

## ENSURE THAT EACH SECTION HAS NO MORE THAN 5 SUBSECTIONS

See **3.5** of the Checklist

Using 5 subsections (or fewer) enhances the readability of legislation.

As required by **3.3** of the Checklist, each section should be restricted to one coherent and related group of ideas. Too many subsections indicate too many ideas in a section. By breaking up a long section into 2 or more sections, you can increase the number of headings for readers to scan, enabling them to find specific information more easily (see **4.4** of the Checklist).

## A GUIDE NOT A RULE

Five is not a magic number, but it is a useful guide to when a readability problem is more likely to arise.

Sections with too many subsections are undesirable because—

- readers find long sections daunting
- it is harder to navigate legislation when a section takes up more than one page
- a heading for a section that contains too much material is likely to be more general and less informative.

If you draft a section with more than 5 subsections, it should act as a trigger to examine—

- the overall length of the section
- the length and complexity of the subsections
- whether the section contains more than one main idea
- whether the heading is general to cover all the content of the section
- whether it may be helpful to the reader if you break the section up into 2 or more sections.

The rewrite of [section 3](#) of the Frustrated Contracts Act 1944 as [sections 60 to 66](#) of the Contract and Commercial Law Act 2017 provides a good example of where a single section has been broken up to achieve the goals outlined above. The full text is set out in the example at the end of this document.

## EXCEPTIONS TO THE RULE

More than 5 subsections may be justifiable if—

- they are short
- they are closely related to a simple idea, which is clearly conveyed by the section heading
- they facilitate the use of the narrative style (see **6.4** of the Checklist).

## EXCEPTIONS WHEN AMENDING EXISTING LEGISLATION

You may need to use more than 5 subsections when amending existing legislation if—

- the provision to be amended already has several subsections and the amendment is closely related to those subsections (eg, see [sections 96\(6A\) and \(6B\)](#) of the Land Transport Act 1998 (inserted by [section 42](#) of the Land Transport Amendment Act 2017))
- a new section would be inconsistent with the existing structure.

## EXAMPLE – A SINGLE SECTION BROKEN UP INTO 7 SECTIONS

✘ Section 3 of the Frustrated Contracts Act 1944 (repealed)

### **3 Adjustment of rights and liabilities of parties to frustrated contracts**

- (1) Where a contract governed by the law of New Zealand has become impossible of performance or been otherwise frustrated, and the parties thereto have for that reason been discharged from the further performance of the contract, the following provisions of this section shall, subject to the provisions of [section 4](#), have effect in relation thereto.
- (2) All sums paid or payable to any party in pursuance of the contract before the time when the parties were so discharged (in this Act referred to as the time of discharge) shall, in the case of sums so paid, be recoverable from him or her as money received by him or her for the use of the party by whom the sums were paid, and, in the case of sums so payable, cease to be so payable:  
  
provided that, if the party to whom the sums were so paid or payable incurred expenses before the time of discharge in, or for the purpose of, the performance of the contract, the court may, if it considers it just to do so having regard to all the circumstances of the case, allow him or her to retain or, as the case may be, recover the whole or any part of the sums so paid or payable, not being an amount in excess of the expenses so incurred.
- (3) Where any party to the contract has, by reason of anything done by any other party thereto in, or for the purpose of, the performance of the contract, obtained a valuable benefit (other than a payment of money to which the last preceding subsection applies) before the time of discharge, there shall be recoverable from him or her by the said other party such sum

(if any), not exceeding the value of the said benefit to the party obtaining it, as the court considers just, having regard to all the circumstances of the case and, in particular,—

- (a) the amount of any expenses incurred before the time of discharge by the benefited party in, or for the purpose of, the performance of the contract, including any sums paid or payable by him or her to any other party in pursuance of the contract and retained or recoverable by that party under the last preceding subsection; and
  - (b) the effect, in relation to the said benefit, of the circumstances giving rise to the frustration of the contract.
- (4) In estimating, for the purposes of the foregoing provisions of this section, the amount of any expenses incurred by any party to the contract, the court may, without prejudice to the generality of the said provisions, include such sum as appears to be reasonable in respect of overhead expenses and in respect of any work or services performed personally by the said party.
- (5) In considering whether any sum ought to be recovered or retained under the foregoing provisions of this section by any party to the contract, the court shall not take into account any sums which have, by reason of the circumstances giving rise to the frustration of the contract, become payable to that party under any contract of insurance unless there was an obligation to insure imposed by an express term of the frustrated contract or by or under any enactment.
- (6) Where any person has assumed obligations under the contract in consideration of the conferring of a benefit by any other party to the contract upon any other person, whether a party to the contract or not, the court may, if in all the circumstances of the case it considers it just to do so, treat for the purposes of subsection (3) any benefit so conferred as a benefit obtained by the person who has assumed the obligations as aforesaid.

