

Purpose sections: Why they are a good idea for drafters and users

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Abstract: In this article, I argue that purpose or objects are good for both drafters and users of legislation. They are good for drafters because they provide a basic focus that underpins or should underpin the drafting of the substantive provisions of a proposed Act. Drafters of primary legislation should have them continually in mind as they draft the Bill. They are good for users because they immediately provide them with an indication of the objectives that the Act is designed to achieve. And because legislation is now construed purposively, they provide judges and other interpreters with a clear indication of what the statute is intended to achieve, thus avoiding the need for those interpreters to second guess what the purposes of the statutes might be.

What are purpose sections and what do they do?

In the context of a statute², a purpose section³ is a provision that explicitly states the social, economic or political objective or goal that is sought to be achieved, assuming that the provisions of the statute are implemented by those who are required or authorised to perform that function.

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² It should be borne in mind that a general purpose section will normally not only govern the statute in which it appears but also all subsidiary legislation made under the authority of the statute.

³ In some jurisdictions, these provisions are called ‘objects sections’. For all practical purposes, the terms are interchangeable. For example, a large number of New South Wales statutes have objects sections (“The objects of this Act are ...”) but some have purpose sections (“The purposes of this Act are ...”). Despite the convention that when different words are used in a statute, different meanings are intended, I doubt that the use of the different terminology in these cases signifies an intention to convey different meanings.

Thus, a purpose section is about ‘ends’ and not ‘means’. In contrast to a long title of a statute, which says in a succinct way *what* the statute does, a purpose section says *why* the statute has been enacted.

A purpose section of a statute sets the scene for the substantive provisions of the statute by stating what the statute is intended to achieve or to set out the principles or policies that it is designed to implement. Moreover, it illuminates the principles on which the statute is based and facilitates its interpretation, particularly when a provision of the statute is ambiguous or unclear.⁴ Thus, a purpose section is not a substantive component of a statute, but an interpretative one.⁵

A purpose section will usually specify the policy objectives of the whole statute. However, in some statutes, particularly those that are of a complex nature or contain a large number of provisions, it is often useful to include a statement declaring the purpose of a particular Part, section or Schedule of the statute. A purpose provision relating to a particular segment of a statute, such as a Part, Division of a Part, or a section has the advantage of being more specifically targeted than a purpose provision covering the whole of the statute. Assuming that a statute contains both a general purpose section and purpose provisions governing particular segments of the statute, it is imperative of course that those provisions should be consistent with the general purpose section. For an example of an objects provision that relates to only a particular segment of an Act, see section 18 of the *Competition Policy Reform (Queensland) Act 1996*, which provides—

“Object⁶

18. The object of this Part⁷ is to help ensure that the Competition Codes of the participating jurisdictions are administered on a uniform basis, in the same way as if those codes constituted a single law of the Commonwealth.⁸”

A good purpose section will give decision makers (whether they be administrators, law enforcement officers, courts or tribunals) a yardstick to which they may refer in making decisions under the statute concerned. Moreover, by setting out the objectives of the statute, a purpose or objects section will provide them with a context for the whole statute.⁹ In at least one New South Wales Act this function of a purpose or objects section has been made explicit. For example, section 6 of the *Motor Accidents Compensation Act 1999* reads as follows:

“6 Interpretation and application of Act by reference to objects

⁴ And thus, in the context of interpreting enactments purposively, assists judges in their quest for ascertaining the purpose of an enactment that they are called on to interpret. (R. Sullivan [2008] *Sullivan on the Construction of Statutes* [5 ed.]. LexisNexis Canada: Markham, Ontario, p.388)

⁵ Sullivan (Op. Cit, p.388)

⁶ This heading is unhelpful. In my view, it should have specified the Part to which it relates.

⁷ I.e. Part 5—National Administration and Enforcement of Competition Codes.

⁸ I.e. the Commonwealth of Australia.

⁹ See *Council of Canadians with Disabilities v. Via Rail Canada Inc* [2007] SCJ 51; 2007 SCR 287.

- (1) In the interpretation of a provision of this Act or the regulations, a construction that would promote the objects of this Act or the provision is to be preferred to a construction that would not promote those objects.
- (2) In the exercise of a discretion conferred by a provision of this Act or the regulations, the person exercising the discretion must do so in the way that would best promote the objects of this Act or of the provision concerned.”

Another important function of purpose sections is to define the limits of discretion conferred by legislation. As Ruth Sullivan has demonstrated¹⁰, this function is evident when a purpose or objects provision provides the focus for a statutory authority or tribunal to perform and exercise its functions and powers. Such a provision may confer powers that can be exercised generally¹¹ or for a specified purpose that is mentioned in the text of the enactment itself. For example—

“7 Objects of Trust

- (1) The objects of the Trust are to propagate knowledge about the natural environment of Australia and to increase that knowledge.
- (2) When acting in pursuance of its objects, the Trust shall give particular emphasis to propagating and increasing knowledge in the natural sciences of biology, anthropology and geology.”

