



SOLOMON ISLANDS GOVERNMENT

HANDBOOK FOR LEGISLATIVE DRAFTING

(a guide to working with the Legislative Drafting Division)

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While all care has been taken in preparing this Handbook, the material contained in it is advisory only and the Attorney-General accepts no responsibility for decisions or actions taken as a result of any information it contains.

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Foreward

It gives me great pleasure to present this Handbook.

Legislative drafting is a one of the key functions of my constitutional role. It is performed under my authority by legislative drafting counsel working in the Legislative Drafting Division of the Attorney-General's Chambers and consultant legislative drafters specifically approved by me. All legislation presented to the Parliament or other legislator must be endorsed as a suitable law for Solomon Islands by me or under my authority by legislative drafting counsel in the Legislative Drafting Division.

This Handbook is about the preparation of government legislation. It primarily informs ministerial officers who undertake policy processes about how to instruct for the drafting of legislation. Its purpose is to assist them to understand their role, the role of legislative drafters and the relationship between them so they may work effectively together during the process of writing legislation.

The preparation of a written law requires specialist policy and legal expertise. However, while consideration is given to the policy information needed to draft government legislation, this Handbook is not about policy development and it does not detail policy processes. It is also not about the legislative-making processes of the National Parliament.

The aim of this Handbook is to inform and guide the Ministries and agencies of the Solomon Islands Government, and all other persons in Solomon Islands, about the process for writing legislation for Solomon Islands. Its particular purpose is to enable the policy and legal specialists, who commit time and resources for the preparation of legislation, to be able to effectively carry out their responsibilities so that the resulting laws for Solomon Islands are appropriate for the culture, experience and way of life in Solomon Islands.

John Muria (Jnr)

Attorney-General

June 2022



Acknowledgement

This Handbook deals with most aspects of the process for writing legislation to effect approved Government policy. The intention for producing the Handbook is to enable the Government's policy and legislative drafting personnel responsible for producing legislative provisions to work effectively together. I hope that those who use this Handbook find that it is informative and a useful reference tool.

All comments and feedback on the Handbook are welcomed so they may be addressed in future revisions.

Thank you to the Attorney-General, the Australia Solomon Islands Justice Program and the Department of Foreign Affairs and Trade of the Australian Government for supporting the specialised work of legislative drafting in Solomon Islands and enabling the production of this Handbook.

Legal Draftsperson

Attorney-General's Chambers

June 2022

Chapter 1 Legislation

Legislation is an important source of law. It sets out relationships, rights, obligations and standards of conduct. All persons in Solomon Islands are required to comply with the legislation in force in Solomon Islands.

The National Parliament of Solomon Islands makes or authorises the making of legislation. Legislation made by the National Parliament are Acts. The Parliament may authorise the making of other legislation by specific provisions included in an Act. Legislation authorised to be made by an Act is subsidiary legislation.

Acts

Acts are made by the National Parliament of Solomon Islands under section 59 of the Constitution in the form of Bills passed by Parliament. When a Bill is passed by Parliament it is given to the Governor-General to assent to the Bill on behalf of the Head of State. On assent it becomes an Act.

Under section 59(3) of the Constitution and section 20(1) of the *Interpretation and General Provisions Act (Cap.85)* (“IGPA”) an Act cannot commence until it is published in the Gazette, but the Act may provide that it comes into operation on a date after it is published or retrospectively on a date before it is published.

The content of Acts, and the manner in which they are made, must comply with the Constitution.

Subsidiary Legislation

Subsidiary legislation (“SL”) is made by a person or body other than the National Parliament. Parliament authorises the making of such legislation by another person or body by setting out powers for doing so in an Act. Section 16(1) of the IGPA defines SL to mean any legislative provision made in exercise of a power to do so conferred by an Act, including a by-law, notice, order, proclamation, regulation, rule and rule of court.

SL ranges from being simple to large and complex. SL is usually technical or administrative in nature. It may deal with matters that are too detailed to be suitable for parliamentary consideration or that concern rapidly changing or uncertain situations (for example swiftly changing circumstances in an emergency).

It must deal with matters within the subject matter and scope of the Act it is made under. Its content must not exceed that authorised by the Act and must be consistent with the policy and language of the Act as well as the general law. It can complete the details of the Act but cannot add new principles or alter anything in the Act unless there is express authorisation to do so.

Part X of the IGPA sets out matters relating to the process for making SL and other general principles applying to the interpretation and application of SL.

Chapter 2 The legislative drafting division

Legislative drafting counsel working in the Legislative Drafting Division (“LDD”) of the Attorney-General’s Chambers are the primary legal professionals who are authorised to carry out the Attorney-General’s function of drafting and endorsing legislation that is suitable for Solomon Islands.

LDD’s Objectives

The objectives of the LDD are to:

- produce legislation that meets the policy objectives of the Solomon Islands Government (“SIG”) in a legally effective way
- produce legislation that is written in language that is clear, consistent, precise, accurate, error free and as easy to understand as possible
- ensure the public has access to legislation.

LDD’s Functions

The LDD carries out the following legislative drafting functions of the Attorney-General:

1. to provide a legislative drafting service to the Government by:
 - drafting or vetting Bills proposed for introduction into Parliament, SL and statutory instruments
 - explaining and advising on content and meaning of draft legislation and the process of drafting legislation
 - appearing before the Bills and Legislation Committee
 - drafting amendments of Bills to be considered by the Committee of the Whole House
 - maintaining impartiality within Government
 - maintaining confidentiality
 - advising at an early stage whether legislation is necessary to effect a policy change and, if so, the nature of the legislation required
2. to maintain the statute book of Solomon Islands and provide access to legislation by:
 - the printing and publishing of Bills, Acts and SL
 - the publication of Acts, SL and indexes to legislation and Gazettes on the Pacific Islands Legal Information Institute’s website (“PacLII”) (www.pacii.org) and relevant SIG websites
 - an ongoing legislation digitalisation, reprint and publication programme.

