



# How to read legislation, a beginner's guide

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## *How to read legislation, a beginner's guide*

### **1. Introduction**

A lady called Lisa asked if there is a book with the basics about how to read and understand legislation; something like a *How to Read Legislation for Dummies*.

There are books on how to read and interpret legislation but, as well as including information on the subject, they often include related information not central to the subject. They are pitched at audiences of different levels and none is specific to WA legislation.<sup>1</sup>

This publication tries to be a beginner's guide for readers of WA legislation. It tries to explain things simply and shortly.

It does not deal with how legislation is drafted or how it is enacted. On that see *Getting legislation drafted and enacted*, published by Parliamentary Counsel's Office (WA) and 'About Bills' on Parliament's website.<sup>2</sup>

It does not go into much detail on statutory interpretation; i.e. the law on interpreting legislation.

It assumes readers have a copy of the *Interpretation Act 1984* to refer to.<sup>3</sup> It assumes readers will read that Act and the provisions of it that this publication refers to. This publication is not a substitute for reading the *Interpretation Act 1984*.

### **2. Laws, a broad overview**

Broadly, the laws of WA are a combination of these—

- Commonwealth legislation;
- WA legislation;

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<sup>1</sup> One textbook on the subject is nearly 900 pages long.

<sup>2</sup> [http://www.department.dotag.wa.gov.au/P/parliamentary\\_counsel.aspx](http://www.department.dotag.wa.gov.au/P/parliamentary_counsel.aspx)  
<http://www.parliament.wa.gov.au> >Bills >About Bills

<sup>3</sup> <http://www.slp.wa.gov.au/legislation/statutes.nsf/default.html>

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- the common law (aka case law).

The answer to a legal question may be found in one or more of those laws. It will not necessarily be found only in legislation.

This publication refers to WA legislation unless it says otherwise.

### **3. What is 'legislation'?**

It might be useful to clarify what this publication means by 'legislation'. Legislation consists of laws made by Parliament or by people who are given power by Parliament to make laws, such as the Governor.

Broadly, there are two kinds of legislation: Acts and subsidiary legislation.

Acts. These are laws Parliament has enacted. Sometimes Acts are called 'Acts of Parliament'. Less often Acts are called 'primary legislation' to distinguish them from subsidiary legislation. Usually they each have the word 'Act' in their title.

An Act has to be read with any subsidiary legislation that has been made using powers in the Act to make subsidiary legislation. Subsidiary legislation will often fill in details not covered by the Act under which it is made. Not all Acts have or need subsidiary legislation.

Subsidiary legislation. These are laws made by people using powers that Parliament, by means of its Acts, has given them. Sometimes these laws are called delegated legislation or subordinate legislation. The Governor is the

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person most often given power by WA's Acts to make subsidiary legislation<sup>4</sup>.

Subsidiary legislation does not have the words 'subsidiary legislation' in its title. Subsidiary legislation<sup>5</sup> has various names, which do appear in its titles, such as—

- regulations;
- local laws;
- by-laws;
- planning schemes;
- rules.

The different names used by subsidiary legislation do not themselves mean differently named pieces of subsidiary legislation have different effects.

Subsidiary legislation is made 'under' an Act because it is only an Act that can give a person power to make subsidiary legislation. Acts that say someone can make subsidiary legislation say who can make it and say what things the subsidiary legislation can deal with.

A person making subsidiary legislation must not exceed the powers they have to make it. If they do, the subsidiary legislation will not be valid.

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<sup>4</sup> The Governor usually cannot make subsidiary legislation without being advised to do so by the Executive Council, which is established by the *Letters Patent Relating to the Office of Governor of the State of Western Australia* dated 14 Feb 1986 (*Government Gazette* 28 Feb 1986 p 683-6). Conventionally, the members of the Executive Council are the ministers of the government of the day.

<sup>5</sup> The *Interpretation Act 1984* s. 5 defines "subsidiary legislation" and lists various types. But in order for any document or instrument to be subsidiary legislation it must have legislative effect. What that means does not have a short, easy answer.

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Other descriptions of legislation. Legislation is sometimes referred to as 'written law', a term the *Interpretation Act 1984* s. 5 defines. That presupposes there is unwritten law, a subject too deep for this publication.

The 'Statute Book' is sometimes used to describe all of the legislation that exists in a place. It is an imaginary book because, of course, there is no one book that contains all WA's legislation. Currently WA has in force about 860 separate Acts and about 830 separate pieces of subsidiary legislation such as regulations and rules, not counting pieces of legislation made by local governments.

#### **4. Common law (aka case law)**

Apart from legislation there is another set of laws called the 'common law'. The common law' is the law made by the courts by means of the decisions they make in the cases they decide. Sometimes it is called 'case law'.

