

A Guide to
Legislative Drafting
in
South Africa

By

Andrew J Burger

Dip Iur BProc (Unisa)

*Attorney of the High Court of South Africa
Director of Professional Standards
at the Auckland District Law Society*

2002



© JUTA Law

PO Box 24299, Lansdowne 7779

This book is copyright under the Berne Convention. In terms of the Copyright Act 98 of 1978 no part of this book may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording or by any information storage and retrieval system, without permission in writing from the Publisher.

ISBN 978 0 7021 5729 5

Typeset by AN dtp Services, Cape Town
Printed and bound by Digital Action

Contents

Foreword.....	v
Preface.....	vii
Dedication	ix
Table of Cases.....	xv
Table of Statutes and Bills	xvii

1. Introduction

1. Communicating in Legal Language.....	1
2. The Rule of Law.....	3
3. The Plight of the Legislative Drafter	4

2. The Legislative Process in South Africa

1. Introduction	6
2. How Does the Law-making process begin?	7
3. Bills in the National Assembly	7
4. Bills in the National Council of Provinces (NCOP)	7
5. From a Bill to an Act	8
6. Constitutional Changes	8
7. Private Members' Bills and Committee Bills	9

3. Legislative Research

1. Types of Legislation	10
2. Regulations	14
3 Law Reports.....	15
4. Words and Phrases.....	16
5. Other Sources of Law.....	18
6. Recommended Websites and Materials for Research	20
7. General Websites and Materials.....	23

4. Legislative Interpretation

1. Methods of Interpretation.....	25
2. The Constitution and Legal interpretation.....	26
3. Basic Rules of Interpretation	28
4. Aids to Construction	31
5. Presumptions	33
6. Deviation from the Basic Rules of Interpretation	37

5. Conventions	
1. The Structure of a Bill	42
6. Principles of Legislative Drafting	
1. The Subject	68
2. The Object.....	72
7. Drafting Legislation in Plain English	
1. An Introduction to the Rules of Grammar	77
2. Troubleshooting.....	83
3. Syntax	86
4. Omit Unnecessary Words: Write Plainly and to the Point ..	87
5. Adding Precision to the Legislative sentence.....	92
6. Avoid Linguistic Quirks	94
8. Punctuating the Legislative Sentence	
1. Apostrophe	96
2. Hyphen.....	97
3. Comma.....	98
4. Full Stop (Period)	101
5. Ellipsis	101
6. Semicolon	102
7. Colon	102
8. Capital Letters / Uppercase.....	103
9. Question Mark	103
10. Exclamation Mark	104
11. Dash.....	104
12. Brackets.....	104
13. Parenthesis	105
14. Inverted Comma / Quotation Mark	105
15. Italics	105
16. Bold.....	106
17. Virgules.....	106
9. Miscellaneous Provisions	
1. The Constitutional Effect on Legislation	107
2. Retroactive and Retrospective Operation of Legislation	109
3. The 'Deeming' Provision.....	110
4. The Proviso	111
5. Offences and Penalties	113
6. Amendments: Specimens	114

CONTENTS xiii

7. Access to Courts	118
8. Delegations	118

Appendix 1

The Bill of Rights in the Constitution of the Republic of South Africa, 1996	119
--	-----

Appendix 2

Interpretation of Act 33 of 1957	132
--	-----

Bibliography	142
---------------------------	-----

Index	143
--------------------	-----