It is not the function of the LDD to develop policy or make policy decisions.

Roles and competencies of LDD officers

Legislative Drafting Counsel

Drafting legislation is a specialist legal practice – it is not a mechanical exercise of putting policy ideas into a written legal format.

It requires the ability to:

- critically analyse a policy proposal for legislation to ensure that the proposal will be effective in practice
- express complex ideas in language that is clear, is not open to misinterpretation, is easy to understand and implement and avoids litigation and amendment
- design legislative schemes and compose appropriate legislative provisions that operationalise the policy proposal as an effective law.

An important part of this role is ascertaining if there are any deficiencies in the operation of the policy proposal as law, and putting forward alternative approaches to address the issues identified.

It also requires a good general legal knowledge and particular knowledge of:

- constitutional law, administrative law, statutory interpretation
- the IGPA
- the areas of Government business and associated government policy.

A good piece of legislation is the product of a team effort by ministerial policy advisers and the drafters. Consultation is therefore an important feature of this role. A drafter must be able to liaise and work constructively with a range of people and coordinate the performance of drafting tasks and compliance with the requirements of others.

Each legislative drafting counsel aims to produce legislation that works well for Solomon Islands and has the following characteristics:

Clarity – legislation that is written plainly, is logical and well-structured and is understood by Solomon Islanders

Certainty – legislation that can only be interpreted in one way (and avoids litigation)

Applicability – legislation that applies to circumstances of Solomon Islands

Flexibility – legislation that is capable of applying to multiple relevant situations, existing and future

Durability – legislation that will last over time and will not need frequent amendment

Accessibility – legislation that is easy to find.

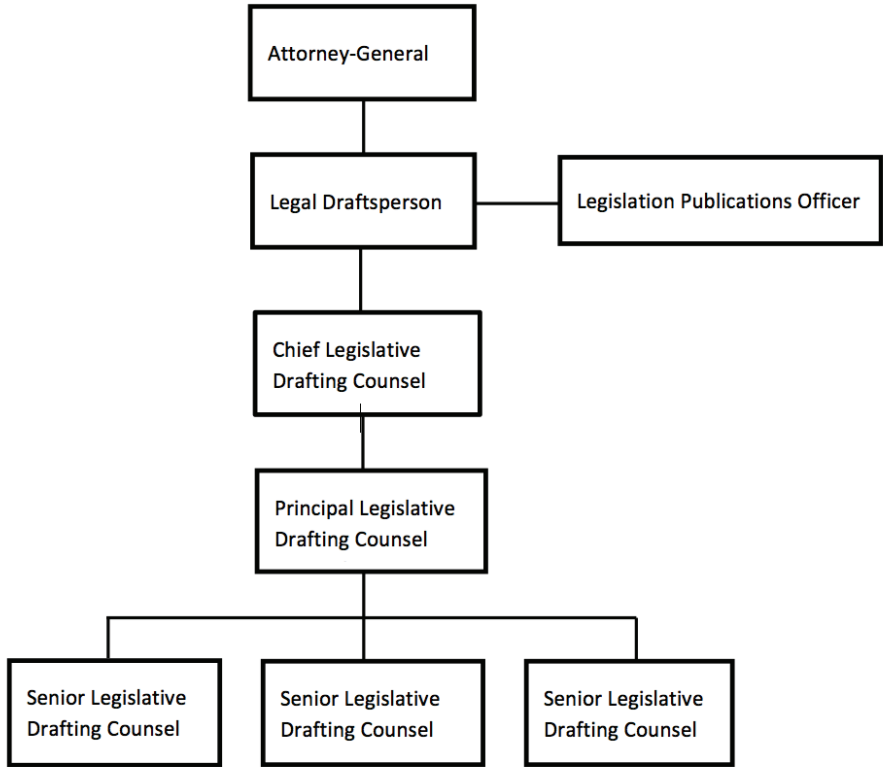
Legislation Publications Officer

The responsibilities of the Legislation Publications Officer are:

- the printing of finalised Bills and their delivery to Parliament
- the printing and delivery of copies of Acts passed by Parliament for assent
- working closely with the Gazette office for the publication of Acts and SL in the Gazette under sections 20 and 61 of the IGPA
- on-going legislation digitalisation and publication as reprints
- on-going maintenance of legislation and Gazette indexes
- maintaining records of the Gazette
- ensuring the legislation, indexes, and the Gazette notices and Legal Notices, are published on PacLII and relevant SIG websites
- assisting with final proof-reading of draft Bills and instruments.

Figure 1: Flow chart depicting the organisational structure for legislative drafting in the Attorney-General's Chambers

Structure of Legislative Drafting Division



Chapter 3 The drafting process

Government sponsored legislation gives legal effect to a government policy decision that provides a solution to a problem. Successful implementation of the policy will depend on the quality of the implementing legislation.

What is the drafting process?

The drafting process is the process for writing the implementing legislation.

- Its purpose is to produce good written laws for the jurisdiction (that is, legislation that is effective, principled, intelligible and certain).
- It is about the relationship between an approved government policy (or the purpose for a written law) and the function of writing that law.
- It depends on the competency and skills of both those who provide the drafting instructions for writing the legislation and those who write the legislation.