Legislation and the common law exist side by side. Legislation prevails over the common law if there is a conflict between them. However, the common law can and does affect legislation and legislation can and does affect the common law.

Some of the law on how to interpret legislation (aka statutory interpretation) is in the common law. As common law stems from courts' decisions in cases, decisions on how to interpret legislation will usually relate to only the provisions of the legislation which the cases involved. But they may contain general statements on how to interpret legislation.

The result is there are some cases that can be used whenever interpreting legislation and others that each relate to only a particular provision.

## **5. Some general observations about reading legislation**

Most people do not read legislation for enjoyment.

Usually, reading legislation is something people do because they have to for some reason. Such as because they are a student or a lawyer or a judge. Or perhaps because they are a public servant involved in administering legislation. Or perhaps because they are an MP. Or because they are a member of the public trying to work out the legalities of something they want to do.

Legislation seldom gives its readers much pleasure. More often it is probably a chore, and a boring one at that.

Reading legislation requires concentration and a concentration span. Unlike novels, some of which can be skip-read quickly without losing too much understanding, legislation has to be read slowly, carefully and methodically if the reader is to understand it properly. Skipping words in legislation is not advisable.

Legislation is written in English and its basic purpose is to communicate to readers various messages such as 'do X' or 'don't do Y'. Unfortunately it gets more complex than that. Although English is an amazing language, English words and sentences constructed of such words do not always mean the same thing to everyone. Communications in English are fallible.

For those reasons, any one piece of legislation might mean different things to different readers. When people disagree on what legislation means, it is advisable to get legal advice. Legal advice will be based on—

- the general law on statutory interpretation; and

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- if the courts have already interpreted the legislation in question or similar legislation, what the courts have already decided.

Legal advice on what legislation means will try to predict how the courts, if asked, would interpret the legislation.

#### **6. Plain English**

In the last decade or two, criticisms of the way legislation was drafted and an increase in advocates for and users of plain English have led to changes in the way legislation is drafted, chiefly in the way it is structured, but also in the language used. These changes arguably have made legislation easier to read and understand.

But how hard legislation is to read and understand will always be related to some extent to how complex are the things that it has to communicate. There are probably many books explaining Einstein's Theory of Relativity. Some will be easier to read and understand than others, depending on the abilities of the authors to communicate via the written word. It is unlikely any of them explains the theory in one short sentence.

The same goes for legislation. A complex scheme or concept will not necessarily be easy to communicate quickly in clear, simple language. How well the legislation communicates it will depend on the ability of the drafter. It is not always the fault of legislation that it is not that easy to read and understand. To some extent it may be the fault of those who thought up the scheme or concept that the legislation has to communicate. An explanation of how an hourglass works is likely to be much shorter, simpler and easier to understand than an explanation of how a clock works.

## **7. Where to find legislation**

Legislation made in WA is published by the State Law Publisher (SLP) which is part of the Department of the Premier and Cabinet. Paper versions can be bought from the SLP. Electronic versions are on various websites.

The SLP's website is at [www.slp.wa.gov.au](http://www.slp.wa.gov.au).

## **8. How to know what legislation to read**

All WA legislation is available to be read by everyone. But it is highly unlikely anyone has read all the legislation or even all the legislation that is currently in force.

Deciding what legislation to read depends on what you want to know. WA does not have a subject index of its legislation. The titles of the various pieces of legislation give a general idea of what they are about. More useful are the contents pages at the front of most legislation. On the websites, searches can be done electronically which is a great help. But even then, things can be missed.

Each year the SLP publishes the *Western Australian Legislation Information Tables* (formerly called an Index). The tables contain information about WA's past and current legislation. An up-to-date version of the tables is on the SLP's website.

Using those resources and perhaps information published by government agencies or local governments and perhaps text books, people should be able to find which piece of legislation they need. But, because of the quantity of legislation, patience and perseverance is needed sometimes.

## **9. Why read legislation?**

People often read legislation because they are looking for the answer to some question and not because they want to understand the legislation as a whole.

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But, unless the question is quite simple (such as what is the penalty for removing guano illegally), the reader will often have to get to understand all or a significant part of the legislation in question, or indeed other legislation that has a general effect, to get a full answer.

**10. Legislation of general effect**

Take removing guano. *The Criminal Code* s. 387<sup>6</sup> says—

**387. Removing guano without licence**

Any person who collects or removes guano on or from any part of the territorial dominions of Western Australia without lawful authority is guilty of a crime, and is liable to imprisonment for one year.