This function of purpose statements was discussed by L’Hureaux-Dube J in *Canadian Assn of Industrial, Mechanical and Allied Workers Local 14 v. Paccar of Can Ltd.*¹² The issue in this case was whether the Labor Relations Board of British Columbia had exceeded its jurisdiction under the provincial Labour Code. Section 27(1) of the Code contained a purpose section that required the Board to perform its powers and duties “so as to develop effective industrial relations” having regard to a number of specific purposes and objects set out in the section. The Judge found that because the Board had ignored the goals of its mandate as set out in its purpose clause, it had reached a patently unreasonable solution and so exceeded its jurisdiction.

The basis for purposes and objects provisions is to be found in the common law. In *Padfield v Minister of Agriculture, Fisheries and Food*, Lord Reid explained why the fundamental objects of the enabling legislation restrict the delegation of discretionary powers. In the course of his judgment in that case, he said—

“... Parliament must have conferred the discretion with the intention that it should be used to promote the policies and objects of the Act; the policy and objects must be determined by construing the Act as a whole and construction is always a matter of law for the Court. ...”.

¹⁰ Sullivan (Op. cit. p. 388)

¹¹ E.g. “For the purposes of this Act ...”.

¹² [1989] SCJ No. 107; [1989] 2 SCR 983 (SCC).

Effect of purpose sections

A purpose provision is usually to be found near the beginning of the statute or at the beginning of the relevant Part, Division or section.¹³ Some purpose sections are explicit and begin “The purposes [*or* the objects] of this Act are ...” or “The following principles are to be applied in interpreting this Act”. In contrast to a preamble to a statute, a purpose section is invariably located after the enacting clause and so forms part of what is enacted as law. This means that that a purpose section has legislative effect. However, as Ruth Sullivan demonstrates, purpose and objects sections, as is the case with definitions and application provisions, “do not apply directly to facts but rather give direction on how the substantive provisions of the legislation are to be interpreted and applied.”¹⁴

Extent to which purpose sections are used in different countries

Purpose or objects sections are now quite common in modern Australian statutes. All Victorian principal Acts begin with a purpose section. Most recent South Australian principal Acts have ‘objects’ sections and a substantial proportion of recent Queensland and Western Australian principal Acts also have contain ‘objects’ sections. Many recent New South Wales principal Acts contain either ‘objects’ or ‘purpose’ sections, with the former significantly outnumbering the latter. The following is a sample of Australian statutes containing ‘objects’ or ‘purpose’ sections:¹⁵

Commonwealth of Australia Acts

- *Australian Insurance and Investment Commission Act 2001*, section 1
- *Competition and Consumer Protection Act 2010*, section 2
- *Indigenous Education (Supplementary Assistance) Act 1989*, section 7
- *Australian National Training Authority Act 1992*, section 3

New South Wales Acts

- *Anti-Discrimination Act 1977*, section 122C
- *Aboriginal Housing Act 1998*, section 3
- *Aboriginal Land Act 1989*, section 3
- *Administrative Decisions Tribunal Act 1997*, section 3
- *Agricultural Livestock (Disease Control Funding) Act 1998*, section 10 (Purpose of industry fund)

¹³ See the examples listed above. Most of the purpose or objects sections are the first, second or third section of the Acts listed.

¹⁴ Sullivan (Op. Cit., p. 388).

¹⁵ In giving these examples, I make no judgment as to how useful or effective they have been. Except as specifically mentioned, all of the sections cited state the purposes or objects of the Act as a whole.

- *Agricultural Tenancies Act 1990*, section 3
- *Architects Act 2003*, section 3
- *Assisted Reproductive Technology Act 2007*, section 3
- *Associations Incorporation Act 2009*, section 3
- *Australian Jockey Club Act 2008*, section 3
- *Australian Museum Trust Act 1975*, section 7 (Object of Trust)
- *Bank Integration Act 1992*, section 3
- *Births, Deaths and Marriages Registration Act 1995*, section 3
- *Botany Bay National Park (Helicopter Base Relocation) Act 2004*, section 3
- *Business Licences Act 1990*, section 4
- *Casino Control Act 1992*, section 4A (Primary objects of Act)
- *Catchment Management Authorities Act 2003*, section 3
- *Centenary Institute of Cancer Medicine and Cell Biology Act 1985*, section 5 (Objects of the Institute)
- *Central Coast Water Corporation Act 2006*, section 5 (Principal objectives of the Corporation)
- *Charitable Fundraising Act 1991*, section 3
- *Child Protection (International Measures) Act 2006*, section 3
- *Consumer, Trader and Tenancy Tribunal Act 2001*, section 3
- *Motor Accidents Compensation Act 1999*, section 5
- *Police Integrity Commission Act 1996*, section 3

Queensland Acts

- *Native Title (Queensland) Act 1993* (which interestingly not only specifies the objects of that Act but also recites those of the corresponding Federal statute.)
- *Victims of Crime Assistance Act 2009*, section 3
- *Whistleblowers Protection Act 1994*, section 3
- *Workplace Health and Safety Act 1995*, section 7

South Australian Acts

- *Workers Rehabilitation and Compensation Act 1986*, section 2
- *Professional Standards Act 2004*, section 3

- *Petroleum and Geothermal Energy Act 2000*, section 3

Victoria Acts

- *Coroners Act 2008*, section 1
- *Bus Safety Act 2009*, section 1
- *Public Sector Employment (Award Entitlements) Act 2006*, section 1

Western Australia Acts

- *Architects Act 2004*, section 3
- *Dangerous Sexual Offenders Act 2006*, section 4
- *Waste Avoidance and Resource Recovery Act 2007*, section 5
- *Mines Safety and Inspection Act 1994*, section 3
- *Rural Business Development Corporation Act 2000*, section 3

Although I believe that the inclusion of purpose or objects sections in principal statutes in Australia is laudable, an analysis of those sections reveals that they are not always what they seem. In a few cases they state what the relevant statute does rather than what its objective is. Section 3 of the *Consumer, Trader and Tenancy Tribunal Act 2001* (NSW) exemplifies this.