Drafting process: who does what?

There are two distinct and complementary roles involved in the drafting process, each with its own responsibilities for ensuring policy decisions are translated into a good law:

1. **the provider of drafting instructions** – the person responsible for explaining the approved policy to be implemented by legislation and receiving, checking and commenting on draft legislation (“instructor”)
2. **the writer of the draft legislation** – the person responsible for the expression, style and form of legislative text and its legal effect (“drafter”).

Drafting process: what happens?

The drafting process is both iterative and consultative, with many exchanges, discussions and meetings between the instructor and the drafter. It may include consultations on the draft legislation. *(See depiction of drafting process at Figure 2 on page 9)*

The features of the drafting process are:

- the drafting process begins with the **receipt of drafting instructions** by LDD and allocation to responsible legislative drafting counsel (the drafter)
- **the drafter reads and analyses** the instructions **and researches** the content of the proposed legislation, and may seek further instructions to clarify particular matters
- **the drafter plans and produces the first draft** of legislation
- **the drafter sends the first draft** together with written advice, comments and questions to the instructor

- **the instructor checks the draft** to see if it gives effect to the policy and complies with the drafting instructions, consults on the draft legislation, answers the drafter's questions and sends the answers and further instructions back to the drafter
- **the drafter prepares a second draft** which includes changes required by the instructor and returns it with further comments and questions to the instructor
- this exchange of drafts and instructions **continues until both the instructor and drafter are satisfied** that the draft legislation reflects the policy in a legally implementable form
- **the drafter provides the instructor with an electronic pdf copy of the legislation and covering memorandum, and arranges delivery of original copies of the legislation and covering memorandum to the Ministry.**

Who is the instructor and what are the instructor's tasks?

The instructor is the officer or group of officers working in the government ministry or agency, or other unit of government, responsible for the area of government business the policy and proposed legislation relates to who instructs LDD or a consultant legislative drafter for the drafting of legislation.

The tasks of the instructor are:

1. **before the drafting process begins, to:**
 - develop the policy proposals (ensuring they fit in with the policies of the whole of government) and get policy approvals
 - prepare drafting instructions
2. **during the drafting process, to:**
 - receive each draft and read it critically
 - check for consistency with policy approval and drafting instructions, and that the draft meets the policy intention
 - check for internal consistency
 - check for readability and intelligibility
 - test the draft against practical scenarios
 - consider the drafter's questions and difficulties raised, and the solutions proposed, by the drafter
 - conduct consultations on the draft to ensure that the legislation is supported and understood both within and outside SIG and will likely be properly implemented after it is made
 - respond as promptly as possible to the draft, answering the drafter's questions, proposing alternative solutions and policy refinements, specifying any difficulties or errors and commenting on parts that are hard to understand
 - fully explain any problems the instructor has with the draft.

Who is the drafter and what are the drafter's tasks?

The drafter is a legislative drafting counsel or a consultant legislative drafter who writes the legislative provisions to give effect to the government's policy explained in drafting instructions received from the instructor.

The tasks of the drafter are to:

- advise at an early stage on the necessity for legislation to effect a desired policy change and the nature of legislation required to do so
- analyse, understand and research drafting instructions
- ask questions to clarify issues
- identify and assist to solve, problems associated with the policy and the need for all government policies to work together
- compose simple, clear and certain legislative text to implement policy
- consider comments about the draft legislation
- be aware of the formal requirements for legislation and work to comply with them as well as the style and format of the jurisdiction
- be aware of the statute book as a whole and the need for the draft legislation to fit in with the existing law of SI and its international obligations
- draft to the agreed timetable
- provide advice on the interpretation and operation of draft legislation
- proof-read, edit and ensure quality of legislative text produced
- provide covering memorandum to indicate that legislation is endorsed by LDD on behalf of AG
- provide advice generally on statutory interpretation and the processes for producing legislation.

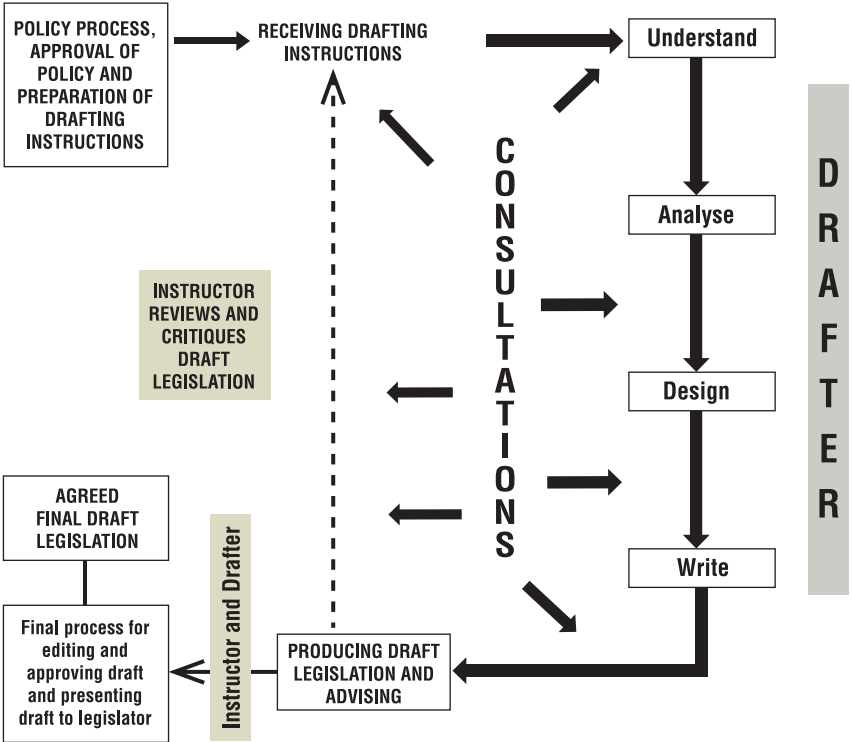
How are the tasks of instructor and drafter complementary?

