

ATTORNEY-GENERAL'S DIRECTIVE NO. 4

DRAFTING CONVENTIONS

Purpose

This is an Attorney-General's Directive under Chapter 7 of the Legislative Drafting Handbook and sets out the drafting conventions drafters are to comply with from the date of its application.

Application

This directive applies to drafting of all Bills, and where relevant, to all subordinate legislation, prepared after 5 April 2010.

Date of Issue - 10 February 2010

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PRELIMINARIES

- **Definitions**

Definitions contained in common provisions according to the Legislative Drafting Handbook may be repeated e.g. those in the Acts Interpretation Act 1974. This ensures that the reader of an Act is made aware of provisions in other legislation that are relevant to the Act.

Note: Section 4 of the Acts Interpretation Act says that one of the principles of interpreting law is that plural includes singular and singular includes plural.

- **Name of a Regulation or other subordinate legislation**

starts by mentioning the Act	Fisheries Management
then clarifies the policy purpose	(Southern Bluefin Tuna Fishery) or Amendment
then identifies the kind of instrument	Regulations
and then shows the year in which it is made	2006

- **Policy Aim**

It is important that the aims of the policy are clear. These are fundamental questions: **what is the policy to achieve and who is to benefit from the policy?** This information answers the question of why legislation (if any) is needed.

If there is existing legislation, is it adequate or will it need to be changed? If there is no legislation, is new legislation needed? If so, what kind of legislation will it be?

- **Simpler way to refer to legislation**

Samoa Convention	Common law
Section 4	Section 4
Section 4(1)	Subsection (1) of section 4
Section 4(2)(a)	Paragraph (a) of subsection (2) of section 4
Section 4(3)(a)(i)	Subparagraph (i) of paragraph (a) of subsection (3) of section 4
Section 4(3)(a)(ii)	Subparagraph (ii) of paragraph (a) of subsection (3) of section 4

NUMBERING

- **Sections and Parts of Section**
 - Sections – 1, 2, 3, etc.
 - Subsections – (1), (2), (3), etc.
 - Paragraphs – (a), (b), (c), etc.
 - Subparagraphs – (i), (ii), (iii), etc.

- **Grouping sections**
 - Part I, Part II
 - Division 1, 2, 3
 - Subdivision 1, 2, 3

- **Schedules and parts of schedules**
 - Schedules—1, 2, 3 etc
 - amending items—1, 2, 3 etc
 - non-amending clauses (other than in a treaty or agreement) —these are numbered in the same way as sections
 - provisions of a treaty or agreement—these are numbered in exactly the same way as in the original treaty or agreement.

- **The effect of amendments**
 - The insertion of new provisions by amendments, or the repeal of provisions, will upset the neat, sequential numbering of an Act or instrument. If a new provision is inserted between 2 existing provisions, it will be given the number of the first provision, plus a letter of the alphabet (generally A or a). For example, a new subsection between (1) and (2) will be (1A), and a new paragraph between (b) and (c) will be (ba).
 - On the other hand, a repeal will leave a gap in the numbering.
 - Occasionally, an amended Act or instrument is renumbered so that it again has a neat, sequential numbering system—but this is the exception rather than the rule.
 - An amending Act also contains these common features.

- **What may be set out in the Schedules**

Schedules appear at the end of Acts or instruments and always rely on an earlier section of the Act or instrument. Schedules have a number of uses:

- **amendments of other Acts or instruments** can be set out in schedules (eg the XYZ Amendment Regulations 2005 may set out a schedule containing amendments to the XYZ Regulations 2000)
 - **agreements** mentioned in an Act or an instrument are often set out in schedules
 - **procedural or administrative matters** are sometimes set out in schedules
 - **tables of information** eg a table setting out fees for particular services
 - **boundary descriptions of areas** eg the boundary description for a part of a protected area
-

LANGUAGE AND GRAMMATICAL STRUCTURE OF SENTENCES

- **Main clause before conditions**

Putting the conditions first would require the reader to retain a lot of information before he or she arrived at the main idea of the sentence.

- **Keep related words close to each other**

The grammatical structure of a sentence is improved by keeping its structural components (the subject, verb and object) close to each other and in that order. Similarly, auxiliary verbs (must, may, is, has) should be kept close to the main verbs. The drafter should avoid placing a large amount of text between the auxiliary verb and the main verb.