Compare: Law reform (Frustrated Contracts) Act 1943 s 1 (Imp)

## ✔ Sections 60 to 66 of the Contract and Commercial Law Act 2017

### Subpart 4—Frustrated contracts

#### **60 Application**

- (1) Sections 61 to 66 apply if—
- (a) a contract governed by New Zealand law has become impossible to perform or has been otherwise frustrated; and
  - (b) the parties to the contract have for that reason been discharged from the further performance of the contract.
- (2) Subsection (1) and sections 61 to 66 are subject to sections 67 to 69.
- (3) In this subpart, time of discharge means the time at which the parties to the contract were discharged as referred to in subsection (1).

Compare: 1944 No 20 s 3(1), (2)

*Money paid or payable*

**61 Money paid may be recovered and money payable ceases to be payable**

- (1) All money payable to a party under the contract before the time of discharge ceases to be payable.
- (2) All money paid to a party (A) under the contract before the time of discharge is recoverable from A as money received by A for the use of the party who paid it.

Compare: 1944 No 20 s 3(2)

**62 Court may allow party who has incurred expenses to retain or recover money**

- (1) This section applies if the party to whom the money was paid or payable under the contract incurred expenses before the time of discharge in, or for the purpose of, performing the contract.
- (2) The court may, if it considers it just to do so having regard to all the circumstances, allow the party to retain or recover the whole or any part of the money that was paid or payable.
- (3) However, the amount to be retained or recovered must not exceed the expenses that were incurred.

Compare: 1944 No 20 s 3(2)

*Other valuable benefits*

**63 Sum may be recovered if party has obtained valuable benefit**

- (1) This section applies if—
  - (a) a party to the contract (A) has obtained a valuable benefit before the time of discharge; and
  - (b) the benefit was obtained because of anything done by another party to the contract (B) in, or for the purpose of, performing the contract.
- (2) B may recover from A the sum (if any) that the court considers just.
- (3) For the purposes of subsection (2), the court must have regard to all the circumstances and, in particular,—
  - (a) the amount of any expenses incurred before the time of discharge by A in, or for the purpose of, performing the contract, including any money paid or payable by A to any other party under the contract and retained or recoverable by that party under section 62; and
  - (b) the effect, in relation to the benefit, of the circumstances that gave rise to the frustration of the contract.
- (4) The sum that is recoverable must not exceed the value of the benefit to A.
- (5) In this section and section 64, a benefit does not include a payment of money to which section 61 applies.

Compare: 1944 No 20 s 3(3)

**64 Benefit may be treated as being obtained**

- (1) For the purposes of section 63, the court may, if in all the circumstances the court considers it just to do so, treat a benefit conferred on a person (C) as a benefit obtained by a person (A) if A has assumed obligations under the contract in consideration of the benefit being conferred on C by any other party to the contract.
- (2) Subsection (1) applies whether or not C is a party to the contract.

Compare: 1944 No 20 s 3(6)

*Expenses*

**65 Estimates of expenses**

- (1) For the purposes of sections 61 to 64, in estimating the amount of expenses incurred by a party to the contract, the court may include the amount that appears to be reasonable for—
  - (a) overhead expenses; and
  - (b) any work or services performed by that party.
- (2) Subsection (1) does not limit sections 61 to 64.

Compare: 1944 No 20 s 3(4)

*Insurance*

**66 Money payable under contract of insurance**

- (1) This section applies when a court considers whether an amount ought to be recovered or retained under sections 61 to 64 by a party to the contract.
- (2) The court must not take into account any money that has become payable to the party under a contract of insurance if the money is payable because of the circumstances that gave rise to the frustration of the contract.
- (3) Subsection (2) does not apply if there was an obligation to insure that was imposed by an express term of the frustrated contract or by or under any enactment.

Compare: 1944 No 20 s 3(5)