Modern New Zealand principal Acts now include purpose sections, but according to Sullivan, purpose sections are less common in Canadian principal Acts.¹⁶ Similarly, purpose and objects sections are rarely found in UK or Irish statutes, but some exceptions¹⁷ are—

- *Legal Aid Act 1988* (c.34), section 1
- *Arbitration Act 1996* (c.23), section 1
- *Courts and Legal Services Act 1990*(c.41), section 17 (applies only in relation to part of the Act)
- *Nuclear Safeguards and Electricity (Finance) Act 1978* (c.25), section 1

Some other UK Acts state the Act's purpose in terms of statements of principle; e.g. see section 1 of the *Children Act 1989*. Purpose sections are not generally included in Jersey statutes, but there are exceptions. The Isle of Man does not have a policy on the use of purpose sections and rarely uses them. However, purpose sections are to be found in the *Children and Young Persons Act 2001* (the overriding objective in proceedings about children and young people being to promote their welfare) and in the *Financial Supervision Act 2008* (in which the regulator is required to have

¹⁶ "Purpose statements are a relatively recent innovation in Canada and are not referred to in either the federal or provincial interpretation Acts." Sullivan, (Op. cit. pp 387-8).

¹⁷ All are UK statutes.

regard to the reputation of the Isle of Man as a centre for financial services). Although purpose sections have been proposed for inclusion in Gibraltar statutes, the proposal did not prosper.

In Pakistan, a very brief statement is made in the long title and preamble to describe the object of the statute, but these do not form part of the law. Parliamentary rules of procedure also require a statement of objects and reasons to be attached to every Bill but such statements do not of course form part of the resultant statute. This also applies not only to federal statutes but also to ones enacted by a Provincial Assembly.¹⁸

Sri Lanka has recently begun putting an objects section near the beginning of a principal Act, with a view to providing guidance to the courts on the direction of the Act.

In Singapore purpose sections are included in some statutes, but the practice has not yet been institutionalised as a drafting convention. However, Singapore legislative counsel are, it seems, open to using them if they provide a useful aid to interpreting statutes. Singapore has a purposive interpretation provision in its Interpretation Act since 1993, partly to give legislative effect to *Pepper v Hart* [1992] UKHL 3. For example, section 3 of the *Electronic Transactions Act 2010* sets out the purposes of the Act. Similarly, section 11 of the *Chemical Weapons (Prohibition) Act* and section 105B of the *Income Tax Act* (Cap. 134) sets out the purposes of the Parts of the Acts in which those section appear.¹⁹

A search of Hong Kong statutes revealed only five Ordinances containing purpose or objects sections. The situation is little different, in many Commonwealth countries, with purpose and objects sections being comparatively rare.

In South Africa, preambles and objects and purpose sections are often included in principal Acts, but it is understood that this has more to do with the country's apartheid past, rather than specifically to comply with any requirement to include such clauses.²⁰ In Ghana, it is the general practice to have an objects clause in all principal Acts. In the past, the objects have been combined with the functions in the same section, but more recently the preference seems to be to keep the two be separated. A search of the statutes of other Commonwealth African countries²¹ revealed that the inclusion of purpose or objects sections was either non-existent or only spasmodic²².

As far as I could ascertain, it is not the general practice in Commonwealth Caribbean countries to include purpose or objects sections in new principal statutes. However, one exception is the Cayman Islands *Freedom of Information Law*.²³ According to an authoritative source in the

¹⁸ Mohsin Abbas Syed, Director, Law & Parliamentary Affairs Department, Government of the Punjab.

¹⁹ Source: Charles LIM Aeng Cheng, Singapore Law Reform Commission.

²⁰ Source: Enver Daniels, Chief Legal Adviser to the South African Government.

²¹ Relatively few statutes of African countries are available on the Internet.

²² E.g. purpose sections are occasionally included in Kenyan statutes, but there is no consistent policy on the issue.

²³ The drafter informed me that the precedent he was using had a purpose section and so he could see no reason to remove it!

Cayman Islands legislative drafting office, the issue of whether or not purpose sections should or should not be included in principal statutes of that jurisdiction has never been considered.

According to a reliable source in the House of Representatives Legislative Counsel Office (HOLC)²⁴, the practice of including purpose or objects sections in United States statutes is generally discouraged. One of the reasons for this is that purpose statements tend to get out of kilter with the Bill as it goes through the amendment process, thus presenting judges with inconsistent evidence of the intent. However, this rationale applies mainly to statutes that are likely to be litigated. On the other hand, such statements can sometimes be useful in legislation that gives broad discretionary authority to some executive agency but without much direction about how to use it. It is understood that the kind of US statutes in which a purpose or object statement is considered to be useful are ones involving making grants to finance infrastructure and other programs: e.g. “The Secretary shall make grants to worthy recipients for worthy purposes.” As the HOLC source points out, without some statement as to purpose, there would be no constraint on the purposes for which the Secretary might expend the money that has been granted.