Those 35 words, which seem to convey a simple enough message, raise questions. Some are—

- (a) Why does s. 387's heading (i.e. 'Removing guano without licence') refer to 'licence' when the rest of section 387 does not?
- (b) What are WA's territorial dominions?
- (c) What does 'lawful authority' mean?
- (d) What are the consequences of it being a crime?
- (e) Can you be arrested for the offence?
- (f) Which court(s) can deal with people charged with the offence?
- (g) Is 'imprisonment for one year' a fixed penalty or just the maximum?
- (h) Can you be just fined for the offence or is imprisonment mandatory?

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<sup>6</sup> This is an old offence first enacted in 1902 and little changed since then.

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Without going into details, to get some of the answers to those questions a reader would need to read, respectively—

- (a) *Interpretation Act 1984* s. 32.
- (b) Case law, possibly.
- (c) Case law.
- (d) *Interpretation Act 1984* s. 67; *The Criminal Code* s. 3; *Criminal Procedure Act 2004*.
- (e) *Criminal Investigation Act 2006* Part 12; *Bail Act 1982*.
- (f) *Criminal Procedure Act 2004*; *Children's Court of Western Australia Act 1988*; *Magistrates Court Act 2004*; *District Court of Western Australia Act 1969*; *Supreme Court Act 1935*.
- (g) *Sentencing Act 1995* s. 9.
- (h) *Sentencing Act 1995* s. 41.

Even from that brief foray into the law on guano, it is clear not all answers to questions raised by a provision in a piece of legislation will be found in either the provision itself or the piece itself.

Some answers might be either in other legislation or in case law. And some questions will not be answered clearly by either legislation or case law.

In the above answers some legislation that has a general effect on other legislation is listed. The *Interpretation Act 1984* is probably the most important. Every reader of WA legislation should know about that Act and have some idea of the things it covers.

It is hard to list all WA legislation that has a general effect on other legislation but this is a start—

*Interpretation Act 1984*

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*Criminal Investigation Act 2006*

*Bail Act 1982*

*Criminal Procedure Act 2004*

*The Criminal Code s. 2-5, 7, 11-17 & 22-26*

*Evidence Act 1906*

*Sentencing Act 1995*

*Fines, Penalties and Infringement Notices Enforcement Act 1994.*

For those in or dealing with the public service, add—

*Public Sector Management Act 1994*

*Financial Management Act 2006.*

And for some of the basics of how we are governed, add—

*The Constitution (Commonwealth)*<sup>7</sup>

*Constitution Act 1889*

*Constitution Acts Amendment Act 1899.*

## **11. Interrelationship between pieces of legislation**

From the above it should be clear that an individual piece of legislation (say Act A) sits among many other individual pieces some of which have an effect on Act A.

Generally speaking, Act A (and its subsidiary legislation) will stand alone and not have an effect on other legislation. If Act A has any effect on other legislation it will usually be stated in it or in the other legislation.

The effect other legislation has on Act A may be to answer questions not answered in Act A, such as those above about removing guano.

But the effect may be one in conflict with or inconsistent with Act A. What if Act A says 'do X' and Act B says 'do Y' and X conflicts with or is inconsistent with Y?

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<sup>7</sup> In the *Commonwealth of Australia Constitution Act* (UK) clause 9.

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Sometimes it is hard to know if there is a conflict or inconsistency. For example, if a law imposes a speed limit of 50 kph and another a limit of 70 kph on the same road, it is possible to obey both. There is case law on that.

If the conflict is between Act A and a piece of subsidiary legislation, Act A usually prevails.<sup>8</sup> But, of course, Act A or some other Act might say otherwise.

If the conflict is between two of WA's Acts, those questions have to be resolved by statutory interpretation. Often the more recently enacted Act prevails but beginners should be careful on this and get legal advice. Likewise if the conflict is between two pieces of WA's subsidiary legislation.

If the conflict is between WA's legislation and the Commonwealth's, the Commonwealth's prevails.<sup>9</sup> But, of course, a Commonwealth Act might say otherwise.

The extent to which one piece of legislation prevails over another is also sometimes hard to know. Again there is case law on that.

If two pieces of legislation seem to conflict, it is usually advisable to get legal advice on whether there is a conflict, on which prevails, and to what extent it prevails.

## **12. Interrelationship between legislation and case law**

From the above it should also be clear that an individual piece of legislation (say Act A) exists along side case law some of which is on statutory interpretation. Some case law might be about Act A itself. Which case law is relevant to a

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<sup>8</sup> See *Interpretation Act 1984* s. 43(1).

<sup>9</sup> See *The Constitution* (Cwlth) s. 109.

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particular question of statutory interpretation will depend on the question.

So the meaning of legislation sometimes depends on what case law says.

