all Bills before sent to Cabinet, unless prevented due to time constraints. Otherwise, executive officer drafts are unsettled. For non-executive officer Bills, all executive officers read 1st and last drafts of each Bill. Settling practices otherwise vary depending on executive officers.
WA	Reader's responsibility is to check draft and make suggestions as appropriate.
NZ	Draft read by supervisor (for a junior drafter's draft) or peer reviewer (for a seasoned drafter's draft). Instructing agencies, interested parties, responsible Minister, settles for policy; proof-readers settle for error, style etc.
Ontario	No junior lawyers at present. Senior lawyers' work is unsettled. All govt bills reviewed by cabinet committee before first reading, but for policy not wordsmithing.

<b>3.6 Do you use a time recording system? Is there any formal/informal method of 'billing' client agencies (or particular agencies, e.g. independent statutory authorities)?</b>	
ACT	Time recording system for drafting & non-drafting tasks. Data used for more comprehensive reporting (Annual Report, Estimates Committee, internal management, particularly useful for gauging burden of private members' work). No actual billing (except outside work e.g. Norfolk I Govt)
Cwlth OPC	No to both.
NSW	Govt drafting – no to both. Private members' drafting – core drafting hours recorded [maximum limit on core hours drafting for PMs – see above]
NT	No to both. No proposal to outsource, so no need to benchmark.
Qld	No [to both].
SA	No to both.
Tas	Some drafting categories billed – simple time-recording system for these.
Vic	No to both.
WA	No to both.
NZ	No to both. PCO commissioned study a few years ago about billing agencies. Found that this shouldn't be done.
Ontario	All work is docketed. Gov't work is billed.

<b>3.7 Do you have regular office (or drafting group) meetings? (If so, how regular?)</b>	
ACT	Weekly call-over meetings of all drafters to monitor workloads and priorities. Non-sitting periods occasional all-staff meetings. Occasional ad hoc committees (e.g. performance feedback system committee).
Cwlth OPC	Monthly all-staff meeting. First & Second PC & SES drafters meet fortnightly.
NSW	Legal officers' meeting most Wednesday mornings.
NT	No. Morning and afternoon tea instead.
Qld	Regular meetings of drafters & specific committees (including current drafting practices, uniform styles, fundamental leg've principles). Drafters' meetings should be weekly, others fortnightly.
SA	No
Tas	Irregular
Vic	Hourly meetings, monthly on average. Weekly ½-hourly meetings for CPC to monitor workloads. Weekly management meeting (1 hour) of 4 executive officers.
WA	Management meeting bi-monthly (PC, 2 senior counsel, 3 senior clerical staff). Fairly informal weekly staff meetings.
NZ	Yes. 2 teams fortnightly, 1 weekly. At team meetings, drafting assignments are distributed & workload & progress gauged. Style of meetings varies between teams (and matters covered, e.g. continuing education). Every 2 months or so, all-staff meeting (admin/special interest). Various social occasions for informal contact within office.
Ontario	Aim at weekly 1-hour lawyers' meetings. At height of session meetings may be cancelled at short notice.



## 4 Publications

<b>4.1 How is final draft legislation published? (e.g. camera-ready copy to printer/in-house printing etc). In what format (A4/B5)?</b>	
ACT	PDF files of Bills to printer, B5 window on A4 paper. Bills are supplied to Assembly in B5 pamphlet format. Urgent Bills may be supplied to agency (pdf or hard copy) for presentation in A4 format. Final draft regulations are photocopied in-house, or pdf files sent to line area. Also B5 window on A4 paper (after making and notification they are published in B5 pamphlet form). Amendments are supplied in A4 format (printed in-house). After passage and notification, Acts are printed by the Assembly (from camera-ready copy generated from word files given to the Assembly by PCO).
Cwlth OPC	Electronic camera-ready copy to printer. Draft legislation in B5 pamphlet form.
NSW	Camera ready A4, B5 window.
NT	Electronic camera ready to government printer, printed B5.
Qld	Camera-ready copy of draft Bills to GoPrint (Govt printer). GoPrint handles printing for various stages during passage. Bills in A4, Acts, reprints etc in Crown Quarto.
SA	Final draft in camera-ready form, plus WordPerfect file, to Government Printer, in A4 [Acts also published in A4].
Tas	Camera-ready A4 to printer (postscript file + hard copy as final check). OPC controls camera-ready copy for all stages of legislation (drafts, minister copy, Parliamentary prints & amendments, vellum).
Vic	Camera-ready copy to printer. Bills-at-Cabinet in A4. Bills approved by Cabinet and Acts published in B5 pamphlets.
WA	Word 97 copy to State Law Publisher. Bills in B5, subsidiary legislation gazetted in A4 format. Reprinted legislation in B5 format from pdf files supplied by PCO.
NZ	WordPerfect 9 file to printer (Legislation Direct). File converted to SGML. Converted file printed in B5.
Ontario	First reading copy printed in-house in Word. Camera-ready copy for printer after 1st reading. 8.5" X 11" paper (North American 'letter size'). [2nd & 3rd reading versions of Bills also printed by OLC. 3rd reading version is post-Assent, incorporating any amendments in committee]