The Chairperson may, after consultation with the Council and if there are no objections, refer the recommendation to the Minister for his or her decision.

The Chairperson may refer a recommendation to the Minister for his or her decision if the Council has been consulted and there are no objections.

After consultation with the Council and if there are no objections, the Chairperson may refer the recommendation to the Minister for his or her decision.

In the first sentence above, text is placed between the auxiliary verb 'may' and the main verb 'refer' and this disrupts the main idea of the sentence. In the two other examples, the auxiliary verb and the main verb have been kept together.

- **Draft in the active voice rather than the passive voice**

Drafters have used the passive voice a lot in the past. However, it is better to use the active voice. The active voice uses fewer words and has a more natural word order. The passive may leave it unclear who is responsible for taking action. The active voice makes this clear.

The shareholder must be given a notice.

The director of the company must give a notice to the shareholder.

In the first sentence, it is not clear who gives the notice. In the second sentence, which is in the active voice, it is essential to specify who is to give the notice.

- **Use the positive rather than the negative**

Negative statements often confuse readers because they need to translate a negative statement into a positive one to work out what they can do. Positive statements are easier to understand. If a

drafter can use either a positive or a negative statement, the drafter should use the positive statement.

- **Example 1:**

A person must not enter the building unless the person has identification.

A person may enter the building only if the person has identification.

This example sets out a pre-condition to enter the building. 'Only if' can be used instead of 'not...unless'.

- **Example 2:**

A drafter should use a negative statement to prohibit behaviour in criminal offences.

A person must not walk on the grass.

Penalty: A fine of \$100.00

A positive statement such as 'A person must walk on the path' does not have the same effect.

- **Example 3:**

Multiple negatives (double and triple negatives) are particularly confusing. However, a double negative does not always equal a positive.

The Director has not certified that the benefit has not been paid.

The Director has certified that the benefit has been paid.

The first and second sentences have different meanings.

- **Use definitions to avoid complexity**

A drafter can make a sentence less complicated using definitions. A complicated concept can be defined and the operative provision can use the definition. This results in a shorter sentence.

The chief executive officer must develop a human resources management program.

A definition of 'human resource management program' would be in the definitions section or the section in which the above sentence appears.

- **Participles and relative clauses**

- **Relative clauses** (that has, that was issued, etc) are longer than participles (having, issued, etc).

Example: don't say: "a corporation that has been prescribed for the purposes of this section"
 say: "a corporation prescribed for the purposes of this section".

- The **participle** also avoids difficulties when both the present and past tenses are used in the same sentence.

Example don't say "a licence that is or was issued" say "a licence issued".

- When a provision refers to the beginning (or end) of a period, the traditional style doesn't use the present participle if the period began (or ended) before the commencement of the provision.

Example don't say "the grant year that began/ended on 1 July 1930" say "the grant year beginning/ending on 1 July 1930".

- **Adverbial clauses**

If an adverbial clause or phrase is placed between the auxiliary verb and the main verb, it can weaken the importance of the adverbial clause. It is better to place adverbial clauses at the start or end of a sentence.

A person must, within 7 days after receiving an offer, accept or reject the offer.

A person must accept or reject the offer within 7 days after receiving the offer.

Within 7 days after receiving an offer, a person must accept or reject the offer.

In the second and third examples, the adverbial clause 'within 7 days after receiving the offer' is placed at the start or end of the sentence, which avoids separating the auxiliary verb and the main verb.

- **Ambiguity**

1. The drafter must try to avoid ambiguity. The arrangement of words in a sentence (syntax) can cause ambiguity.

A person must not damage council property in a public place.

Does 'in a public place' apply to the 'council property' or to the 'damage'?

2. Ambiguity also arises if an adjective or adjectival phrase or clause is used with more than one noun.

A charitable organisation or trust must provide an annual statement to the Commission.

Does 'charitable' relate to both 'organisation' and 'trust'?

3. A qualifying clause or phrase following more than one noun can also cause ambiguity.

The Commissioner must distribute the emergency funds to a person or organisation whose property is destroyed.

The organisation's property must be destroyed to receive the emergency funds, but what about the person's property?

4. A drafter can avoid this kind of ambiguity by rewording the provisions.

A person must not damage council property that is located in a public place.