Readers who are not lawyers should be careful when reading case law because one case's decision may have been overruled or modified by a later case. So a case that seems to answer a question of statutory interpretation may in fact not.

### **13. Things to remember before reading legislation**

Before starting to read any legislation there are some things in the *Interpretation Act 1984* worth remembering.

What is and is not part of the law. Although legislation sets out laws, not all of the words in legislation are part of the law. The *Interpretation Act 1984* s. 31 and 32 cover this. In short—

- These are not part of the law—
  - table of contents;
  - headings and footnotes to individual sections, regulations, clauses, by-laws and provisions of a similar level;
  - notes at the end of reprints of legislation, including the compilation table.
- The rest is part of the law unless the legislation says otherwise. For example, legislation might say notes in it are not part of the law.

It follows that schedules, appendices and headings (other than those mentioned) in legislation are just as much part of the law as other bits of it.

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The order in which provisions appear in legislation does not usually affect their relative importance. The last provision in the last schedule of an Act carries as much weight as every other provision in the Act.

Headings to sections etc. (e.g. **Removing guano without licence**), in particular, are not part of the law and it is unwise to rely on a section's heading to tell you what is in the section. A heading is meant to be a short pointer to the subject matter of the section, in much the same way as an entry in a book's index is a pointer. A section's heading almost never conveys accurately or fully what is in the section.

#### Words and phrases defined in the *Interpretation Act 1984*.

If the legislation you are about to read does not define a word or phrase that it uses, the *Interpretation Act 1984* might. See *Interpretation Act 1984* s. 5, 11, 12, 13, 13A, 13B, 13C, 13D, 17, 44, 46, 56, 62, 75 and 76. And if neither the legislation you are about to read nor the *Interpretation Act 1984* defines the word or phrase, it has its ordinary, everyday meaning unless case law gives it a meaning.

Defined words and phrases include other parts of speech and grammatical forms of them. The *Interpretation Act 1984* s. 9 deals with this. For example, if the verb 'sell' is defined, that definition will apply also to the verb's tenses that use 'sold', to the nouns 'sale' and 'seller' and to the verbal noun and adjective 'selling'.

Gender and number. The *Interpretation Act 1984* s. 10 deals with this. As a result 'he' etc. includes 'she' etc. and 'cat' includes 'cats' and 'cats' includes 'cat'.

Internal references. The *Interpretation Act 1984* s. 15 deals with this. Its effect is that if Act A refers to Part 6 then it is

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referring to Part 6 of Act A, not to Part 6 of any other piece of legislation unless Act A says the reference is to Part 6 of something else. Likewise if a section refers to subsection (6) it is referring to subsection (6) of that section, unless it clearly is not. Likewise if a subsection or a paragraph in it refers to paragraph (d), it is referring to paragraph (d) in that subsection, unless it clearly is not.

Conjunctions. In legislation conjunctions are most often used between paragraphs and between subparagraphs. But paragraphs and subparagraphs will not always have conjunctions between them. That may be because no one conjunction is suitable or because none is needed. Legislation seldom uses 'and/or' because the result is unclear.

If in 3 or more paragraphs only the second last has a conjunction after it, that conjunction is implied after the ones without conjunctions after them. So (a)...; (b) ...; (c) ...; and (d) usually means (a)...; and (b) ...; and (c) ...; and (d). If conjunctions are needed between paragraphs, modern legislation has whatever conjunction is needed after every paragraph.

The conjunctions most often used are 'and' and 'or'.

Usually 'and' between, say, two paragraphs means both have effect at the same time. So 'If M believes (a) and (b), M must do X.' means M cannot do X unless M believes both (a) and (b).

Understanding what 'or' means can be trickier. The *Interpretation Act 1984* s. 15 clarifies one aspect of the use of 'or' but not all uses of 'or' between, say, paragraphs mean only one of them can apply. If Act A says 'M may do (a) or (b) or (c).', it does not necessarily mean M can do only one of them. It depends on the context.

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The Interpretation Act 1984 can be overridden. Although the *Interpretation Act 1984* defines various words and phrases and has rules about how to read legislation, any or all of it can be and sometimes is overridden by individual pieces of legislation. See *Interpretation Act 1984* s. 3.

**14. Basic rules for interpreting legislation**

Other things worth remembering before starting to read legislation (say an Act) are these important basic rules—

- the Act has to be read as a whole; and
- the Act has to be interpreted in such a way as to give effect to its purpose or object.

That an Act has to be read as a whole is not that strange an idea because many books are written to be read as a whole. There are exceptions such as dictionaries, recipe books and the like.