The tasks of the instructor and the drafter are not mutually exclusive as they both share the aim to achieve quality legislation for SIG, Parliament and the people of Solomon Islands. Their tasks are complementary in the following ways:

- in determining how to compose legislative text, **the drafter reviews the policy**, uncovers inconsistencies and inadequacies and poses solutions to difficulties, and so **contributes to policy refinement**
- in reviewing and commenting on individual drafts, **the instructor** considers and **contributes to the modification of each draft**, and so contributes to ensuring it achieves and communicates the policy
- **drafter and instructor both aim to achieve legislation that gives effect to the policy** and that will work by being legally and administratively effective.

Figure 2: A flow chart summarising the legislative drafting process in Solomon Islands

Activities for producing legislative text – a draft by draft process



Victoria Aitken, January 2017

Chapter 4 Drafting instructions

What are drafting instructions?

Drafting instructions are a set of instructions which clearly set out the policy that is to be given effect by legislation. They communicate vital information necessary for the drafter to understand and analyse the policy reasons and outcomes for a new law or change in the law. They are not a draft Bill or suggestion for the wording of legislative provisions (although they may be accompanied by a draft Bill or suggested provisions).

Why do drafters need drafting instructions?

Drafting instructions communicate an approved policy by setting out an accurate and complete description of:

- the policy (that is the policy problem and solution)
- how the policy is to be implemented.

By doing that, they communicate what the legislation needs to do to give effect to the policy solution and why.

Drafting instructions are:

- the responsibility of the unit of government responsible for the area of government business the policy and proposed legislation relates to
- usually prepared by the instructor after approval of a policy and authorisation is given for legislation to be drafted to give effect to the whole or a part of the policy.

The quality of the policy work and the drafting instructions directly affects the speed of drafting and the quality of legislation produced.

What do drafting instructions contain?

Legislative drafters like to receive drafting instructions that contain the following:

- reference to government approval of the policy and approval to draft the legislation
- an explanation of the problem the policy remedies (***the WHY***)
- details of the policy objective and policy solution (***the WHAT***)

- details of the implementation of the policy – what the legislation will do and how (***the HOW***)
- a statement of known specific matters/details (statutory offices, powers and functions, delegations, regulatory matters, offences and enforcement, SL, repeals, savings and transitional matters)
- statement of known difficulties (legal and other) with the policy
- if instructions are incomplete, a statement as to what additional instructions will follow and when
- copies of relevant background and other support material
- the name and contact details of officer(s) responsible for instructions
- advice of when commencement of the legislation is anticipated (***the WHEN***).

What is the form of drafting instructions?

Drafting instructions should be:

- in writing
- in narrative style
- expressed in simple language (avoiding jargon and unnecessary technicality)
- factually correct and accurate
- timely.

Drafting instructions should not be in the form of a draft law because:

- a draft law does not inform the drafter of the policy, but places the drafter in the position of having to penetrate behind the words of the draft to know and understand the problem and how it is remedied, and other relevant facts and issues
- drafters do not need to be provided with the wording someone else thinks gives effect to a policy, but need to know the reason for a proposed law, what it is to achieve and how it will be implemented
- the draft could be a cut and paste compilation of extracts from laws of other jurisdictions or a complete transplantation, and the structure and wording in the draft could be confusing and inconsistent
- there could be unnecessary administrative content, unconstitutional content or no reference to the IGPA.

Drafting instructions template

The Legislative Drafting Division has devised a template for drafting instructions (see *Figure 3* on the following pages and <http://solomons.gov.sb/ministry-of-justice-and-legal-affairs-attorney-generals-chambers/>).

The template provides:

- a checklist of what to include in drafting instructions
- a suggested format of drafting instructions.

Tips for preparing drafting instructions

1. The purpose of drafting instructions is to describe the legislation you want.
2. Address all relevant matters in the checklist.
3. Use plain English in narrative style.
4. Lists may be formatted as bullet points.
5. The instructions may be accompanied by (not substituted by) draft legislation or suggested wording.