A phenomenon often found in US statutes that is generally unknown in the legislation of Commonwealth countries is that of “findings”. These are usually self-serving political statements, sometimes appearing as factual statements. It is understood that US legislative counsel discourage such statements. As with purpose sections, the problem seems to be with the amending process. It was at one time thought (apparently through a misreading of US Supreme Court cases) that such findings were required in order to uphold the constitutionality of certain kinds of laws, especially some of those dealing with interstate commerce and the 14th Amendment to the US Constitution.²⁵ However, the actual requirement is that Congress (through factual hearings or legislative history, or perhaps even in the legislation itself) must establish the factual basis for some legislation or demonstrate the relevance of other legislation to its constitutional underpinnings. It is normally safer to do that elsewhere than in the legislation itself. The HOLC view is that findings are acceptable (even if unaesthetic) in legislation that is expected to have little legal effect and not to be the subject of litigation.

Because of the very plural nature of the US legislative process, it differs significantly from the much more controlled Westminster model. While some States of the US have rules relating to the long title, the US House of Representatives has in the House a germaneness or relevance rule,

²⁴ Douglass Bellis, Deputy Chief Legislative Counsel in the US House of Representatives. He says there is no “official” United States position, but it can be said, though, that the consensus runs along the lines he has indicated, but with some exceptions.

²⁵ The 14th Amendment to the Constitution was ratified on 9 July 1868, and granted citizenship to “all persons born or naturalized in the United States,” which included former slaves recently freed. In addition, it forbids states from denying any person “life, liberty or property, without due process of law” or to “deny to any person within its jurisdiction the equal protection of the laws.” By directly mentioning the role of the states, the 14th Amendment greatly expanded the protection of civil rights to all Americans and is cited in more litigation than any other amendment.

which means that amendments must be “germane” to the subject matter of the Bill as so far amended.²⁶

However, the reality is that every Bill involves achieving some sort of deal. If the political will is there, a Bill will eventuate and some way or other can usually be found to avoid points of order, even when they would otherwise limit the drafter’s course of action.

According to the HOLC source, there are many ways to get a statement of purpose into a draft if one is thought to be needed without resorting to a non-operative and perhaps duplicative provision: an explicit command governs no matter how poorly drafted to carry out the real intent.

Why purpose sections are good for legislative counsel

I have found that many (perhaps even a majority) of legislative counsel are sceptical about the value of purpose sections. They claim that, if a statute is well drafted, the statute’s purposes or objectives should be readily apparent from a reading of the substantive provisions of the statute themselves. They claim that the inclusion of a purpose or objects section is liable to introduce inconsistent and confusing language. For reasons stated below, I think these arguments are not valid.

Some legislative counsel also claim that it is extremely difficult to draft a useful purpose or objects section. They maintain that there is a tension between the general nature of a purpose or objects section and the more focused substantive provisions that follow. They also claim that a purpose or objects section will usually end up being no more than a list of grandiose statements that would not be out of place in a party political election manifesto. Admittedly there is a danger that a purpose or objects section may be drafted too widely or too narrowly. However, a good legislative counsel will always keep a proposed purpose or objects section under continual review during the drafting process to ensure that the substantive provisions are consistent with the purpose or objects section and that that section is not drawn more widely or narrowly than is warranted by the substantive provisions of the statute. So I think these claims are largely unfounded.

The sceptics sometimes also claim that that the objectives of a proposed statute are so diffuse or extensive that no useful statement of purposes is possible. But if this the case, then surely there is something wrong with the policy proposals? Any legislative counsel worth their salt will surely point out the inconsistencies to the policy formulators or instructing officers at an early stage in the drafting process to ensure that the policy objectives of the legislative are reconsidered in order to ensure that they are both coherent and consistent?

So why are purpose or objects sections a good idea for legislative counsel? In my view, the purpose or objects section should be the first “substantive” provision to be drafted, because it should provide the focus for the drafting of the remaining substantive provisions of the proposed statute. The legislative counsel should keep it under continuous review both during the policy analysis stage and throughout the beginning of the drafting process. It should certainly not be an

²⁶ It is understood that the long title means nothing for the purpose of this analysis.

afterthought. A legislative counsel who begins with the purpose or objects section will (or should) always have it in mind throughout the drafting process. In other words, the legislative counsel should be constantly using the draft purpose or objects section to check each of the other substantive provisions in order to ensure that they are capable of giving effect to the purpose or objects set out in the purpose or objects section, or more specifically the policy objectives that are to be attained. The purpose or objects section should thus provide the legislative counsel with a mental guide for subsequent drafting. When drafting a substantive provision, the legislative counsel should be continually asking him or herself whether it is likely to contribute to the attainment of the policy objectives of the proposed legislation. If it is not likely to do so, then the provision should either be redrafted so that it does or be discarded. A good legislative counsel will use the content of the purpose section to test the substantive provisions against the policy objectives of the proposed statute as expressed in that section.