Do long Acts such as *The Criminal Code* or the *Local Government Act 1995* have to be read as a whole? Not necessarily, but readers who do not read the whole may not get a full understanding. A reader who reads only *The Criminal Code* s. 387 on guano will not know about what the Code says about things such as who is criminally responsible for offences (in Chapter V of the Code).

Interpreting legislation in such a way as to give effect to its purpose or object is called the 'purposive approach'. The *Interpretation Act 1984* s. 18 supports it. So, if legislation is not clear on what it is saying, the reader has to try to work out what its purpose or object is. Then the reader has to interpret it to give effect to that purpose or object. That is sometimes easier said than done but not always.

Understanding what its purpose or object is may be helped by things such as the long title (in an Act) and provisions (if

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any) that set out the purpose or objects. But often the only way to understand say an Act's purpose is to read it from cover to cover and to get a feel for what it is trying to do. The long title and any purpose or objects provision will not contain the full answer. Although pieces of legislation do not, like novels, have plots, understanding the purpose of a piece of legislation is akin to understanding a novel's plot. You have to read it all.

Legislation seldom explains why it was enacted.

Sometimes the reasons are easy to deduce. Without reading the *Dangerous Goods Safety Act 2004*, it is probably a fair bet it was enacted to try to ensure dangerous goods are handled safely so people are not hurt. On reading it, it becomes apparent it is concerned also with protecting property and the environment. Why was the *Contraceptives Act 1939* (now repealed) enacted? Reading it may be the only way to find out.

Sometimes the reasons are not so easy to deduce. The reasons might become clear when the legislation is read as a whole. But they will not usually be in the legislation.

The reason why legislation was enacted is usually explained during the process of enacting it.

To understand the purpose of legislation, it is sometimes useful to read what was said when it was being enacted.

Before Parliament enacts an Act, it considers a bill for the Act. The bill is in effect a draft of the Act. The person introducing the bill, usually a government minister, explains to Parliament why it is being introduced and what it proposes. Also the person gives Parliament an explanatory memorandum about the bill which explains

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each clause<sup>10</sup> of the bill. Those explanations and the debate about the bill may help to understand the bill or a particular bit of it.

Sometimes a bill is introduced because of a report by someone such as the Law Reform Commission of Western Australia or a Royal Commission. The report may help to understand the bill or a particular bit of it.

Subsidiary legislation is not preceded by a bill and not all subsidiary legislation is reviewed by Parliament. Some is and is sent to Parliament with an explanatory memorandum. However, as those explanatory memorandums are not usually publicly available, they are not usually available to help people understand subsidiary legislation or its purpose.

Regulatory impact statements (RISs) are now required for some pieces of subsidiary legislation and should be publicly available if the legislation is enacted. RISs may help people understand subsidiary legislation and its purpose but that is not their main purpose.

The above aids to understanding are often used informally. But in courts they can be used only for limited purposes. The *Interpretation Act 1984* s. 19 deals with that. Note the non-exclusive list in s. 19(3) of what can be considered.

#### **15. The shallow end, general tips**

At this stage, it is assumed a person has got a piece of legislation (say an Act) to read and is about to start. Although this §15 refers to Acts, it can be taken to also refer to subsidiary legislation.

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<sup>10</sup> Under Parliamentary practice, what are called sections in Acts are called clauses in bills for Acts. Explanatory memorandums used to be called 'clause notes'. Parliament often considers a bill clause by clause (not section by section). This can be confusing for people.

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On opening the Act and before getting right into it, the reader should take time to look at some things that might make things easier down the track. This process is akin to assessing water before swimming in it.

Contents. The contents pages will give some idea of how the Act is structured. A well structured Act will often make it easier to read and make it easier for readers to find things. Some Acts are more structured than others. Most Acts do not have indexes at the back so the contents pages are the only aid to finding things unless electronic searching is being used.

Modern Acts are often divided into Parts with Parts being divided, if need be, into Divisions and Divisions, if need be, into Subdivisions. They are all numbered and have a short description of the subject concerned in the heading. Dividing an Act into Parts etc. allows sections to be grouped according to their subject.

The lowest level of the structure shown in the contents pages is the section. Sections have numbers and headings.

Some Acts have one or more schedules at the back which, if need be, will be subdivided. Schedules may contain lists or forms or provisions that do not fit easily in the earlier portion of the Act. Provisions in schedules are usually called clauses and are usually numbered.

Scanning the table of contents is a good way to get a quick, broad idea of what the Act is about. For example, if an Act creates a statutory body, that will often be obvious from the contents pages even if all that is apparent is the name and existence of the body.