<b>4.2 What is the standard source you use for up-to-date legislation of your jurisdiction (e.g. in-house past-ups/in-house database)?</b>	
ACT	PCO drafters access legislation through the legislation register (also available to public) ( <a href="http://www.legislation.act.gov.au">www.legislation.act.gov.au</a> )
Cwlth OPC	Consol database maintained by Attorney-General's Dept.
NSW	In-house database (updated within 5 days)
NT	In-house paste-ups, in-house reprints database (Acts in force, no uncommenced changes). Public access to database via NTLA website: <a href="http://www.nt.gov.au/lant">www.nt.gov.au/lant</a> .
Qld	OQPC electronic legislation database (in-house to staff).
SA	Hard-copy and electronic versions supplied by Government Printer on an on-going basis. Data provided by our office (also available to public).
Tas	OPC maintains in-house database, Tasmanian Legislation Database; still some use of hard-copy paste-ups. Amendments done by marking up Principal Act taken from legislation database. Certain parts of database available to public.
Vic	Law Today database. Data from Vic CPCO available to both drafters & public at <a href="http://www.dms.dpc.vic.gov.au">www.dms.dpc.vic.gov.au</a> . Drafts can be printed for drafters in published form (public can only print in cruder format).
WA	Hard-copy cut-and-paste, current WA Acts & subsidiary legislation drafted by PCO, and compiled electronic database [in-house?].
NZ	Hardcopy paste-ups (private contractor); Electronic database via Folioviews (legal publisher).
Ontario	In-house database [moving towards use of e-laws site]

<b>4.3 Is the drafting office responsible for republications? How up-to-date is your republication program? Is there any statutory authority or accepted convention for the parliamentary counsel to make corrections or stylistic changes to republications?</b>	
ACT	Yes. Recently prepared or checked unofficial republications of almost all primary legislation is available on the legislation register website. Official republications of much primary legislation are also available. The <i>Legislation Act 2001</i> authorises corrections, minor stylistic changes, other editorial changes, renumbering (though renumbering rarely done without express statutory direction to renumber under the <i>Legislation Act 2001</i> ). Notes (not a part of Acts or subordinate laws) may be updated or removed for official republications.
Cwlth OPC	Attorney-General's Dept. (not OPC) responsible for republications.
NSW	Selected Acts (about 100) reprinted regularly. <i>Reprints Act 1972</i> enables very minor editorial changes, but this power is sparingly used.
NT	Government printer responsible for hard-copy reprints. Choice to reprint affected by whether all amendment Acts have been sold as single copies (to lessen losses due to printing costs). [Up-to-date reprints available online (see below)]
Qld	Yes. OQPC function under Legislative Standards Act, s 7 (k). Since 1992 (commencement of LSA), function fulfilled through Queensland Legislation Reprints series.  2 reprinting programs – printed, authorised reprints (QLR series); electronic reprints and updated versions of printed reprints. <i>Legislation Reprinting Policy</i> – when reprints will be reprinted in each of these.  <i>Reprints Act 1992</i> , pts 3 & 4, authority for editorial changes. But office's use of these powers now strictly limited to "those regarded as essential from a publishing perspective" (e.g. consequential amendments, spelling, punctuation, reordering defs & lists, format & printing style, removing renumbered provisions, removing amended provisions, removing enactment words, renumbering expressly required, correction minor errors).
SA	Yes. Statutory authority for changes under Acts Republication Act 1967. A senior assistant parliamentary counsel is 'Commissioner for Statute Revision' under that Act.
Tas	OPC maintains Tasmanian Legislation Database. Automatic consolidation system – "aims to provide in-house access and access to the public of up-to-date consolidated and new legislation on the day that a change occurs or the day new legislation gets Royal Assent, commences or, in the case of subordinate legislation, is notified in the gazette." Point in time searching available from 1 February 1997 for Acts and around April 1998 for Statutory Rules. Corrections etc under Legislation Publication Act 1996.

<b>4.3 Is the drafting office responsible for republications? How up-to-date is your republication program? Is there any statutory authority or accepted convention for the parliamentary counsel to make corrections or stylistic changes to republications?</b>	
Vic	Yes. Republications only if there have been enough amendments to make republication worthwhile. Capacity to republish fairly soon after amendment (often on date of effect of amendment). No express statutory authority to make changes. But until recent changes to Interpretation Act [which made section headings and punctuation part of law] the view was taken that amendments to section headings and punctuation could be made in republication, but the power rarely exercised. The respondent's view is that OCPC can make stylistic changes of a formatting type at will, but says that this has only ever been done across the board. (e.g. new Act format early 1990s).
WA	Yes. Reprints under <i>Reprints Act 1984</i> . Attorney-General (through delegate, Parliamentary Counsel) may authorise some minor corrections and stylistic changes. Not all authorised changes are made – it is often considered more useful for a reprint to contain a historical record of the written law being reprinted than to omit all spent provisions that there would be power to omit. Approximately 30% of WA legislation reprinted in 'new' (1999) format. Balance as quickly as resources allow.
NZ	Yes. Each year PCO publishes 1 or 2 volumes in reprint series (depending on importance & topicality). Subscriptions available for paste-up service from legal publishers. Acts republished in new format (post-1/1/2000). See <i>Acts and Regulations Publications Act 1989</i> , s 17A – s 19F.
Ontario	Yes, in partnership with the Queen's Printer. We do the database updating and camera-ready work. We publish office consolidations and provide updated files for the e-Laws website. We have no authority at present to make corrections but spelling errors and other typos are fixed. [Past practice has been to publish official consolidations every 10 years ('decennial' revisions) - republications - of virtually all primary (non-amending), Acts and regulations in force, authorised under a revising statute. Last revision was in 1990 (incorporating official French translations of Acts and many regulations). This practice is probably going to be superseded by next phase of the e-laws project, in which it is intended to publish authorised electronic consolidations of each law (on an individual basis) soon after it is amended.]