It may of course become apparent during the drafting process that, because of the content of particular sections, the purpose section is too wide or too narrow, in which case it will be necessary for the legislative counsel to adjust the content of that section accordingly.

Some guidelines for drafting purpose sections

In drafting a purpose clause for a principal Bill, legislative counsel should have regard to the following precepts:

- The policy objectives to be attained (the ‘why’) should not be mixed with the means by which they are to be attained (the ‘what’). However, although unusual, it is possible that the ‘means’ may be so closely entwined with the ‘ends’ that to mention them in the purpose section may be warranted. So the following purpose section taken from the *Tobacco Sales to Young Persons Act 1993* [Can] would be justifiable:

“The purpose of this Act is to protect the health of young persons by restricting their access to tobacco in light of the risks associated with the use of tobacco.”
- If there are multiple policy objectives, steps should be taken to ensure that those objectives do not conflict with each other or, if they do, to specify which of those objectives are to prevail. (Failure to do this is liable to render the legislation difficult and perhaps even impossible to implement effectively). The purpose section of the *Extradition Act 1979* (Barbados) included a statement that one purpose of the Act was to make extradition proceedings ‘as uniform as circumstances permit irrespective of whether a fugitive is from a Commonwealth country or a foreign state’ However, another purpose was—

“... to adopt the principles relating to the rendition of fugitive offenders within the Commonwealth as formulated by the Law Ministers of the Commonwealth in their London Conference of 1966 and generally to accord with current international practice regard the return of fugitives”.

Clearly there is a possibility of conflict between these two purposes, which arguably the drafter of the Act should have addressed.

- In the case of a principal statute that is to contain both a long title and a purpose or objects section, steps should be taken to ensure that the two provisions are consistent with each other. See the *Integrity in Public Life Act 1989* (Barbados), which contains both a long title and a purpose section. In that Act, the long title and the purpose section are inconsistent, with the former referring to avoiding conflicts of interest by “persons engaged in governing, guiding or administering the public affairs of Barbados”, whereas the latter refers to “persons in public life to whom this Act applies”. And while the long title refers to establishing a body to monitor “the assets of persons in public life”, the purpose section refers to monitoring “the personal income, expenditures, assets and liabilities” of those persons.²⁷
- The inter-relationship between the purpose section and the provisions that specify how and by whom the policy objectives are to be attained should be made clear.
- Consideration should also be given as to whether (and if so to what extent) the policy objectives are to be implemented and interpreted independently of the Executive or whether the Executive (e.g. perhaps a Government Minister) should have some role in that implementation.

It perhaps goes without saying that it will not usually be appropriate to include a purpose section in an amending statute, particularly when all the amendments are textual ones. This is because the amendments will normally be governed by the general purpose section contained in the principal statute. However, it is essential that the drafter of the amending statute should review the purpose section in the principal statute to ensure that the amendments are consistent with it or, if they are not, that that section is amended to make it consistent with the amendments.

It is rare to find a purpose ‘section’ in a statutory instrument²⁸. This is because the statutory instrument will be governed by the general purpose section in the parent statute (assuming that it contains such a section). Because of the possibility of inconsistency, it would in any case be inadvisable to include a purpose section in a statutory instrument. Such an inconsistency is likely to render the provision being held to *ultra vires*.

What pitfalls are there in drafting purpose sections?

- Sometimes a purpose section might consist of a statement of high principle. The danger with such a section is that, although it might look good, insufficient consideration may have been given to its likely effect.
- Although a purpose section may be ‘good public relations’, the ramifications could be unfortunate if a decision maker under the relevant statute fails to establish that all matters

²⁷ See Bennion F. (1983) *Statute Law* (2 ed), Oyez Longman, London, p. 99.

²⁸ I.e. one made under the authority of a parent statute.

required to be taken into account have been considered.

- Although providing a yardstick for the making or implementation of decisions under a statute provides a flexible tool for decision makers its value is likely to be dependent on its specificity.
- The purposes (i.e. the objectives to be attained) should be distinguished from principles and steps should be taken to ensure that the latter are kept separate from the purpose section. The following provisions taken from the *Sugar Loaf Islands Marine Protected Area Act 1991* (NZ) illustrates the approach that might be followed in drafting a statute that contains both a purpose section and a statement of principles.

“Purpose of Act

3. The purpose of this Act is to ensure that the scenery, natural features, and eco-systems of the Protected Area that should be protected and conserved by reason of their distinctive quality, beauty, typicality, or uniqueness are conserved.

Principles

4. The Protected Area shall be administered and maintained so as to ensure that, so far as is practicable,

- (a) the area, and its scenery, natural features, and eco-systems are protected and conserved in their natural state:
- (b) the value the area has in providing natural habitats is maintained:
- (c) members of the public have access to the area for recreational purposes and for studying, observing, and recording any marine life in its natural habitat:
- (d) the provisions of any relevant management plan for the time being in force under the *Fisheries Act 1983* or the *Conservation Act 1987* are complied with.”