Figure 3: Drafting instructions template checklist and suggested format

Drafting instructions template: checklist

- *Drafting instructions must be a comprehensive and accurate statement of policy objectives(s) and outcome(s) and how to achieve them.*
 - *Address all matters in the checklist as relevant (some matters may not be necessary or need to be adapted – it may be necessary to add matters)*
 - *Use plain English in narrative style. Lists may be formatted as bullet points. The instructions may be accompanied (not substituted) by draft legislation.*
 - **ASK FOR ADVICE ABOUT DIFFICULTIES AND CONCERNS**
- 1. Instructing officer(s) names and contact details**
 - 2. Policy authority and authority to draft legislation** *(Decision number and date)*
 - 3. Proposed short title/citation of legislation**
 - 4. Objective(s) of legislation**
 - 5. If subsidiary legislation, source of subsidiary legislation making power**
 - 6. Time table**
(Proposed commencement date, proposed target for review, proposed consultations on draft legislation, and other deadlines LD should know).
 - 7. Description of policy**
(Explaining policy – what is the problem, what is to be done about it and why)
Set out the problem. State the cause of the problem, what the (legal, practical and political) issues are, who is affected and other relevant circumstances. Give examples. State what law applies and how it is deficient. State the policy objectives wanting to implement to resolve problem, and how planning to implement them. Advise consultations conducted – affected public offices and stakeholders – and outcomes of consultations.
Provide background information to problem and policy objective, or provide relevant references to the information – reports, texts, articles, discussion papers, legal opinions, case law, other jurisdictions legislation, international conventions or other source of international obligation, model laws, international standards, technical information.
 - 8. Description of legislation required**
(A complete and accurate description of how the legislation is expected to implement the policy.) NOTE – do not provide the words to be used.
 - 8.1 Set out picture of how proposed legislation will work:**
 - *describe new/amendment legislation/legislative scheme*
 - *if an amendment – specify how operation of legislation being amended is to change, and set out provisions consider need to be amended to achieve the change*
 - *who is to do what and how*
 - *whose conduct will be affected and how*
 - *relationship with existing law and any constitutional issues*

8.2 Set out substantive principles, administrative machinery and enforcement regime:

- commencement
- application (whole or part of territory, extra-territorial application)
- whether Crown to be bound
- matters of interpretation
- specify conduct controlling/changing/will be subject to the legislation, and how
- rights conferring and duties and obligations imposing
- functions and powers required, who to perform them and how will they be performed
- need to create new statutory office, statutory corporation, authority
- relationship of new body/office with Crown
- manner of appointment of officer/members of body
- qualifications and experience, term of office and other membership matters
- meetings
- procedures
- record keeping
- delegations
- employment or engagement of persons to carry out work
- money for administration of legislation, taxation/appropriation, donations and bequests
- a licensing or registration scheme or other form of authorisation
- application form and process, grant and refusal of application/licence etc. and grounds for grant or refusal
- form of authorisations and terms and conditions of authorisations
- fees and forms
- a code of conduct or other soft law (codes, standards, guidelines, statements of principles and values)
- adopting or incorporating a document made or approved by another person/authority
- what rights and property interests are affected
- consequences of contravention – matters of enforcement and discipline; powers of inspection, entry, search and seizure, procedures for suspension and termination, offences and penalties, evidence and proof
- exceptions and exemptions
- procedures for review, appeal, payment of compensation
- miscellaneous matters – confidentiality, limitation of liability, reports etc.
- subsidiary legislation making power (what kinds of things want to deal with at secondary law level)
- repeal, savings and transitional matters
- consequential amendments – effect on existing legal framework

9. Other

9.1 Known gaps, deficiencies and outstanding issues to be resolved and when and how expect to be able to provide instructions for these:

9.2 Expected legal or other difficulties with the implementation:

9.3 Other concerns:

Drafting instructions template: suggested format

Provision – Title

Provision – Commencement

- [Provide instructions on when the bill should commence. Keep in mind that different parts of the bill may commence at different times. If commencement of the bill is contingent upon an event (for example, the commencement of a related piece of legislation), provide information about that event].

Provision – Definitions

Reason/Background

- [Many of the terms used in your Bill may need to be defined. Definitions not only make legislation more readable (by reducing the need to repeat concepts), but help minimise ambiguity and interpretation problems. The drafter should be able to help you identify which terms require definitions, but you should also be mindful of this and form your own views and refer to any important definitions here.]

Instruction

- Please draft ...

Provision 4 – [XX]

Reason/background

- [Insert brief reason/background.]

Instruction

- Please draft ...

Provision 5 – [XX]

Reason/background

- ...

Instruction

- Please draft ...

Chapter 5 Consultant legislative drafters

If it is not possible for the LDD to draft legislation, the Ministry, agency or other unit of government may arrange to engage a consultant legislative drafter to draft the legislation and request the Attorney-General to approve the consultant legislative drafter to draft that specific legislation.

A consultant legislative drafter may not draft legislation unless approved by the Attorney-General. When the consultant finishes drafting the legislation, the draft legislation must be provided to the LDD for vetting and endorsement as suitable to effect the policy as a law for Solomon Islands before it can be presented to Cabinet and Parliament or made as SL.

Protocols for using consultant legislative drafters

The following are the Attorney-General's requirements for engaging a consultant legislative drafter.

- 1. A Ministry must not engage a legislative drafter outside of AGC without prior approval of the AG:**
 - the decision to approve a consultant legislative drafter is made by the AG in consultation with the Legal Draftsperson, with consideration being given as to whether there is capacity to draft the legislation required in LDD
 - in relation to drafting matters, the consultant legislative drafter is supervised by the Legal Draftsperson
 - legislation drafted by a consultant or other person who is not approved by AG will not be vetted or endorsed by the LDD.

- 2. The terms of reference for consultant legislative drafters should not include policy development, and consultant legislative drafters should not lead consultation on policy matters or draft legislation:**
 - the instructing Ministry/agency/unit is responsible for developing the policy, conducting consultations on the policy and preparing drafting instructions
 - the consultant legislative drafter's role should only be to draft on receiving drafting instructions given by the Ministry/agency/unit through its instructing officer.

- 3. When the consultant legislative drafter is given the drafting instructions, the instructing officer must give to the Legal Draftsperson:**
 - the name and contact details of the instructing ministerial officer
 - a copy of the policy document and policy approval
 - a copy of the drafting instructions.