<b>4.4 Is your legislation (including any associated subordinate legislation or instruments) published on the internet? If so, how? (e.g. via SCALE or Austlii, or in-house website)? [updated by NH]</b>	
ACT	<p>Primary site <a href="http://www.legislation.act.gov.au">www.legislation.act.gov.au</a>. Authorised (pdf) files; non-authorized (rtf) files; selected 'future' republications also available (rtf). Historical database only from 2001. Notifications, subordinate instruments (e.g. approved forms, determined fees) all available online (post October 2001).</p> <p>Austlii <a href="http://www.austlii.edu.au/au/legis/act/consol_act/">www.austlii.edu.au/au/legis/act/consol_act/</a></p>
Cwlth OLD	<p>Primary site SCALE <a href="http://scaleplus.law.gov.au/">http://scaleplus.law.gov.au/</a></p> <p>Austlii <a href="http://www.austlii.edu.au/au/legis/cth/consol_reg/">www.austlii.edu.au/au/legis/cth/consol_reg/</a></p>
Cwlth OPC	<p>Primary site SCALE <a href="http://scaleplus.law.gov.au/">http://scaleplus.law.gov.au/</a>; Bills at Parliament House website: <a href="http://www.aph.gov.au/legis.htm">www.aph.gov.au/legis.htm</a>.</p> <p>Austlii <a href="http://www.austlii.edu.au/au/legis/cth/consol_act/">www.austlii.edu.au/au/legis/cth/consol_act/</a></p>
NSW	<p>Primary site <a href="http://www.legislation.nsw.gov.au/">www.legislation.nsw.gov.au/</a></p> <p>Austlii <a href="http://www.austlii.edu.au/au/legis/nsw/consol_act/">www.austlii.edu.au/au/legis/nsw/consol_act/</a></p>
NT	<p>Primary site <a href="http://notes.nt.gov.au/dcm/legislat/legislat.nsf?OpenDatabase">http://notes.nt.gov.au/dcm/legislat/legislat.nsf?OpenDatabase</a> [Reprints database; Historical database from mid-1997 (full text); 1995 (register info only). No Gazettals available (though info on gazettal available).]</p> <p>Austlii <a href="http://www.austlii.edu.au/au/legis/nt/consol_act/">www.austlii.edu.au/au/legis/nt/consol_act/</a></p>
Qld	<p>Primary site <a href="http://www.legislation.qld.gov.au/Legislation.htm">www.legislation.qld.gov.au/Legislation.htm</a>. LSA, s 7 (m) requires OQPC to arrange for electronic access to Queensland legislation. OQPC legislation database fulfils this function. Electronic reprints frequently updated.</p> <p>Austlii <a href="http://www.austlii.edu.au/au/legis/qld/consol_act/">www.austlii.edu.au/au/legis/qld/consol_act/</a></p>
SA	<p>Primary site <a href="http://www.parliament.sa.gov.au/legislation/5_legislation.shtm">www.parliament.sa.gov.au/legislation/5_legislation.shtm</a>. Made available to SA Parliamentary website, fortnightly cycle. [NB no link to statutes through Attorney-General's page on government website].</p> <p>Austlii <a href="http://www.austlii.edu.au/au/legis/sa/consol_act/">www.austlii.edu.au/au/legis/sa/consol_act/</a></p>
Tas	<p>Primary site <a href="http://www.thelaw.tas.gov.au/">www.thelaw.tas.gov.au/</a></p>

	Austlii <a href="http://www.austlii.edu.au/au/legis/tas/consol_act/">www.austlii.edu.au/au/legis/tas/consol_act/</a>
Vic	Primary site <a href="http://www.dms.dpc.vic.gov.au">www.dms.dpc.vic.gov.au</a> . Austlii <a href="http://www.austlii.edu.au/au/legis/vic/consol_act/">www.austlii.edu.au/au/legis/vic/consol_act/</a>
WA	Primary site State Law Publisher, via Parliament House website: <a href="http://www.slp.wa.gov.au/statutes/swans.nsf">www.slp.wa.gov.au/statutes/swans.nsf</a> [NB no link through Dept of Justice website – only through WA Government – Parliament – Statutes]. Austlii <a href="http://www.austlii.edu.au/au/legis/wa/consol_act/">www.austlii.edu.au/au/legis/wa/consol_act/</a>
NZ	Primary site Commercial publisher: <a href="http://www.gplegislation.co.nz/">www.gplegislation.co.nz/</a> Free browsing access to source law only (pay for downloads of whole Acts). No electronic access to consolidations. An unofficial database of NZ legislation is planned to become available online by mid-2002; official database by early 2003. See PCO website for details of “Public Access to Law” progress and access to electronic tables of NZ legislation <a href="http://www.pco.parliament.govt.nz/">www.pco.parliament.govt.nz/</a>
Ontario	Primary site <a href="http://www.e-Laws.gov.on.ca">www.e-Laws.gov.on.ca</a> Consolidations of statutes and regulations, with source law (Acts and regulations as made) to be added in 2003. Bills available via the Legislative Assembly website at <a href="http://www.ontla.on.ca">www.ontla.on.ca</a> .