“For the purposes of this Act”

Many statutes contain provisions prefaced with the phrase “For the purposes of this Act”, “For the purposes of this Part” or “For the purposes of this Schedule” without stating anywhere what those purposes are. This in my view is extremely unhelpful. It leaves the reader who wants to know what those purposes are with the tedious task of reading the whole statute to ascertain those purposes. Even when the readers have undertaken this task, they cannot be sure that the conclusion they have reached will equate with that which the drafter might have specified had he or she gone to the trouble of including a purpose or objects section in the statute. To exemplify the problem I randomly did a search of a recent UK statute, the *Equality Act 2010*. The Act contains 218 sections and 29 Schedules and runs to just under 400 pages. The search revealed one provision that included the phrase “For the purposes of this Act” and several provisions that included the phrases

“For the purposes of this Part” or “For the purposes of this Schedule”, but nowhere was there to be found explicit statements of what those purposes are. I believe the statute user deserves better, particular with a statute as socially significant and as complex as the Equality Act.

Why purpose sections are good for users of statutes

So why are purpose sections good for users of statutes? Before answering that question, we need to identify what is meant by ‘users’. Users are the people who comprise the audiences of a document and so, in this paper, I use the term to refer to the people who either need or wish to consult particular legislation in order to find out how it affects either themselves or other people. For example, a person may wish to consult the relevant legislation on wills to find out what formalities must be observed in making a will. A tax consultant will need to consult the relevant income tax legislation in order to determine whether or not a particular deduction applies to his or her client. A police officer will need to consult the relevant provisions of statutes relating to the criminal law and the law of evidence, in particular those relating to powers of arrest and other enforcement powers. A law student who is studying trade practices or consumer protection law will want to consult the relevant legislation relating to trade practices or consumer protection. A judge who is hearing a case involving the interpretation of a particular statute will need to consult the statute and so on. The term refers not only to real users but also to anyone who is looking for a particular legislative provision and to anyone who wants to try to understand the provision²⁹ or simply wants to read it.

Returning to the initial question, a purpose section of a statute is good for users because it provides a beacon to guide them through the substantive provisions of the statute. It provides them with a context within which they can engage with those provisions. In my view, a statute user who is aware of the objects that the statute is intended to achieve is better able to understand the means by which those objects are to be attained. Furthermore, an understanding of the totality of what a statute is seeking to do helps users to recognise the significance of the parts of the statute both in relation to the law as a whole and in relation to one another.

Decision makers generally—In so far as users are decision makers, a purpose section of a statute provides them with a yardstick or benchmark to which they can (and indeed should) refer when making decisions under the statute. A decision maker who makes a decision under the statute without taking into account its purpose will be liable to have the decision questioned by judicial review or, in the case of a judicial decision, by appeal to a superior court.

Often, a statute³⁰ will require decision makers to state reasons for their decisions. Irrespective of whether the statute requires a particular decision maker to have regard to specific purposes in making a decision under the statute, the decision maker will be required to make such a decision that is consistent with the purposes of the statute, whether they are explicit or implicit. Decision makers who ignore this requirement do so at their peril, since they will leave themselves exposed to judicial review.

²⁹ For instance, as a law student.

³⁰ Or any other kind of legislative document for that matter.

Sometimes a provision of a statute will require a decision maker to “take into account” or “have regard to” specified purposes or objectives when making a decision. By directing decision makers to address specific purposes, the provision will contribute to the attainment of the objectives of the statute.

Judicial interpretation—Now that a purposive approach to statutory construction is routinely taken by the courts in many jurisdictions, there is an increased obligation on legislative counsel to make the aim and object of legislation clear on the face of it. The readiness of courts in some jurisdictions to look at *Hansard* and other legislative materials increases the need for legislative counsel to make the purposes of legislation clear in the legislation itself.

The statutory interpretation statutes of many common law jurisdictions include a section directing courts to give every enactment “such fair, large and liberal construction and interpretation as best ensures the attainment of its objects”.³¹ Thus, the courts are expected to interpret a statute or other legislative document in a way that will achieve its objects.

In Australia, New Zealand and Ireland, a different form of words is used. Section 15AA of the *Acts Interpretation Act 1901* (Cwlth) provides as follows:

“In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.”³²

New South Wales, Victoria, Tasmania and Western Australia have enacted similar provisions with a similar wording.³³ Queensland and South Australia have also enacted legislative provisions requiring courts to interpret purposively the legislation of those States, but with a somewhat different wording. Section 5(1) of the *Interpretation Act 1999* (NZ) provides:

“The meaning of an enactment must be ascertained from its text and in the light of its purpose.”

Some disagreement exists as to the effect of section 15AA and its Australian State counterparts. Some judges have assumed or decided that the provisions are applicable only where the provision to be interpreted is ambiguous.³⁴ Nonetheless, it seems clear that section 15AA and its State

³¹ See the Canadian Interpretation Act RSC 1985, c. I-21, s. 11. The Interpretation Acts of Canadian provinces contain similar provisions. See RSA 1980, c. I-7, s.9; RSBC 1979, c. 206, s. 7; RSM 1987, c. I-80, s. 7; RSNB 1973, c. I-13, s. 12; RSN 1990, c. I-19, s. 10; RSNS 1989, s. 235, s. 9(1); RSO 1990, c. I-11.1, s. 10; RSNWT 1988, c. I-8, s. 9; and RSYT 1986, c. 93, s. 5(1). Also see the Ghana *Interpretation Act 1960*, s. 19, and the *Interpretation and General Clauses Ordinance* (Cap 1)(HK), s. 19.