Long title. Only Acts have long titles. Subsidiary legislation does not. Long titles of Acts appear on the first page after the contents pages. Long titles begin 'An Act ...' and

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explain briefly the Act's purpose. How useful long titles are varies. Some are quite long and informative. Others are brief and convey little. Sometimes a long title will have a bearing on the meaning of the rest of the Act, but because long titles are often very broad descriptions of the purposes of their Acts, their use for interpreting Acts is limited.

Short title. This is likely to be section 1 in the Act. It simply gives the name of the Act (which includes the year in which it was enacted<sup>11</sup>) in the same way as the title page of a book says it is called, say, *Moby Dick*.

Commencement. This is likely to be section 2 and says when the Act commences or, put another way, comes into operation. Quite a bit could be written on commencements but at this stage this might be enough—

- The *Interpretation Act 1984* Part III has things to say on this which are worth reading.
- It is worth understanding the difference between when an Act is enacted and when it commences. An Act is enacted when the Governor gives it Royal Assent after Parliament has agreed to it. With a couple of exceptions, an Act has no effect before it commences. An Act commences whenever it, or the *Interpretation Act 1984* s. 20 etc., says it commences.
- Not all provisions of an Act will necessarily commence at the same time.
- If an Act is amended, the amendments operate from the day on which the amending Act says they will operate.

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<sup>11</sup> The year of enactment is an important element because, e.g., the *Local Government Act 1960* is a totally separate Act from the *Local Government Act 1995*. It is wise to refer to the full name (with the year) to avoid confusion.

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- Reprints of Acts have notes at the back that include a 'Compilation table' with details of when the Act and any amendments to it commenced. (At the back of a reprint of subsidiary legislation those details refer to the *Government Gazettes* in which the subsidiary legislation and its amendments were published. Many of those *Gazettes* are available on line at [www.slp.wa.gov.au](http://www.slp.wa.gov.au).)<sup>12</sup>

Purpose. Some Acts have a section setting out the Act's purpose or objects. In an Act such a section would be additional to its long title. Such provisions can give a broad overview of the Act and assist readers to work out the purpose or object of the Act. But because such sections are summaries, they will not necessarily cover everything the Act says.

Application. Some Acts have a section saying what they apply to. Sometimes a Part or a Division of an Act will have a section saying what the Part or Division applies to. Such provisions are worth reading early because they affect the whole Act or the whole Part or Division. For that reason their effect has to be kept in mind when reading the Act, Part or Division.

Definitions. A section containing definitions of various words or phrases used in the Act is usually near the start of the Act. The headings of such sections vary. Some say 'Interpretation', others 'Definitions', others 'Terms used'. Sometimes more than one section defines terms, phrases or concepts. Occasionally definitions are in a 'Glossary' at the back of an Act which is referred to in a section near the front. Sometimes words or phrases are defined for the

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<sup>12</sup> The same information is in the *Western Australian Legislation Information Tables* referred to in §8 above.

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purposes of only a Part, Division, section or subsection. So definitions are not always at the front or back of legislation.

A reprint of a piece of WA's legislation has, at the very end, a table of all the terms defined in it and of the provisions where the terms are defined.

The role of definitions, or defined terms, is covered in more detail in §18 below but when starting to read an Act it is often useful to scan the various words or phrases that are defined to get some idea of what words and phrases are given special meanings. Scanning the definitions will often alert the reader to concepts or bodies to which the Act refers.

Some phrases, when read in the main part of the Act, will obviously be ones that are defined somewhere because they are not everyday phrases. 'Grievous bodily harm' is not an everyday phrase. When used in *The Criminal Code* it has a particular meaning given by section 1 of the Code. If you have any doubts or questions about what a word or phrase means, you should first check to see if it has been defined.

Other interpretation provisions. The Act may have one or more sections that say how the Act is to be interpreted. It is usually worth reading them early on as they may have a bearing on the provisions of immediate interest. Such provisions will not necessarily be in or near the provision of immediate interest so readers should be wary of thinking they have got the full picture if they have not read the whole of the Act.

#### **16. How sections are structured**

A section consists of—

- a number; and
- a heading, which is not part of the law; and
- its words.

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A section's words may be divided into two or more subsections. Subsections are usually each numbered (1), (2) etc. Each subsection usually consists of one sentence.

A subsection (or a section without subsections) may contain two or more paragraphs. Paragraphs are usually each numbered '(a), (b) ...'. Between the paragraphs will usually be a conjunction, such as 'and' or 'or', but not always.

A paragraph may contain two or more subparagraphs. Subparagraphs are usually each numbered '(i), (ii) ...'. Between the subparagraphs will usually be a conjunction, such as 'and' or 'or', but not always.

Subparagraphs are sometimes subdivided.