<b>4.5 Are there any plans for an electronic form of the legislation to become the statutorily authorised ‘official’ form of the law (as now in the ACT)?</b>	
ACT	Authorised versions are published on <a href="http://www.legislation.act.gov.au">www.legislation.act.gov.au</a> , in pdf form (non-official rtf files also supplied for convenience of users). Non-authorised republications put up in rtf form - for example, pre-September 11th (commencement of authorising legislation) versions and “future” republications (showing law as it is to be amended by non-commenced amendments).
Cwlth OPC	Under review.
NSW	No.
NT	Not at this stage.
Qld	Evidence Act 1977 recently updated to allow courts to receive copies of legislation from any source that appears reliable. The authentication of electronic reprints is inevitable.
SA	No
Tas	Plans but nothing concrete.
Vic	No.
WA	No.
NZ	Yes. Timeline to be determined. [Unofficial database online access by end 2002]
Ontario	Yes. In policy development stage.

## 5 Drafting style

<b>5.1 Samples of primary Acts (subordinate laws) and amending Acts (sub laws).</b>	
ACT	<i>Protection Orders Act 2001</i> (No 89 of 2001); <i>Protection Orders (Consequential Amendments) Act 2001</i> (No 90 of 2001).
Cwlth OPC	<i>Public Service Act 1999</i> (No 147 of 1999). <i>Family and Community Services Legislation Amendment (New Zealand Citizens) Act 2001</i> (No 18 of 2001)
NSW	<i>Chiropractors Act 2001</i> ; <i>Workers Compensation Legislation Further Amendments Act 2001</i> (Bill provided)
NT	
Qld	<i>Mental Health Act 2000</i> , No 16; Financial Management Standard 1997 (incl commentary) <i>Domestic Violence Legislation Amendment Bill 2001</i> ; WorkCover Queensland Amendment Regulation (No. 1) 2001, SL 197.
SA	<i>Petroleum Act 2000</i> . <i>Racing (Controlling Authorities) Amendment Act 2000</i> (No 59 of 2000). <i>Statutes Amendment (Gambling Regulation) Act 2001</i> (No 18 of 2001).
Tas	<i>Child Care Act 2001</i> . <i>Gas Amendment Act 2001</i> . <i>Federal Courts (Consequential Amendments) Act 2001</i> .
Vic	<i>City of Melbourne Act 2001</i> (No. 5 of 2001). <i>Building (Amendment) Bill 2001</i> . <i>Corrections (Custody) Act 2001</i> (No. 45 of 2001).
WA	<i>Port Authorities Act 1999</i> . <i>Port Authorities (Consequential Provisions) Act 1999</i> .
NZ	<i>International Crimes and International Criminal Court Act 2000</i> ; <i>Civil Aviation (Medical Certification) Amendment Act 2001</i> ; <i>Fisheries (Foreign Fishing Vessel) Regulations 2001</i>
Ontario	Any recent bills in our Assembly will give you feel for our style - see <a href="http://www.ontla.on.ca">www.ontla.on.ca</a> The pdf version will also give you a feel for our printed formats. The e-Laws site <a href="http://www.e-laws.gov.on.ca/">www.e-laws.gov.on.ca/</a>



<b>5.2 How would you briefly describe the ‘house style’ of your office (e.g. by comparison with other Australasian or other English-language jurisdictions, or with non-legislative legal drafting)? Has it changed greatly in recent times?</b>	
ACT	Until 1998, we followed traditional Cwlth drafting style (though in the late 90s that was already developing beyond what was acceptable in the ACT) – as clear and concise as possible but with a conservative bias and a reluctance to change old habits. Still clearer than non-legislative drafting and UK drafting. From early in 1999, we have moved rapidly to a more radical plain English style. Legal jargon is avoided and a certain level of informality is actively encouraged. Narrative presumptions more boldly made, avoiding cumbersome cross-references. Explanatory material encouraged if appropriate.
Cwlth OPC	‘Emphasises plain English and has made a conscious move towards simplifying provisions and making them more readable. Substantial resources invested in last 10-15 years, drafting style substantially changed. Use of plain English drafting devices noticeable – ‘in addition to the obvious changes, the <i>process</i> of drafting has altered. Many drafters now adopt particular planning techniques and hold more face-to-face meetings than previously’. More external scrutiny in some cases (Tax Law, Corporations projects).
NSW	Plain clear language. Early 1990s enthusiastic use of ‘plain English’ devices (flow charts, boxed overviews, examples, notes). Recent years ‘return to reliance on the use of the words and structure of the document’.
NT	Not ‘cutting edge’. Mid-90s on: clauses deal with single matters (not conglomerations); pomposity gone; clauses shorter than before. ‘Hyper-modern’ compared to the English, not as modern as Qld or Cwlth (examples, bolding definitions, including ‘dictionaries’, shifting locations etc). [Very similar to ACT circa 1998]
Qld	Plain English style. Style changed in early to mid-90s and then settled down in the later 1990s. Consideration could then be given to documentation of changes and finessment of changes to style.
SA	Comparable to WA, NT, Vic and Tas. ‘Consistent with the principles of plain English’. More rigid format than ACT (for example).
Tas	Similar to other Australian jurisdictions. Main change from B5 to A4 several years ago. Style changes made from time to time.
Vic	‘Reasonably modern’, ‘can generally be relatively easily understood by a reader who has completed one of the upper levels of secondary school’. However, the respondent’s view is that the format has deficiencies (headings, smaller point sizes for schedules, little space between sections and bolding of Victorian Act references.) Compares well with Commonwealth (though Cwlth legislation inherently more complex, perhaps). Not quite as ‘plain’ or informal as NSW legislation. Way ahead of private legal drafting (‘in terms of their legal writing, many Victorian lawyers have yet to make it into the 20th century, let alone the late 20th or this century’). Plainier than NZ in style, and