³² It has never been clear to me why this subsection is expressed as a truncated passive.

³³ New South Wales - *Interpretation Act 1987*, s. 33; Victoria – *Interpretation of Legislation Act 1984*; Tasmania - *Acts Interpretation Act 1931*, s. 8A; Western Australia – *Interpretation Act 1984*, s. 18.

³⁴ For example, *Campbell v. Epping* [1970] Tas SR 215 at 225. Also see paper given by Bryson J of the New South Wales Supreme Court, 8 *Aust Bar Rev*, 1991-92, 187.

counterparts require courts, when interpreting a legislative provision, to adopt an interpretation that promotes the purpose³⁵ of the statute in preference to one that would not.

Bearing in mind the directive that, in some common law jurisdictions, the courts are required to interpret a statute in a manner that will achieve its objects and that, in others, the courts are required to interpret a statute in a manner that is likely to promote the purposes or objects of the statute, it seems to me inexcusable not to include a section that expressly states the purposes or objects of the statute. I do not think that judges should have to second guess the purpose of a statute by “reading it as a whole” in order to ascertain the objectives that the statute seeks to achieve. The judges’ difficulty is exacerbated when a statute (such as a taxing statute) has multiple objectives.

Assuming a statute has more than one objective, judges are likely to find it difficult to weigh up the significance of the objects in relation to each other and may in fact treat a secondary object as being more important than the primary object.

Both happened in *Re Trustees of St Peter’s Evangelical Lutheran Church and City of Ottawa* (1983) 140 DLR (3d) 577. In the Ontario Court of Appeal, the purpose of the Ontario Heritage Act had been defined as ensuring the protection for the benefit of the citizens of Canada of a collective resource, including buildings of historical and architectural significance. However, the Supreme Court of Canada identified an additional purpose, which was the protection of landowners. And for a majority of that Court, that additional purpose was decisive in interpreting the relevant provisions of that Act despite the fact that they were unable to show how the Trustees were prejudiced by a failure to comply with a notice requirement. So not only did different judges in different courts have difficulty in weighing up competing objects of the relevant statute³⁶, but a majority of judges in the Canadian Supreme Court arguably treated a secondary object (the protection of landowners’ property interests) as being more important than the primary object (the protection of buildings of historical and architectural significance for the benefit of Canadian citizens).

What support is there for including purpose sections in a statute?

Among the early advocates of purpose sections was Henry Thring, the first Parliamentary Counsel of the United Kingdom Parliamentary Counsel Office when it was established in 1869. His successor, Courtenay Ilbert, was also an advocate of purpose sections. Later First Parliamentary Counsel were less enthusiastic about purpose sections. In giving evidence before the Renton Committee³⁷, the then First Parliamentary Counsel, Sir Anthony Stainton, expressed the view that “in many cases the aims in the legislation cannot usefully or safely be summarised or condensed. A purpose clause might be no more than a manifesto ... which may obscure what is otherwise precise, and exact.” He went on to say that “amendments to a Bill may not merely falsify the accompanying proposition but may even make it impracticable to retain any broad proposition”.

³⁵ Or object.

³⁶ See the *Heritage Act 1974* (Ont).

³⁷ Renton, Lord (1975), *The Preparation of Legislation*, report of a committee appointed by the Lord President of the Council, Cmnd 6053.

Another UK parliamentary counsel said that “the Act should in general explain itself”³⁸. However, as I argued earlier, a purpose section should be drafted very early in the drafting process and should provide the foundation and focus for the substantive provisions that follow. As the drafting progresses, the purpose section should be kept continually under review to ensure that it and the substantive provisions are mutually consistent.

In its report on the preparation of UK legislation, the Renton Committee considered purpose clauses and strongly advocated the inclusion of purpose sections in all new UK principal Acts.³⁹

Judges have rarely commented on purpose sections, but to the extent that they have, they seem to find them helpful. In commenting favourably on section 2⁴⁰ of the *Water and Soil Conservation Act 1981* [NZ](a purpose section), the President of the Court of Appeal had this to say:⁴¹

“Parliament reduced the difficult by taking the unusual step of declaring a special object for the 1981 Amendment Act: the object of this Act is declared by section 2 to be to recognize and sustain the amenity afforded by waters in their natural state. A statutory guideline is thus provided; and I think that the code enacted by the Amendment Act is to be administered in its light. With all respect to the contrary arguments, to treat section 2 as surplusage or irrelevant or mere window-dressing would be, in my opinion, as cynical and unacceptable a mode of statutory interpretation as that which was rejected in *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641. The duty of the Court must be to attach significance to and obtain help from this prominent and unusual feature of the Parliamentary enactment.”

As already mentioned, it is now the practice for purpose sections to be included in all statutes enacted by the Parliament of the Australian State of Victoria. In at least two fairly recent cases, the Victoria Court of Appeal seem to have found section 47 of the *Road Safety Act 1986* (Vic) (a purpose section) helpful in interpreting sections of the Act relating to breath testing of drivers of motor vehicles whom police officers have suspected to be drunk.⁴²

More recently, a member of the Hong Kong Court of Appeal, Mr Justice Bokhary, has expressed support for the inclusion of purpose or objects sections in statutes. In the course of a paper delivered⁴³ at the 2009 conference of the Commonwealth Association of Legislative Counsel, he had this to say:

³⁸ Ibid, Renton, para 11.7.