4. **Depending on the nature of the legislation, the Legal Draftsperson may ask to be given one or more drafts to be kept informed about the content of the legislation, and give early feedback about style, format and content:**
 - provide a copy of the drafting instructions and a commentary from the consultant drafter setting out his or her approach to writing the draft legislation with the draft.
5. **When the consultant legislative drafter's final draft is forwarded to the Legal Draftsperson for endorsement and presentation to Cabinet, Parliament etc:**
 - provide a summary of the policy and all drafting instructions given to the consultant and a commentary by the drafter about his or her approach to the drafting
 - the legislation becomes the Attorney-General's matter and proceeds in accordance with AGC's procedures for finalising and endorsing it as a good law for Solomon Islands
 - as the AGC is the principal legal adviser of SIG, LDD will deal with and take instructions from SIG officers (and not directly deal with consultants and advisers).

Tips if using a consultant

1. Ensure there a clear distinction between the policy process (including the policy approval and preparation of drafting instructions) and the drafting process.
2. Consider what role your consultant will have. Will the consultant be developing policy or drafting legislation?
3. Identify the Ministerial officer(s) the consultant will work with and report to and who will be responsible for communicating with AGC.
4. Ensure there is a written record of the policy from which drafting instructions can be prepared and against which the suitability of draft legislation can be assessed.

Chapter 6 Miscellaneous matters

Legislative drafting counsel's covering memorandum

Ministries must receive from legislative drafting counsel a covering memorandum for final legislation (even legislation drafted by a consultant legislative drafter).

- A covering memorandum signifies that legislation is settled and endorsed by LDD on behalf of AG.
- Cabinet requires a covering memorandum from LDD to consider a Bill for Parliament.
- A Minister or other legislator making SL requires a covering memorandum from LDD to make (sign and date) the legislation.
- The Gazette Officer requires a copy of the covering memorandum from LDD to publish SL in Gazette.

The Interpretation and General Provisions Act

The IGPA contains rules of construction of legislation that have general application to the legislation of Solomon Islands. It is designed to be incorporated into every other act unless the contrary is provided for in the other Act.

Legislative drafting counsel know the IGPA and compose legislation in accordance with its provisions unless doing so will not give effect to drafting instructions. Doing so avoids repetition, secures uniformity in form, language and application and saves time and expense in preparing, printing and publishing the legislation.

Tips for keeping LDD happy

1. **Have a plan** – when you have identified that your policy requires legislation, please be aware of time requirements for consultations, policy approval and drafting and be sure there is sufficient time not only for policy development and approval but also the drafting of the legislation.
2. **Talk to legislative drafting counsel** – at any stage before or during your policy development processes if you are unsure about the nature of legislation required, the drafting process or the drafting time likely involved. LDD may be able to assist if legal queries arise in the policy and approval processes and will need to know if there are any delays.
3. **Communicate drafting instructions through only one instructing officer** – to avoid duplication and inconsistencies.
4. **When preparing drafting instructions** follow the checklist; do not provide draft legislation as drafting instructions (although a draft may accompany drafting instructions). Please provide full name of legislation proposing or amending.

5. **Provide electronic copies of drafting instructions to LDD** – if providing drafting instructions by letter or memorandum to the Attorney-General's Chambers, please also send LDD an electronic copy on drafting@attorneygenerals.gov.sb. Doing this can avoid delays and is especially important if the matter is urgent.
6. **Provide instructors' details by providing the following:**
 - their full names (that is all their names)
 - their positions
 - the Ministry, agency or unit they are from
 - their contact email and telephone details.
7. **When receiving drafts, check all comments and questions** raised by the drafter and respond to them when you send back drafting instructions – this helps formulate the next draft more quickly.
8. **When requiring printing of a Bill for presentation to Parliament or an Act for assent**, please remember that the printing process takes at least 2 days
9. **Give feedback on this Handbook** so LDD can know what additional material could be included in it when it is revised.

Appendices

The following matters are specified in the Appendices:

- the requirements for producing legislation are summarised in Appendix 1
- the steps after the drafting process for making, publishing and commencing legislation are set out in Appendix 2
- where to find legislation after it is made is set out in Appendix 3.

APPENDIX 1: Requirements Summarised

Summary of steps for producing quality legislation

- (1) **An approved SIG policy (*Ministry*)**
 - Well thought out and detailed policy
 - Necessary approvals of the policy and for drafting legislation – by Cabinet, Minister, Permanent Secretary.
- (2) **Provision of drafting instructions by government office(r) responsible for area of government business (*Ministry*)**
 - Clear and comprehensive communication of policy: the what, why, how and when
 - Identification of instructor(s).
- (3) **Drafting process (*AGC and Ministry*)**
 - Research and analysis: understanding of policy and legislation to be drafted
 - Design and composition of text: preparation and consultation on drafts until agreement on final draft as appropriately operationalising policy
 - Editing and proofing of draft legislation: well-structured and clearly drafted legislation
 - Good interaction between drafter and instructor
 - Sufficient time for drafting legislation.
- (4) **Process for approval of draft legislation for presentation to legislator (*Ministry*)**
- (5) **Lawmaking process (*Parliament, Minister/Ministry and Gazette office*)**
 - Parliamentary procedure and assent by Governor-General for Acts, Minister or other person signing SL
 - Publication in the Gazette under sections 20(1) or 61(1) of the IGPA
 - Laying of SL before Parliament.
- (6) **Commencement (*Ministry/AGC/Gazette Office*)**
- (7) **Implementation of the legislation (*Ministry*)**
- (8) **Accessibility of legislation as part of the statute book (*AGC*)**

Summary of LDD's requirements

1. An approved policy
2. Drafting instructions – *the why, what, how, when*
3. Sufficient time for the drafting process
4. Consultation and team-work between instructing Ministry and drafter.