<b>5.2 How would you briefly describe the ‘house style’ of your office (e.g. by comparison with other Australasian or other English-language jurisdictions, or with non-legislative legal drafting)? Has it changed greatly in recent times?</b>	
	‘way ahead’ of US legislation.
WA	<p>‘Modern traditional’. Developed under Garth Thornton QC (PC 20 years ago). ‘arguably somewhat ahead of its time then and (in our view) has survived reasonably well’. Amendments not in schedules (though schedules &amp; tables used on occasion to condense amendments). Pedantic internal references discarded (if unnecessary), other modern techniques to make legislation more readable adopted.</p> <p>‘WA has tried to confine the content of its legislative instruments to legislation, resisting a trend of legislation being infiltrated with explanatory and other secondary information’.</p> <p>Format changed 1999 – now largely based on the new Cth format.</p>
NZ	‘Evolving’. Quite a few recent changes. Format changed 1/1/2000. Revised drafting manual November 2000. Style guide revised August 2001.
Ontario	We attempt to follow the principles of plain-language drafting. We have been heavily influenced by the civil code style of Quebec. I would describe our style as midway between the civil code and the common law drafting styles. Compared to much of what happens in non-legislative drafting we use a much simpler style. Are we 100% successful in following plain language principles – no. However, like so much of life – it’s a journey. Recent changes – no law Latin, no law French in English versions, no Anglicisms in French versions, gender-neutral style, no clause sandwiches.

<b>5.3 How much variation in drafting style is there within the office? Apart from the osmotic effect of the training process, is there much (or any) express insistence on uniformity of style?</b>	
ACT	The change in style introduced in 1999 in the ACT office was accompanied by an increased emphasis on uniformity and on documentation of house style. The Parliamentary Counsel has a hand, or at the least an active oversight, in all drafting projects. There are stricter controls on standard vocabulary, and a greater attempt is made than before to establish standard approaches to standard issues. But this doesn't prevent differences in style between drafters; drafting is still a bespoke art that seeks individualised solutions for particular problems.
Cwth OPC	Insistence on uniformity of amending forms and matters covered by Drafting Directions and the Plain English Manual. No insistence on uniformity otherwise, and 'in practice drafters do adopt different styles'.
NSW	Standard precedents for many matters, but room for variations in individual style. Junior drafters rotated through supervisors to 'sample' different approaches while developing own style.
NT	3 years ago fixed amending formula. Some variation of style, but rarely possible to distinguish drafters work on stylistic grounds.
Qld	Insistence on uniformity of style. Drafting Standard and Precedents and Information Standard followed. Word search macro used to vet words and phrases. Standards and macro subject to continuous improvement. D2 process ensures common thread.
SA	'Relatively mild variation of drafting styles'. Parliamentary Counsel tries some variations (e.g. use of examples), as does the respondent (e.g. use of dot points). 'However, by far the bulk of our drafting conforms to a style that has been developed over the years, but is not recorded anywhere'.
Tas	'Little express insistence on uniformity of style'. Enact system (style sheets etc) 'imposes a certain amount of consistency upon drafters'. Amending forms automated due to automatic consolidation system. 'Drafter can override the automatically generated wording but this is seldom done'.
Vic	Considerable variation. 'Some of us draft in a general style that was state of the art in the early 1980s – some of us draft in a style that would not be out of place in the most progressive of the Australian offices, and most of us fall somewhere in between'. Uniformity for some things (e.g. commencement provisions), but no express insistence for the most part. Limits on radical departures from norm.
WA	Word 97 macros used extensively, resulting in uniformity in formal matters. General conformity of style, but no rigid insistence on uniformity.
NZ	Not much express insistence on uniformity of style (ie 'individual writing flair' not suppressed). [Osmosis:] Absorption via manuals, proof-readers, mentors, supervisors, peer-reviewers, agencies, MPs, office of Clerk of House of Reps (assent version of Bill after 3 <sup>rd</sup> reading). Regard given to judicial rulings, particularly on interpretation.
Ontario	Reasonable range, but most would recognise an 'Ontario' style.

<b>5.4 What written documentation is there of the office drafting style (e.g.office manuals, collections of ‘drafting instructions’)? How comprehensive and up-to-date is the documentation?</b>	
ACT	Office Practice Manual relatively comprehensive and reasonably up-to-date. ‘Words and Phrases’ Guide also used (in previous editions) in OLD and Qld, accompanied by a macro (see Qld response to 5.3 – the application of the macro is not now insisted on as a matter of course). IT Procedures manual on macros etc.
Cwlth OPC	Extensive and up-to-date Drafting Directions (on website). Word Notes relate to styles & formatting, also comprehensive and up-to-date. [Also Plain English Manual, available on website – see 5.3].
NSW	Drafting instructions 1985-91. Drafting circulars 1992-01. Professional development circulars 1991-01. Amendment in committee manual (up to date). Drafting manual (being revised).
NT	Amending formula (in office manual). Periodic drafting instructions. Precedents directory in the making. Documentation up to date.
Qld	Drafting standard; Original legislation process manual; Precedents and Information Standard; Fundamental Legislative Principles Standard; Word Search Macro. Subject to continual improvement – monitoring and review by office committees.
SA	None. Some precedents for proclamations.
Tas	Up-to-date office procedures and precedent and EnAct users manual. No up-to-date drafting instructions.
Vic	An Office Manual has recently been compiled and is in use, still incomplete although a lot of work has gone into it. It incorporates drafting instructions, old and new, on various topics.
WA	Model Bill with amending forms. 1999, comprehensive but not up-to-date (but there haven’t been significant changes). Customised word-processing manual, up-to-date. Parliamentary Counsel’s occasional drafting notes. Intended to consolidate these into a drafting manual in due course.
NZ	Drafting manual (rev Nov 2000) & style guide (rev Aug 2001).
Ontario	Short set of drafting conventions (available to clients and public). Developing drafting manual (quite advanced). Instructions document circulated to clients.