³⁹ Ibid, Renton, para 11.7.

⁴⁰ The section provided as follows:

Object of this Act

2. The object of this Act is to recognize and sustain the amenity afforded by waters in their natural state.

⁴¹ *Ashburburton Acclimatisation Society v. Federated Farmers of New Zealand Inc.* [1988]1 NZLR 78.

⁴² See *DPP v Foster*; *DPP v. Bajram* [1999] 2 VR 643; *Wright v Morton* [1998] 3 VR 316.

⁴³ Paper published in *The Loophole*, 2010, Issue no. 1, pp. 26-40; see p. 36.

“In Hong Kong, it has been clearly understood since 1972 (when the Court of Appeal’s predecessor the Full Court decided *Elson-Vernon Knitters Ltd v. Sino-Indo-American Spinners Ltd*⁴⁴) that the Objects and Reasons (nowadays called the Explanatory Memorandum) annexed to a Bill may be looked at for the purpose of ascertaining the mischief which the proposed legislation was intended to remedy. Such memoranda can play a useful role, and the *Elson-Vernon* case has twice been applied by the Court of Final Appeal twice (in *Director of Lands v. Yin Shuen Enterprises Ltd*⁴⁵ and *Secretary for Transport v. Delight World Ltd*⁴⁶). *But if the mischief to be remedied is worth stating, I consider it preferable that it be stated in the Bill itself, so as to become part of any resultant statute.*”
[Emphasis added]

Later in the same paper⁴⁷, he went on say:

“Both in the selection of a legislative drafting style and in the interpretation of legislation however drafted, due regard must be had both to wording and to ascertainable purpose. As Judge Learned Hand said, “the words used, even in their literal sense, are the primary, and ordinarily the most reliable, source of interpreting the meaning of any writing [but it must be remembered] that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning”⁴⁸.”

Other judges (including a former Lord Justice of Appeal in Court of Appeal for England and Wales) have privately expressed support for purpose sections “as long as they are well drafted”.⁴⁹

In *R. v. T* (V⁵⁰), the Supreme Court of Canada has suggested that it is prepared to take purpose statements seriously. It rejected the view that a purpose section is merely a preamble that does not carry the same force as a substantive provision. However, as Sullivan suggests, the weight given to a purpose section depends on a number of considerations. These include—

- how specific the goals, principles or policies are,
- their relation to one another,
- what criteria (if any) the legislature has provided regarding their use; and
- whether there are other indicators of legislative purpose.

⁴⁴ [1972] HKLR 468 at pp 474-476.

⁴⁵ (2003) 6 HKCFAR 1 at p. 15B.

⁴⁶ (2006) 9 HKCFAR 720 at pp 730J-731B.

⁴⁷ At p. 37.

⁴⁸ *Cabell v Markham* 148 F 2d 737 (1945) at p.739.

⁴⁹ The judges concerned asked to remain anonymous.

⁵⁰ [1988] SCJ No. 6; [1988] SCR 217 (SCC).

Because a purpose section forms part of the relevant statute, it carries significant weight. However, because it is interpretive in character, it seems that it will carry less weight than a substantive provision.⁵¹

Conclusion

On balance, I would advocate the inclusion of a general purpose section in all principal statutes, unless for some obvious reason such a section is unnecessary or inappropriate. For example, a purpose provision is not really needed for an Appropriation Bill. The main reasons why I think purpose sections are a good idea are because they—

- provide legislative counsel with a foundation and a focus for drafting a principal statute,
- provide a beacon that helps to give users of such a statute an immediate understanding of what the statute is seeking to achieve, and
- give those charged with the responsibility for making decisions under the statute a guide as to how the statute should be interpreted and applied.

However, it is essential that the drafter of a purpose or objects section should—

- draft it early in the drafting process;
- keep the section under continual review during the drafting process to ensure consistency between it and the following substantive provisions;
- avoid mixing the objectives to be attained (the ends) with the means of attaining those ends;
- state accurately and unambiguously the objectives sought to be attained by the statute;
- ensure that, if the section specifies more than one such objective, either those objectives are consistent with each other or, if they are not, specify which of those objectives is to be given priority in the event of an inconsistency;
- ensure that the section and other provisions of the statute (including the long title (if any)) do not say the same thing in different words;
- ensure that the heading to the section accurately communicates to users the content of the section.⁵²

In conclusion, I would endorse the sentiments expressed by Mr Justice Bokhary in the paper referred to above. “Legislative drafters construct statutes for the purpose of embodying the legislature’s intention. Judges construe statutes purposively. Drafting and interpretation have the same objective. Both are vital to the rule of law.”⁵³ I believe that the inclusion of purpose or

⁵¹ Sullivan, *op. cit.*, p. 390.

⁵² In this regard, a heading that simply states “Objects” is not regarded as adequate.

⁵³ *Op. cit.*, p. 40.

objects clauses in statutes and parts of statutes make a useful contribution towards attaining this objective.