*The following entities must provide an annual statement to the Commission:
a charitable organisation;
a charitable trust.*

If the property of a person or organisation is destroyed, the Commissioner must distribute the emergency funds to the person or organisation.

- **Use verbs not nouns**

By using verbs instead of nouns in a sentence, a drafter conveys a sense of action that is lost if nouns are used. A single verb is often shorter and more precise.

Verb	Noun
<i>Agree</i>	<i>are in agreement</i>
<i>Apply</i>	<i>make an application</i>
<i>if he or she does not appear</i>	<i>in default of appearance</i>
<i>to conclude</i>	<i>to reach a conclusion</i>

- **Avoid words that are unnecessary**

A sentence should contain only necessary words. If a sentence contains a string of related or alternative words, it may be possible to replace them with a single word. If necessary, the single term can be defined. Using a string of words invites the reader to look for gaps between the words.

"take" means to kill, injure, capture, handle or molest a native mammal or bird.

- **Duplicating words**

Drafters often used two words that have the same or substantially similar meaning. It is generally sufficient to use one of the words.

null and void
due and payable
null and of no effect
terms and conditions

- **Unnecessary internal references**

A reference to another provision in the same Act does not need the words 'of this Act'. They are needed to refer to a provision in another Act.

Subsection (1) applies to a public servant despite section 15.

Subsection (1) of this section applies to a public servant despite section 15 of this Act.

The first sentence above is adequate without any loss of precision. The second sentence contains unnecessary internal cross references 'of this section' and 'of this Act'.

- **False subject**

A provision contains a false subject if it starts with 'there is' or 'there are'. These words are not needed and can be omitted.

If there is a person who makes a verbal complaint about officers, the Attorney General may request the person to put the complaint in writing.

If a person makes a verbal complaint about officers, the Attorney General may ask the person to put the complaint in writing.

The second sentence avoids using a false subject.

- **Use of single word**

Legislation contains many expressions that can be replaced with a single word.

Single word	Expression
<i>to, of, for, about</i>	<i>in relation to</i>
<i>if</i>	<i>in the event of</i>
<i>despite</i>	<i>notwithstanding anything to the contrary in</i>
<i>because</i>	<i>by reason of</i>
<i>about</i>	<i>in connection with</i>
<i>to</i>	<i>in order to</i>

- **Words instead of numbers**

In the past, legislation has used words instead of numerals to express numbers. Some legislation has used both. Numerals are easier to read and shorter. Cardinal numbers should be expressed in figures. Ordinal numbers (1st, 2nd, etc) should be spelt out, up to and including 'tenth'.

- **Use common words**

Although legislation must have a certain formality about it, this does not mean that a drafter should try to use grand or unusual words. It is preferable to use a common word if it does the job.

Common words	Grand words
<i>end</i>	<i>expiration</i>
<i>put in writing</i>	<i>reduce in writing</i>
<i>give/supply</i>	<i>provide/furnish</i>
<i>start proceedings</i>	<i>institute proceedings</i>

- **Avoid archaic words, Latin expressions and legalisms**

Similarly, a drafter should avoid archaic words, Latin expressions and legalisms.

Commonly used word	Archaic
<i>under</i>	<i>pursuant to, in pursuance of, by virtue of</i>
<i>despite</i>	<i>notwithstanding</i>
<i>clothes</i>	<i>apparel</i>

Commonly used word	Latin
<i>from the start</i>	<i>ab initio</i>
<i>in good faith</i>	<i>bona fide</i>
<i>with equal treatment</i>	<i>pari pasu</i>

Commonly used word	Legalism
<i>buyer</i>	<i>purchaser</i>
<i>document</i>	<i>instrument</i>
<i>possessing</i>	<i>seized of</i>

- **'Any', 'all', 'each' and 'every'**

Drafters use these words before a noun for emphasis. In most cases it is sufficient simply to use the indefinite article 'a'. If a drafter needs to show that a provision applies to all members of a class individually, then 'each' and 'every' can be used, as in the example below.

256. Register and index of members

- (1) A company shall keep a register of its members and enter in that register -
- (a) the names and addresses of the members and, in the case of a company having a share capital, a statement of the shares held by **each** member (distinguishing **each** share by its number (if any) or by

*the number (if any) of the certificate evidencing the member's holding) and of the amount paid or agreed to be considered as paid on the shares of **each** member;*

- **Legal concepts**

If a drafter is relying on a legal concept, he or she should use the term that lawyers commonly use to describe it. A drafter should check the latest cases for any judicial rulings relevant to the term. Examples include 'intentional', 'negligent', 'reckless' and 'fraud'.