<b>5.5 Does your office have a uniform amending style? Are amending forms documented? How comprehensive and up-to-date is the documentation?</b>	
ACT	Yes. Amending Reference Guide, revised to end 2001. (To be incorporated into Office Practice Manual.) 'Desktop Guide' – stripped-down version of Reference Guide. 'Comparison Guide' used during transition from old to new style 2000-01. Occasional circulars clarify issues in amending guide. New style developed from Qld & OLD styles (see Qld below), but with some differences. Final check reads by drafters & editors enforce uniformity.
Cwllth OPC	Yes. Amending Forms Manual (available on website), very comprehensive and up-to-date.
NSW	Yes. Styles in WordPerfect ensure uniformity.
NT	Yes (see above).
Qld	In Drafting Standard, detailed and current. Location line – amendment command line – inserted text line(s) (if needed). 'omit', 'omit and insert', 'insert'.
SA	Yes – uniform style. No – style is not documented, but some macros internally developed.
Tas	Amending legislation automatically generated from drafter's 'marking-up' of consolidated principal legislation. Documentation in EnAct system specifications.
Vic	No. Respondent has found 7 or 8 different amending styles (variations of Victorian style). There was a mid-1980s instruction that has been modified through oral tradition, and is anyway difficult to apply (e.g. referencing inconsistencies). Tentative moves are afoot to develop more consistent amending styles.
WA	Yes. Model Bill (see 5.4). Word 97 macros used following model Bill examples.
NZ	Yes. Style guide. Proof-readers enforce it.
Ontario	Precedents, with some flexibility. 'However, as part of e[Laws we are examining the use of highly standardized wording to facilitate automatic updating of our database'. [Tas Enact & RMIT influence]

<b>5.6 Has your office expressly adopted a ‘plain English’ policy? If so, in what form? Is there any detailed documentation of this policy (e.g. plain English drafting manual)?</b>	
ACT	Yes. One of PCO ‘Key objectives’ (stated in Annual Report). Words and Phrases Manual and general theme of Drafting Practice Manual and Amending Forms Reference Guide. Basic PE guidelines are enforced for each Bill (and draft regulation) (e.g. 5-line limit on slabs of text) by checklist at time of handover for editing, but this is a checklist only and may be deviated from.
Cwlth OPC	Yes. Plain English Manual (on website).
NSW	‘Plain <u>language</u> was adopted as a policy in 1986’. Plain Language Policy available on PCO website.
NT	No – no manual as such. ‘we say we have a plain english style (but then we all say that now, don’t we?)’. Sceptical about whether what is regarded as plain English ‘actually makes a difference to anyone’s comprehension’ of the law.
Qld	Yes, since 1991. Standards based on this policy.
SA	Parliamentary Counsel requirement to draft in ‘plain English’. No documentation.
Tas	Yes. No detailed documentation (apart from some precedents).
Vic	Yes, mid-80s (Attorney-General Jim Kennan’s insistence). Robert Eagleson in 1986 suggested additional changes. Job advertisements mention that Vic PCO is a ‘plain English office’. Statement of policy on website.
WA	Considers that PCO ‘has been writing in reasonably ordinary and clear language, and presenting its work in readable formats, for at least the past couple of decades.’ But no detailed documentation.
NZ	Yes. ‘drafting should be clear, accessible and understandable.’
Ontario	Yes. Lawyers’ meetings, standard texts, drafting conventions and drafting manual.

**5.7 Here are some of the markers associated with ‘plain English’ drafting style. Give brief notes of office practice:**

- ‘must’ rather than ‘shall’?

ACT	Yes. ‘Shall’ never used. But not all uses of ‘shall’ replaced by ‘must’ (alternatives: present tense for statements of law; passive ‘is to’ if imperative not appropriate).
Cwlth OPC	Yes, always.
NSW	‘You must not use shall!’
NT	Yes.
Qld	Yes. Makes change when amending (when appropriate) as well.
SA	Yes
Tas	Yes.
Vic	Yes, 1985 (Attorney-General Jim Kennan’s insistence), for obligation. Most drafters stopped using ‘shall’ entirely. But recently use of ‘shall’ for obligation is re-emerging.
WA	‘Shall’ avoided. ‘Must’ used instead sometimes, but not always.
NZ	Yes.
Ontario	No. Disagree with Eagleson etc rationale for change.

- examples (part of the law, or same status as notes?)