The same goes for clauses (wherever they are used), but clauses have subclauses. Likewise, regulations have subregulations, rules have subrules and by-laws have sub-bylaws.

Amended sections may contain subsections with numbers such as (2A) or (4b), paragraphs with numbers such as (bb) or (dab) and subparagraphs with numbers such as (iie) or (xb).

To illustrate—

<b>78. Counting fruit</b>	Section number and heading
If a person —	Words of s. 78 start
(a) has one pear; and	paragraph (a) and conjunction
(b) has—	paragraph (b) starts
(i) one apple; or	subpar. (i) and conjunction
(ii) one banana,	subpar. (ii), par (b) ends
the person has 2 pieces of fruit.	s. 78 continues to end.

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<b>79. Counting fruit</b>	Section number and heading
(1) If a person —	Words of s. 79 and subs. (1) start
(a) has one pear; and	paragraph (a) and conjunction
(b) has—	paragraph (b)
(i) one apple; or	subpar. (i) and conjunction
(ii) one banana,	subpar. (ii), par (b) ends
the person has 2 pieces of	subs. (1) continues to end.
fruit.	
(2a) If a person ...	Subs. (2a) starts.
...	
(8) ... .	Subs. (8) and s. 79 ends.

**17. How sections are referred to**

There are several ways to refer to provisions in Acts. But when Acts themselves refer to provisions they do so this way.

A section may have references to another section. A reference to another section (say the first one above about counting fruit) would be to 'section 78' (with a small 's'). A reference to subparagraph (ii) of paragraph (b) of section 78 would be to 'section 78(b)(ii)'.

A section may have references to provisions within itself. If the above s. 79(8) needed to refer to subparagraph (ii) of paragraph (b) of subsection (1) of that section 79, it would say 'subsection (1)(b)(ii)'.

Sections that define a number of words or phrases sometimes confuse people who want to refer to them. That arises because definitions are not separately numbered and more than one definition might use paragraphs. E.g.—

**3. Terms used**

- (1) In this section—  
    **X** means—  
    (a) O; and

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- (b) P;
- Y means—
- (a) Q; and
- (b) R.

That section 3(1) might appear to have two paragraph (a)s and two paragraph (b)s. How do you refer to them? Each word or phrase defined should be treated as a new subsection but without a subsection number. References should be to, say, paragraph (b) of the definition of X in s. 3(1) or something similar. Not to s. 3(1)(b) because s. 3(1) does not strictly have a paragraph (b). It has two terms each of which has a paragraph (b).

### **18. Definitions**

The purpose of defining a word or phrase is usually to give it a meaning which differs from its ordinary, everyday, current meaning, either to exclude some meaning it would ordinarily have, or to include some meaning it might have but not always, or to include some meaning it might not have ordinarily. Or to explain a word or phrase that readers might not be familiar with. That is why §3 above explains what 'legislation' is.

Definitions are often used to encapsulate a concept so as to save having to repeat the full concept in a number of places. Used that way they help shorten legislation.

Legislation often defines words and phrases used in it. Sometimes they are defined for the purposes of the whole of the piece of legislation. Sometimes for only a Part or for only a Division of it. Sometimes for only a section or for a subsection.

If a word or phrase is defined for say only a section, the definition applies only in that section. So, if the word or phrase is used outside that section, that definition of it does

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not apply in those other places unless any of them clearly says it does. The meaning it has in those other places will be its ordinary, everyday, current meaning unless some other meaning is intended; e.g., if there is some other definition of it in some other place and that definition applies in the place in question.

If an Act defines a word or phrase, the definition applies also in subsidiary legislation made under the Act. See *Interpretation Act 1984* s. 44(1). However the effect of section 44(1) may be limited if, say, a word is defined in a section of an Act for the purposes of only that section.

If an Act defines a word or phrase, the definition does not apply in other Acts that use the word or phrase unless there is some law that says it does or unless the definition is in the *Interpretation Act 1984*.

There are two general kinds of definitions—

- those that say what the word or phrase means;
- those that say what the word or phrase includes or does not include.

And there are hybrids, e.g. those that say what the word or phrase means ... and includes and those that say what the word or phrase means ... but.

If a word or phrase is defined to mean something, the definition closes off the meaning and excludes other meanings. It puts a rigid barrier around what the word or phrase means. So, if a definition says—

*domestic animal* means a dog or a cat kept as a pet;

the phrase ‘domestic animal’, when used in the provision(s) to which the definition applies, does not mean animals like pet Siberian hamsters.

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If a word or phrase is defined to include something, the definition does not close off the meaning and other ordinary, everyday, current meanings of the word or phrase apply. Often a definition of that kind is used to clarify that meanings on the grey edges of the ordinary meaning are included.