- **Technical terms**

If a drafter is dealing with a technical subject, for example telecommunications law, he or she should use the technical terms that are used for the subject. If the legislation will have a wide audience and not just experts will use it, a drafter should consider defining the technical terms, as long as accurate definitions can be prepared. It is appropriate to use technical terms that are not in common use.

- **Acronyms**

Sometimes a drafter can use acronyms to avoid repeating long expressions—for example, 'MPF' for 'Military Police Force'. The drafter can make up acronyms as well as use existing ones. Acronyms should be defined.

- **'Where', 'if' and 'when'**

Coode developed rules about the use of 'where', 'when' and 'if'. The distinctions between 'where', 'when' and 'if' are fine and they serve little practical importance.

In plain language drafting, the word 'if' can be used to introduce a set of facts or circumstances. The word 'when' can be used if the facts or circumstances are certain. If the ABC Act states that it ceases to have effect on 1 July 2007, a drafter referring to this could use: 'when the ABC Act ceases to have effect'. The word 'where' should be used to convey the idea of place, which is how it is commonly used.

- **'Shall', 'must' and 'is to'**

In the past, the word 'shall' was used to impose an obligation. The word 'must' is now being used instead. The word 'must' is precise and unambiguous and is commonly used in everyday writing to express an obligation. The word 'shall' can also be used to make a statement about the future in the same way that 'will' can be used. The word 'must' cannot be used to make a statement about the future.

In plain language drafting, the common word should be used if it is the best word. Therefore, the word ‘must’ should be used to impose an obligation. ‘Must not’ should be used instead of ‘shall not’ in offence provisions.

Despite 9.3.1 of the Legislative Drafting Handbook which permits the use of the word ‘shall’ to impose mandatory requirements, from the date of the application of this Attorney-General’s Directive No. 4, new principal or stand-alone legislation, including subordinate legislation, is to be drafted using ‘must’ to indicate the compulsory nature of an exercise of powers or performance of functions etc.

Where amending legislation or subordinate legislation will result in insertions into existing legislation or regulations that already use ‘shall’, for internal consistency within that legislation or those regulations, the drafter must use ‘shall’ (and ‘shall not’) in the amendments.

A drafter can use ‘is to’ or ‘is not to’ only if the subject matter of the Bill is based on a cooperative relationship amongst the persons affected by the Bill. This form still creates an obligation and is appropriate to use when imposing obligations on important persons like the Head of State.

The Head of State is to appoint a person who is of good character.

In the past, ‘shall’ was used in declaratory provisions. This can be simplified using the present tense of the main verb.

This Act shall cease to have effect on 1 July 2007.

This Act ceases to have effect on 1 July 2001.

Even if the event is yet to happen, the provision can be drafted using the simple present tense of the verb because an Act is always speaking.

For discretionary use of ‘may’, refer item on ‘may’/‘must’ below at page 18.

- **Use of the word ‘deem’**

The word ‘deem’ is used to create a legal fiction—that is, to cause something to be treated as if it were something else. It can also be used to mean ‘to consider’ or ‘to conclude’—for example, ‘as he deems fit’. It is better not to use the word ‘deem’. If the drafter is creating a legal fiction (and these should be kept to a minimum), it is better to use ‘taken’ or ‘regarded as’.

*This Act is deemed to have commenced on 1 January 2005.
This Act is taken to have commenced on 1 January 2005.*

*A member is deemed to be on leave if he or she is out of the country.
A member is regarded as being on leave if he or she is out of the country.*

If the drafter is not creating a legal fiction, the words 'thinks' or 'considers' can be used.

- **Use of 'being'**

Drafters often use the word 'being' after a relative clause. It is better to use the conjunction 'and'.

A person who is employed by the government, being a person who is in a remote location, must report weekly to the provincial administrator.

A person who is employed by the government and is in a remote location must report weekly to the provincial administrator.

- **Back-references in associated provisions**

In a section with several subsections, common law drafting binds the later subsections to the earlier ones by back-references. This is often unnecessary.