APPENDIX 2: After the Drafting Process

Steps after completing the drafting process for legislation to become law

The completion of the drafting process is signified by the drafter providing to the instructor an electronic copy and 3 original copies of the final draft of the legislation with a covering memorandum endorsing the legislation as legislation that is suitable for Solomon Islands.

Then, if a Bill:

- the Ministry presents the Bill (with the covering memorandum) to Cabinet for approval for presentation to Parliament
- if Cabinet does not accept the Bill and requires changes to be made to it, the Ministry must then give LDD drafting instructions for making those changes, and the drafting process recommences
- when Cabinet approves the Bill, the Ministry requests the Legislation Publications Officer in LDD to arrange printing and presentation of the Bill to Parliament
- the Legislation Publications Officer arranges the printing of the Bill by SIG's authorised printer and prepares the presentation file
- the printing process is usually undertaken in 2 steps: a first print which must be accepted and approved by the Legislation Publications Officer and the Legal Draftsperson; and when the first print is approved the Legislation Publications Officer requests the printer to print 100 copies
- the introduction file includes a covering letter from the Minister to the Clerk and the Notice of Presentation of the Bill, both of which must be signed by the Minister
- the Legislation Publications Officer delivers the file to the Minister's office
- the Ministry arranges for the Minister to sign both the letter and Notice and returns the file to LDD
- the Ministry must also photocopy and provide to LDD copies of the relevant pages of any legislation that is amended by the Bill
- the Legislation Publications Officer collates the photocopies with the 100 copies of the Bill and delivers the Bill and the introduction file to Parliament
- on presentation of the Bill to Parliament, the Bill is in the control of the Parliament for introduction, review by the Bills and Legislation Committee, debate and passage, assent and distribution of assent copies of the Act
- on receiving the assent copy the Legislation Publications Officer arranges publication of the Act in the Gazette by the Gazette Office
- under section 59 of the Constitution and section 20(1) of the IGPA, an Act is not a valid law unless the Governor-General assents to it and, after assent, it is published in the Gazette

or, if subsidiary legislation:

- the Ministry or other body or authority responsible for the SL, must present the SL to the lawmaker (that is, the Minister, the body concerned or a constitutional or statutory office holder) for making the SL by signing and dating it
- sections 61(1) and 62(1) require that, after SL is made it must be published in the Gazette and laid before Parliament
- the Ministry, body or authority must arrange for publication of the SL in the Gazette by the Gazette Office
- the Minister must lay the SL before Parliament in accordance with Order 17 of the Standing Orders of the National Parliament of Solomon Islands.

Publication of legislation

Legislation must be published

It is a function of government to ensure adequate publication of the written law of Solomon Islands. In Solomon Islands responsibility for the publication of legislation is shared by the Attorney-General and the Gazette Office in the Office of Prime Minister and Cabinet.

Publication in the Gazette

The Solomon Islands Gazette publishes new Acts and SL, and notices made under the Acts and SL:

- section 59 of the Constitution and section 20 of the IGPA requires every Act to be published in the Gazette to become a law
- section 57 of the IGPA provides that a copy of the Gazette containing an Act is evidence of the due making and tenor of the Act
- section 61 of the IGPA requires SL to be published in the Gazette
- the Gazette publishes the legislation by publishing Gazette Notices (which are notices that are neither of a legal character nor SL) and Legal Notices (which are notices of a legal character and are published by a numbered Supplement to the Gazette)
- the Gazette Office publishes the Gazette by:
 - a. publishing a weekly edition of the Gazette and Supplement each Friday; and
 - b. publishing an extraordinary Gazette if publication by Gazette is required urgently before each Friday
- copies of the Gazettes are found at: www.paclii.org/sb/other/SBGovGaz
- since November 2020, when Gazettes are made they are published on <https://solomons.gov.sb/ministry-of-justice-and-legal-affairs/attorney-general-chambers/gazettes-legislation/>

- an index to Gazette Notices and Legal Notices by year of publication (specifying the Gazette edition number, notice reference and a description of the contents of the notice) is available at <http://www.pacii.org/sb/indices/legis/> and on a SIG website.

The Gazette Office is located at the Office of the Prime Minister and Cabinet, Mendana Avenue, Honiara. The Gazette Officer and the Legal Typesetter work at the Gazette Office and may be contacted by phone on: +677-20607 and by email on TTani@pmc.gov.sb

Legislation digitisation and reprinting

The Attorney-General is responsible for the reprinting of legislation. This is the process for electronic publication of up-to-date legislation so there is easier access to the legislation. Reprinting of legislation must be authorised by an Act.

The main features of reprinted legislation are:

- reprinted legislation is legislation as it is in force on the date shown on the reprint (which will be the date of the commencement of the legislation or the most recent amendment of the legislation).
- the legislation has amendments to it incorporated into it as they are commenced;
- there are “point-in-time” versions of the legislation for each time it is amended;
- the legislation has detailed End Notes tracking both legislative information and amendments since origin setting out the publication, commencement and repeal (if applicable) of the legislation and each amendment of the legislation, and of the changes to individual provisions made by each amendment.

At the date this Handbook is published, the program under the Australia Solomon Islands Justice Program for the digitisation and reprinting of Acts is in its final phases and will be completed after the authorising legislation is enacted.