But as with all legislative provisions, definitions of words and phrases must be read as a whole.

#### **19. The deep end, general tips**

Having got this far, and being now armed with some general ideas of what the Act to be read is about, how it is structured and what definitions it uses, it is time to get down to the nitty gritty and to try to understand the Act or some bit of it or to answer some question about it. It is time to get fully in the water. One reading might not be enough. Do not be daunted. The Act is in English not Greek. Some Latin words remain in older legislation but Latin words are rarely used in modern legislation.

Being in English, the Act's words usually have their ordinary, everyday, current<sup>13</sup> meanings as recorded in generally available dictionaries. That is unless the Act or case law gives a word or phrase a special meaning. Lawyers do not have a special dictionary that is not available to non-lawyers. Lawyers use the same dictionaries as everyone else. There are however books that record how courts in case law have interpreted various words and phrases. However, to begin with, words and phrases should be given their ordinary, everyday, current meanings. And it should

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<sup>13</sup> Even if the Act was enacted long ago. What legislation in force has to say is in effect being said every day, not just on the day it was enacted. See *Interpretation Act 1984* s. 8.

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be assumed a word or phrase has the same meaning wherever it is used in a piece of legislation.

Read the Act as you would read any other document in English. If you can read and understand books, recipes, owner manuals, newspapers and the like, there is no reason why you cannot understand an Act, or at least get a long way to understanding it. But you may have to concentrate a bit harder and longer.

If the meaning of a word or phrase seems unclear or troublesome or vague, check to see if the Act defines it. But make sure the definition applies to the word or phrase in the place where you are reading it. That assumes you have already checked the *Interpretation Act 1984*.

The full effect of a provision may not be in the provision itself. Section 11 might say M may do X. Section 13 might say M must not do X unless Z. Section 17 may say if M does X, M must also do Y. And there may be other sections that affect when, where, how or why M can do X. As with a jigsaw, the full picture is not usually on one of its pieces.

All of those provisions about M have to be read together and the effect of the combination is the full effect. The full effect might be understood only after reading a number of sections or a whole part or the whole Act.

#### **20. Hierarchy of legislative provisions**

As has been said, each provision in, say, an Act has the same weight and importance as every other provision. But sometimes an Act may say two things that conflict with one another and so has to clarify which dominates.

That is often done by saying provision (1) is 'subject to' provision (2). In that way the reader is told provision (2) dominates provision (1).

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Another way is to say provision (3) operates 'despite' or 'notwithstanding' provision (4) so the reader is told provision (3) dominates provision (4).

But such things are not always said. That is because the Act has to be read as a whole and if two or more provisions have a bearing on a matter, it is their combined effect that counts.

#### **21. Amending legislation**

Legislation is often amended after it is enacted. The reasons for amendments are many and varied. Very little legislation is perfect and it is human nature to want to change things.

These days, amendments are done by textual amendments; i.e. by deleting words or inserting words or both. That is done by enacting a new piece of legislation that itself sets out the textual amendments to be made. When the new piece commences, the deletions and insertions are made and the amended version becomes the law from then on.

Acts can be amended only by another Act. Subsidiary legislation made under an Act can be amended only by another piece of subsidiary legislation made under the Act. There are a few exceptions to that.

If legislation has been amended, each provision that has been amended has under it a note in italics that says what amended it. Exactly what the amendment was is not explained in the note. Some provisions have been amended a lot. The notes at the back of reprinted legislation have more details about what has amended it and when the amendments commenced.

To find out exactly what was done to a provision that has been amended, the reader has to go to the legislation that made the amendment.

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Legislation that has been amended is reprinted on paper from time to time but not every time it is amended. However, an electronic version of each amended version of legislation is increasingly available on-line so readers can see what the legislation said at any given time in the past as well as what it says today.

It follows that a paper copy of legislation is not necessarily up-to-date and readers, if they want to see the law as it is today, should check the legislation has not been amended since the paper copy was printed. How to do that? See §7 and 8 above.

#### **22. Repealing legislation**

From time to time the operation of legislation needs to be discontinued, perhaps because it is being replaced by new legislation or because it is no longer needed. That is done either by repealing the entire piece or deleting the bits of it that are not wanted anymore.

Repealing legislation is usually done by enacting another piece of legislation that does the repeal. But some pieces of legislation contain a provision that says when the legislation ceases to operate or, put another way, when it expires.

#### **23. Transitional provisions**

When legislation is amended or replaced, provisions are often needed to deal with the transition from the old law to the new law. These are called transitional provisions. They may deal with things such as ensuring people who are licensed under the old law continue to be licensed under the new law.

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