Example

don't say:

- “(1) A person may apply to the Minister under this section for a licence.
- “(2) An application under subsection (1) must be accompanied by the prescribed fee.
- “(3) On receiving an application made by a person under subsection (1), the Minister may issue a licence to the person.
- “(4) A licence issued under subsection (3) must be in the prescribed form.
- “(5) A licence issued under this section authorises the holder to ...”

say:

- “(1) A person may apply to the Minister for a licence.
- “(2) The application must be accompanied by the prescribed fee.
- “(3) The Minister may issue a licence to the applicant.
- “(4) The licence must be in the prescribed form.
- “(5) The licence authorises the holder to ...”

or say:

- “(1) A person may apply to the Minister for a licence.
- “(2) An application must be accompanied by the prescribed fee.
- “(3) The Minister may issue a licence to an applicant.
- “(4) A licence must be in the prescribed form.

“(5) A licence authorises the holder to ...”.

- **‘And’ or ‘or’ at the end of paragraphs** Elements of a single provision: paragraphs

In some jurisdictions there is a style convention that ‘and’ and ‘or’ is only inserted between the two final series of paragraphs. Drafters know that if ‘and’ or ‘or’ appears at the end of the second last paragraph, it applies to all the earlier paragraphs. However, non-lawyers will not know this and there is a risk that they will interpret the ‘and’ or ‘or’ as applying only to the last two paragraphs and will be left in doubt about the others.

Although it adds words and may sometimes appear clumsy, placing the relative word between *each* paragraph is preferable for this reason.

- **‘And/or’**

The expression ‘and/or’ should not be used because it creates confusion. It can often be replaced by “or” on its own, or by using ‘or both’—for example, ‘notes or coins, or both’ (not ‘notes and/or coins’).

- **Period**

A period of time does not have to be referred to as a period. The word ‘period’ can be omitted.

Within the period of 6 months starting on 1 June 2006.

Within the 6 months beginning on 1 June.

- **Possessives**

The shorter form of the possessive can be used in preference to the longer form—for example, ‘the Commissioner’s’ rather than ‘of the Commissioner’.

- **Pronouns (‘it’, ‘them’, ‘they’, etc.)**

Pronouns are not often used in common law drafting, where drafters repeat the noun instead using a pronoun. If pronouns do not cause any ambiguity, they should be used.

The Commission must publish an annual report and give a copy of it to the Minister.

- **‘Provisions of’**

The expression ‘subject to the provisions of section 2’ can be simplified to ‘subject to section 2’.

- **‘Body, etc. to which this section applies’**

If a section states that it applies to a legal body and there are later references to the legal body in the section, the phrase ‘a body to which this section applies’ is used. This can be simplified by defining ‘body’ in the section and having later references refer to ‘the body’.

If a section states that it applies to an entity, etc and there are later references to the entity, the common law traditional style often uses clumsy definitions for the references.

Example “A body is a body to which this section applies where ...”,
or:
“body to which this section applies’ means ...”.

Later references are to the phrase “a body to which this section applies”. This is unnecessarily elaborate.

Example **say** “This section applies if ...”
or say: “This section applies to a body if ...”,
or say: “In this section, ‘body’ means ...”
then in later references, you can just say “the body”.

- **‘Subject to this Act’**

This expression is not helpful to readers and should be avoided. It is more helpful to refer to a particular provision or Part of the Act.

- **‘Anything to the contrary contained in’**

The form ‘notwithstanding anything to the contrary contained in the ABC Act’ can be simplified to ‘despite the ABC Act’.

- **Duplicated adjectives**

In the traditional style, adjectives are repeated unnecessarily when the noun is expressed in the singular and the plural.

Example **don’t say** “another application or other applications”, or “a prescribed company or prescribed companies”.

say “any other application or applications”, or “any prescribed company or companies...”.

- **Duplicated nouns**

In the traditional style words are sometimes repeated unnecessarily, perhaps through a desire to repeat the exact words of a phrase set out in another section of the Act.

Example if section 5 states “This section applies to a person who ...”,
don’t say “a person who is a person to whom section 5 applies”
say “a person to whom section 5 applies”.

- **Duplicated verbs**

If a sentence has singular and plural subjects, the traditional style uses the verb in both the singular and the plural. Fowler states that we can make the verb agree with the nearer of its subjects (2nd ed., p. 402, para 3).