Commencement of legislation

Legislation does not have effect unless it has been commenced.

Legislation may commence on the day it becomes a law, or on a day earlier or later than the day it becomes a law. Section 20(2) and (3) of the IGPA, provides that an Act commences on the day it is published in the Gazette unless the Act provides otherwise. Section 61(1) of the IGPA provides that SL commences on the date it is published in the Gazette or, if it is provided that the SL commences on another date, on that other date.

If an Act has a commencement provision, the Act may not commence on a day

that is earlier than the day provided for by its commencement provision.

SL may not commence on a day that is earlier than the day authorised by its parent Act.

Legislation may specify that it commences on a day other than the day it becomes a law by specifying the day on which it commences or by requiring that the day on which it commences must be notified by notice published in the Gazette. It may also specify that different provisions of the legislation may commence on different dates.

Whether legislation has commenced or has partially commenced will be indicated in the appropriate legislation or Gazette index. (See Appendix 3.)

If commencement is by a date to be notified in the Gazette:

- the Ministry, body or authority responsible for the legislation must determine the commencement date and instruct LDD to draft the appropriate statutory instrument
- the instrument will be drafted in accordance with the drafting process and LDD will provide an electronic copy and 3 original copies together with a covering memorandum
- on receipt of the instrument and covering memorandum, the Ministry, body or authority arranges for the signing and dating of the instrument by the lawmaker and for its publication in the Gazette by the Gazette Office
- after it is published, the Minister must then lay a copy of the instrument before Parliament.

APPENDIX 3: Where to find Legislation after it is made

An Act is part of the law of Solomon Islands on its publication in the Gazette (see sections 59(3) of the Constitution and 20(1) of the IGPA) although it may commence on an earlier or later day.

SL is made on the day when it is signed by the lawmaker, but may commence on another day. Under sections 61(1) and 62(1) of the IGPA, it must also be published in the Gazette and laid before Parliament.

Where legislation is published

- The consolidated version of Acts and SL made under the Acts as in force at 1 March 1996 are published in bound volumes known as the Revised laws of Solomon Islands 1996 or “the Green Books”, and are also found at http://www.paclii.org/sb/legis/consol_act/.
- For Acts or SL made since that date, the Legislation Publications Officer will, within 3 days of publication of an Act or SL, provide a copy of the Act or SL to the Managing Editor of PaCLII for publishing on that website. They are found at:
 - for sessional Acts http://www.paclii.org/sb/legis/num_act/
 - for SL http://www.paclii.org/sb/legis/sub_leg/.
- It is also possible to access some of the legislation by way of links in the legislation and Gazette indexes published on PaCLII. (See below).
- Publication of sessional Acts and SL on PaCLII occurs whether or not that legislation has commenced, and it is important to always refer to the Indexes of legislation maintained by LDD (see below) for information about the commencement of the legislation.

Where indexes to legislation are published

- PaCLII publishes 2 indexes of the revised laws of Solomon Islands 1996 at <https://www.paclii.org/sb/indices/legis/>:
 - an index of the revised Acts and SL in the order in which they are published in the 1996 volumes
 - an index of the revised Acts (which includes SL made under the Acts) in chronological date order of when they were made.
- The Solomon Islands Index of Acts (providing details of the making and commencement of an Act, subsequent legislation that amends the Act, and legislation the Act amends or repeals) is maintained by the LDD and published at <https://www.paclii.org/sb/indices/legis/> and is planned to be published on a SIG website.
- A project under the Australia Solomon Islands Justice Program to provide a Solomon Islands Index of Subsidiary legislation (which will set out the SL, its parent Act, amendments to the SL, and

the dates and references to the Gazettes for the publication and commencement of the SL) is at the date of publication of this Handbook close to completion and is planned to be published at <https://www.paclii.org/sb/indices/legis/> and on a SIG website.

Further information about Acts and SL (particularly their publication and commencement) is in the Annual Indexes to Gazette Notices and Legal Notices (specifying the Gazette edition number, notice reference and a description of the contents of the notice). (See below.)

Where indexes to the Gazettes are published

- The collection of Gazette Editions and Supplements for each year are published at <http://www.paclii.org/sb/other/SBGGovGaz/>.
- The Annual Indexes to Gazette Notices and Legal Notices date from 1996, are maintained by the LDD and found at <http://www.paclii.org/sb/indices/legis/>. For each year, they contain both Gazette and Legal Notices with hyperlinks to subsidiary legislation and commencement notices.
- It is planned to also publish both Indexes on a SIG website.

At the publication of this Handbook, all the Annual Indexes to Gazette Notices and Legal Notices are undergoing full revision and republication on PacLII. The hyperlinks will be reinserted for each year.

Where to find reprints

At the publication of this Handbook, there is an on-going program under the Australia Solomon Islands Justice Program for the digitisation and reprinting of Solomon Islands legislation, with the reprinting of Acts nearing completion.

Reprinting legislation will enable the publication and access electronically to a collection of up-to-date versions of legislation.

It is anticipated that the reprints will be published on PacLII (<https://www.paclii.org/sb/>) and a SIG website.

Glossary

Term	Meaning
AGC	Attorney-General's Chambers
IGPA	<i>Interpretation and General Provisions Act (Cap. 85)</i>
LDD	the Legislative Drafting Division, Attorney-General's Chambers
legislation	Acts and SL
PacLII	Pacific Islands Legal Information Institute website
parent Act	(of SL) is the Act that authorises the making of the SL
SIG	the Solomon Islands Government
SL	subsidiary legislation



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