ACT	Yes. Part of the law, non-exhaustive, may extend but not limit meaning of exemplified provision ( <i>Legislation Act 2001</i> , s 132). Provision may be an 'example' even if not labelled as such (LA, s 132 (2)).
Cwlth OPC	Part of an Act, but <i>Acts Interpretation Act 1901</i> , s 15AD – examples not exhaustive, and if inconsistent with provision exemplified, provision prevails.
NSW	Notes (not part of Act). Mainly in technical legislation, e.g. <i>Duties Act 1987</i> .
NT	Not used.
Qld	Used sparingly. <i>Acts Interpretation Act 1954</i> , s 14 (3) similar to ACT provision but provides that exemplified provision prevails in the event of inconsistency.
SA	Used by Parliamentary Counsel, not other drafters – regarded as part of Act (though no statutory provision relating to their use).
Tas	No, but have had to be accommodated for adoption of interstate laws including them.
Vic	1/1/01 change to Interpretation Act made examples part of the law. Since then increasing use (though many drafters are yet to use them).
WA	'It is not generally accepted that examples are an appropriate means of formulating general rules of law. They are sometimes used to illustrate the operation of a provision, but always taking care to be sure that the rule is sufficiently clearly formulated to work without relying on the example...fulfils a function similar to case law'
NZ	Unless contrary statement in Act, example part of law ( <i>Interpretation Act 1999</i> , s 5). 'Rare, but outstanding' example in <i>Personal Property Security Act 1999</i> (contains express provision requiring inconsistency between provision & example to be resolved in favour of provision, s 21).
Ontario	Not in text, but used in explanatory note.



- readers' guides, summaries, flow-charts etc

ACT	Yes, if appropriate. Use not extensive. Flow-charts inserted (rarely) as notes (non-legislative). ( <i>Workers Compensation Amendment Act 2001</i> ).
Cwlth OPC	Frequently used.
NSW	Not as such. Flow charts rarely ( <i>Health Care Complaints Act 1993; Mental Health Act 1990; Evidence Act 1995</i> ). Summaries from time to time ( <i>Taxation Administration Act 1986</i> ).
NT	No
Qld	Readers guides often; flowcharts occasionally.
SA	Not used.
Tas	No, but have had to be accommodated for adoption of interstate laws including them.
Vic	Very limited experiments with tables and flowcharts. No readers' guides or summaries. Sometimes 'outline' section used (summary of operation of Act).
WA	No. 'These are further examples of confusing the function of clear legislative drafting with the functions of analysing, explaining and commenting on the legislation'.
NZ	Occasionally ( <i>Personal Property Security Act 1999</i> ).
Ontario	May be supplied by instructors at first reading stage.

- explanatory notes [ie annotations inserted by the drafter throughout the text of a Bill]

ACT	Used often, usually for internal and external cross-references. Not part of the Act ( <i>Legislation Act 2001</i> , s 127 (1)). Parliamentary Counsel may authorise omission, change or insertion of note in republication (LA s 116 (1) (m)).
Cwlth OPC	Used fairly frequently.
NSW	Common. Not part of Act.
NT	No
Qld	Used occasionally.
SA	Used by some drafters. Footnotes do not form part of the Act (Interpretation Act). A note in the body of the Act would be viewed as part of the Act.
Tas	No.
Vic	Yes, but only by some drafters. Previous practice of printing at end of Act restricted practical utility; use at foot of provision annotated makes them more attractive.
WA	No. See above on readers' guides etc.
NZ	See 2.1 (PCO drafts clause by clause analysis of explanatory note for first reading of Bills. Policy statement & reg. impact statement drafted by instructing agency (although PCO edits for style, consistency, clarity). Ex note for bills accompanies introductory version; dropped in subsequent versions (reported back, 2nd reading, 3rd reading, assent)
Ontario	Yes, same as NZ. It is proposed to put the Ex. note for each Bill up on the e-Laws website.

- ‘dictionaries’ at end rather than ‘interpretation’ provisions at beginning

ACT	All new legislation has a ‘dictionary’ at end (unless there is only a short list of definitions). When an Act is amended significantly, definitions are also often moved from an ‘interpretation’ or ‘definitions’ provision at the beginning, to a new ‘dictionary’ at the end.
Cwlth OPC	Uncommon, although sometimes used (e.g. <i>Income Tax Assessment Act 1997</i> , <i>Native Title Act 1993</i> ).
NSW	Only if large number of intrusive definitions. ‘Have rather gone out of fashion’
NT	No. (‘Always a cosmetic change I thought – easier for the reader to miss!’)
Qld	Yes (default), but ultimately a matter for judgment (e.g. may be placed at beginning if dictionary would be too remote from body of Bill, or if the Bill is short).
SA	No
Tas	No, but have had to be accommodated for adoption of interstate laws including them.
Vic	No. Respondent yet to be convinced that this is a ‘plain English practice’. Can be difficult if dictionary not literally at the end. Victorian practice of including index in large principal Acts with list of all defined words and page number may be satisfactory substitute.
WA	Bill for a new Act, or a reprint, usually includes list of defined terms at the end (terms defined anywhere in the legislation), with reference to provisions. Not part of legislation, can be updated in republications. Dictionaries and glossaries seldom used as a result.
NZ	No – interpretation section at beginning.
Ontario	No – definitions at the beginning.