Example **don’t say** “the corporation has, or corporations have, entered into an agreement”
say “the corporation or corporations have entered into an agreement”, **or**
use the passive and say “an agreement has been entered into by the corporation or corporations”.

- **Unnecessary repetition - negatives**

The common law traditional style sometimes repeats too much when expressing the negative. In the following example, subsection (2) has to negate the effect of subsection (1).

Example “(1) A tertiary education institution that has complied with section 5 must do X.”
don’t say:
“(2) A tertiary education institution that has complied with section 5 is not required to do X, if ...”
or:
“(2) A tertiary education institution that has complied with section 5 is not required to do X, if ...”
or:
“(2) Subsection (1) does not apply to a tertiary education institution that has complied with section 5, if ...”
say:
“(2) Subsection (1) does not apply if ...”.
Subsection (1) has spelt out the whole case, so you don’t need to spell it out again when expressing the negative.

- **Unnecessary repetition - noun phrases**

In the traditional style, if a provision introduces an entity described by several words, it repeats the whole phrase every time the entity is later referred to in the provision.

Example if the section introduces the concept “tertiary education institution”, just say “the institution” in later references (in the same section).

- **Calculations and proportions**

A calculation or proportion in a Bill can be described using words. However, a formula is easier to understand. The components of the formula can be expressed in words or symbols.

(2) *On the first business day in each later category A year, there is to be credited to the Land Fund the amount worked out using the formula:*
Indexation factor x Previous year’s amount
where:
‘Indexation factor’ means the indexation factor for the year worked out under section 193D;
‘Previous year’s amount’ means the amount credited to the Land Fund under this section in the previous financial year.

If some of the components cannot be expressed in words because they are too long or complex, a drafter can use letters as symbols for the components. The initial letters of key words in the components should be used instead of the more traditional a, b, c symbols because such words are more meaningful to the reader.

- **Limitations and exceptions**

Drafters commonly use limitations and exceptions, in addition to modifying clauses, to modify the legal subject and legal predicate so that the provision does not apply in all circumstances. Limitations and exceptions can also be drafted for grammatical objects.

Limitations can be drafted using adjectives or adverbs including phrases or clauses. Adverbs, adverbial phrases or clauses are placed as close as possible to the verb.

The Committee must, within 7 days after receiving an application, accept or reject the application.

The Committee must accept or reject an application within 7 days after receiving the application.

In the second sentence, the auxiliary and main verbs are not separated by the adverbial clause.

Exceptions to the legal subject are drafted using 'other than' or 'except' after the legal subject. Exceptions are also drafted using '**unless**' and '**except that**' in relation to the main verb.

A member of the Commission, other than an honorary member, must attend the hearing.

- **'May'/'must'**

It is commonly known that 'may' is used to indicate a discretion and 'must' is used to indicate that something is mandatory.

'Must' is used to make it clear that the holder of a power is obliged to exercise it.

The Director must issue the permit on payment of the prescribed fee.

In this sentence, the Director is under a duty to issue the permit on payment of the fee.

'May' is used to confer permission on the holder of the power to use it.

The Director may issue the permit on payment of the prescribed fee.

The Director has a discretionary power to issue the permit even if the fee is paid. If a drafter wants to make the intention clearer, he or she can add 'in his or her discretion', 'if he or she thinks fit' or 'if satisfied that (etc)'.

The Director may, in his or her discretion, issue the permit on payment of the prescribed fee.

Legal consequence or status

The auxiliary verbs 'must' and 'may' are very useful in sentences that command or authorise. If the legal predicate states a legal consequence or declares a legal status, the present tense of other verbs can be used.

A board member ceases to be a member if he or she becomes incapacitated.

This example uses the simple present tense 'ceases'.

- **Rights**

A right can be conferred using 'is entitled' instead of 'may', which is the traditional way. The first sentence below is clearer.

The owner of the land is entitled to receive compensation for any loss caused by the local council negligently carrying out works on the land.

The owner of the land may receive compensation for any loss caused by the local council negligently carrying out works on the land.

- **Liability**

A liability can be drafted using 'is liable' instead of 'may/shall be liable'.

A person, other than a police officer, entering a restricted area is liable to be prosecuted.

A person, other than a police officer, entering a restricted area shall be liable to be prosecuted.