- frequent in-text definitions (*tagged term* definitions or similar)

ACT	Yes, often. My personal view is that we need to impose some consistency on definition style within the office (we are going through an experimental period with this and other new devices, and office use is not entirely consistent).
Cwlth OPC	Frequently used.
NSW	Frequently used (bold ital).
NT	If necessary will restrict def to section if only place used.
Qld	Yes, often. If in-text definition used outside of section, it will be inserted in dictionary or general definition section & signposted.
SA	Becoming more common.
Tas	No.
Vic	Sparingly, but increasingly used. 'Drafting device' not 'plain English' device. Harder to find than normal definitions (thus 'anti-plain English').
WA	When helpful. Defined terms bolded (to enable them to be included in automatically generated list of defined terms – see previous answer).
NZ	Occasionally definitions introduced with restricted range (part, division, section).
Ontario	No.

- highlighting of defined terms (e.g. by asterisk\*) [ie apart from the def itself]

ACT	No. Considered too distracting (see WA comment). But cross-reference to definition sometimes included in an explanatory note.
Cwlth OPC	Sometimes (e.g. Tax Code Acts). At drafter's discretion.
NSW	No
NT	No.
Qld	No. Highlighting (bold italic) only at point of definition.
SA	No.
Tas	Definitions bolded and put in quotes [at point of definition. In Tas style, no highlighting of defined terms elsewhere]
Vic	Experiments in some regulations. One experiment grouping defined terms at bottom of page (labour intensive, but could be automated). Generally too distracting.
WA	No. Too distracting. 'the technique is considered potentially misleading as the context, the Interpretation Act, and other things can affect the meaning of terms even though they are not defined'.
NZ	No. [boldface used in def itself, though]
Ontario	No.

- relaxation of single sentence/single provision rule

ACT	No. Single sentence rule listed as ‘plain English’ rule of thumb (drafters’ checklist), despite some PE literature which regards single sentence/single provision rule as anti-plain English (leading to complexity of legislative sentences).
Cwlth OPC	No requirement to draft in single-sentence provisions. But not routinely ‘relaxed’.
NSW	Yes, sparingly.
NT	No
Qld	No.
SA	Very occasionally.
Tas	No.
Vic	No absolute rule – occasionally used. Query whether ‘plain English’ practice (as such) – used in the past.
WA	Not widely
NZ	Very occasionally (& when done, semi-colon rather than period used to separate sentences). Not encouraged.
Ontario	Yes, but only in limited circumstances.

- limits on sentence length & provision length

ACT	Yes. No more than 5 subsections/section; 5 paragraphs/subsection; 5 lines/provision. But rules of thumb only (see drafters' checklist).
Cwlth OPC	No explicit rules generally. Rules for tax law improvement drafting, however.
NSW	5-line rule, but flexible.
NT	Yes, but not by set number of words or grammar checkers.
Qld	5 lines maximum without paragraphs. Preference to limit length if possible.
SA	Not particularly.
Tas	Yes.
Vic	No formal rule, but longstanding informal policy that sentence/provision length shouldn't be too long.
WA	Try to keep short, but no inflexible limit.
NZ	Encouraged to break section after 6 subsections. Short sentences preferable, but use of paras/subparas tends to support longer sentences without unduly reducing readability/accessibility
Ontario	Encourage short sentences and short provisions.

- other special features (e.g. bias towards rewriting for ‘plain English’ style when amending rather than minimal textual amendment)

ACT	Rewriting when amending actively pursued (smallest text unit or units rewritten rather than textual amendments). But not for minor & consequential amendments. Depends on situation (e.g. see OPC comments below). I personally tend to think that a problem with too aggressive a rewriting policy is that it presumes adequate explanatory memoranda and 2nd reading speech material to explain actual change. This assumption may not always be relied on (PCO doesn't prepare these documents). See Vic comment below.
Cwlth OPC	Plain English rewriting decided on a case-by-case basis. Preference towards rewriting, but depends on instructions and situation (e.g. judicial interpretation, political considerations, e.g. keeping Bill size small).
NSW	Rewriting whenever appropriate & if time permits.
NT	No.
Qld	Yes, with authority from instructor
SA	Some rewriting, as far as reasonably appropriate.
Tas	Usually minimal textual amendment.
Vic	Bias towards rewriting wherever possible. View that it is easier for people to read a complete provision rather than amendments. Rewritten text required to conform to style current at time of rewriting.  Free rein over primary Act structures.  Explanatory memorandum begun to be published with certain selected Acts, more generally in annual bound volumes. But standard of explanatory memorandums not good. If standard were to improve, could considerably assist readers.
WA	‘Usually replace more than the minimal amount if there are multiple changes, but generally would not encourage excessive rewriting based only on stylistic preference’.
NZ	Informal drafters’ meeting once a month to discuss drafting issues & swap techniques (shifting attendance). Work of group recently led to revision of amending formulas in style manual.
Ontario	No clause sandwiches. No law Latin or law French, non-sexist style.



**5.8 Any other comments about your office drafting practice (e.g. peculiarities of your jurisdiction, or any reforms that are underway)**

NZ

Revision tracking system ('redlining') to assist Parliamentary select committees. This is in the process of superseding the 'slip' (amendment sheet) system. All bills coming before committee must be amended using redlining. But in some circumstances the slip system will continue to be used (e.g. bill reported back to House & House sends bill back to select committee). This appears to be due to a limitation in the current technology employed for redlining, which may change when the Public Access to Legislation project is completed (as it may provide us with more powerful tools).

Also, printing function coming in house, likely to change drafting technology (no conversion PCO-to-printer). 'New authoring tool', expected to make drafting more efficient.