

Legal referencing in New Zealand

Referring to secondary sources is an important part of any academic endeavour, to provide breadth that would not be possible through reference to primary data alone. In this instance, referencing serves to acknowledge the source of ideas and allows readers to compare your analysis to the original source.

In some respects, the same is true for legal referencing, particularly when it is done as part of an academic exercise. However, referring to law in the form of statute, secondary legislation, and case law can have additional meaning when applied in professional practice. Here referencing not only provides a source of ideas, but often serves as part of an argument for something to occur or not.

The nature of the legal system also influences the way that legal referencing is undertaken. Unlike a journal article, legislation may be (and often is) changed through amendment, while retaining the same short title (including the year), despite changing the content. This can include the repeal and replacement of multiple sections.

An example of this is the Local Government Act 2002 section 10 “Purpose of Local Government”. This section was amended in 2012, adding a subsection and significantly altering the remit of local government. In 2019 the Act was again amended removing the added subsection and reverting to the original wording.

Referencing cases also presents challenges that are not found in usual academic referencing. The term ‘case’ refers to the decision of the court, based on the evidence prepared and oral hearings. This decision involves significant discussion by the court, and many extracts and quotations from the parties and expert witnesses.

The contentious nature of resource management means that it is not unusual to find the same names coming up in the same year, in the same court. This is further complicated by the management of administrative aspects of judicial decisions being handled in the same way as cases. For example, here are two cases both named ‘Lynton Dairy Ltd v Canterbury Regional Council’ from 2006 heard in the Environment Court.

Lynton Dairy Ltd v Canterbury Regional Council NZEnvC Christchurch C25/06, 3/3/2006

Lynton Dairy Ltd v Canterbury Regional Council NZEnvC Christchurch C30/06, 20/3/2006

The first of these is a 10-page decision on costs (relating to an earlier case with the same name but in a different year) while the other is a 2-page correction to the first. References must contain enough information for a reader to find the **exact** source you are referring to. Your argument will be significantly diminished if you do not refer to the correct decision.

Questions to ask yourself when referencing

What is the current weight of the source?

- Was it referring to an earlier iteration of primary legislation that has since been amended?
- Has the approach in the judiciary been overturned by a higher court?

Mitigation:

- Pay attention to dates
- Note any flags in Westlaw (NB these flags indicate whether aspects of the case may no longer be sound, but the flags only appear in certain subscriptions to Westlaw and your future employer might not subscribe to these).

What is the relevance?

Cases that you may want to refer to need to be relevant to your application. While the law being applied may be the same in each case both the specific facts of the case (such as the proposed activity) and the circumstances in which it occurs (such as under a district plan) may mean that despite superficial similarities, the decisions made may not be applicable to your argument. Consider:

- Is it under the same legislation?
 - o Different legislation, but similar legal concepts – eg decisions relating to effects under the EEZCSA could draw on RMA cases
 - o Is it a common law principle?
- Are the facts of the case similar?
 - o Same activity?
 - o Same plan?
 - o Different plan, but similar objectives?

Referencing style

Throughout this course legal referencing follows the New Zealand Law Style Guide, published online by the New Zealand Law Foundation (<https://lawfoundation.org.nz/style-guide2019/index.html>).¹ While reference should be made to the Style Guide, some examples of common usage and frequent errors are noted below.

This document has been prepared with reference to the 3rd Edition of the Style Guide, published 2018.

Footnotes

This style includes the use of footnotes, rather than the author/date and reference list system that you may be familiar with, such as APA. Footnotes can be used as both a place for references, like a reference list, or a place to expand on an idea that relates to the text but is peripheral, like an appendix.

Footnotes are referred to in text by superscript numbers. These numbers should be at the end of a sentence (outside any punctuation) unless there is more than one reference, or it is necessary to associate the particular point with the footnote. Footnotes should include all the detail that would normally go into a reference list the first time an item is referenced. For subsequent citations, refer to the initial footnote unless it is clear from the context what the source is.

Take care to ensure that footnotes are on the same page as the in-text reference. Microsoft Word has a built-in referencing tool for managing footnotes that will automatically number them and move them to the correct page should the in-text citation move.

Note that the use of footnotes replaces any other referencing system, and no final reference list should be used.

Legislation

Legislation is the formal written law produced by a legislative body; in New Zealand this role is filled by Parliament. All current legislation, recent amendments, bills, and secondary legislation can be freely accessed, downloaded, and shared on the New Zealand Legislation website: <https://www.legislation.govt.nz/>

Legislation is referred to by its short title. Many older acts also included a long title that was used to describe the purpose of the act. This practice has fallen out of favour, and modern acts usually contain a specific purpose section. In either case, the short title only should be used when referencing. The short title of an act includes the date:

Local Government Act 2002

Not

Local Government Act (2002) *or* Local Government Act, 2002

This applies even if you want to note the date separately, such as an event in that same year, even if that event was the enactment of the legislation:

‘... enacted in 2002, the Local Government Act 2002 introduced ...’

Not

¹ Alice Coppard and others *New Zealand Law Style Guide* (3rd ed, Thomson Reuters, 2018)
<<https://lawfoundation.org.nz/style-guide2019/index.html>>

‘... enacted in 2002, the Local Government Act introduced ...’

If you will refer to the legislation often you can use an abbreviation, for example: Local Government Act 2002 (LGA) – with subsequent references being only ‘LGA’. If there are two Acts with the same name in existence at the same time and you are referring to both of them frequently then you should add the date after the acronym to clarify which Act you are referring to. For example, Local Government Act 1974 and Local Government Act 2002 could be referred to respectively as LGA74 and LGA02.

Acts have *Parts* and *Schedules* that are divided into *Sections* and *Clauses*, respectively. These are further divided into *subsections* and *subclauses* respectively. A representation of the hierarchy within an act is shown in the table below, read left to right. Note that not all sections have subsections.

Structure of an Act					
Act (Title of Act)	Part (<i>Part 1</i> – Name of Part)	Sub-part (<i>Sub-part 1</i> – Name of Sub-part)	Section (1 – Description of section)	Subsection ((1) Content of section)	Paragraph ((a) Content of paragraph)
				Subsection	<i>content</i>
			Section	Subsection	<i>content</i>
				Paragraph	<i>content</i>
		Section	Subsection	<i>content</i>	
			<i>content</i>		
Schedule (<i>Schedule 1</i> – Name of Schedule)	Part (Part 1 – Name of Part)	Clause (1 – Description of Clause)	Subclause ((1) Content of clause)	Paragraph ((a) Content of Paragraph)	
	Clause	Subclause	Paragraph	<i>content</i>	

While it is correct to refer to a *Part* or *Sub-part* as a whole, do not include this if you go on to reference a section. When referring to the content of legislation be as specific as possible - this may be an entire Act, a *Part*, or paragraph (ii) of subsection (a) from section 2, written as: S(2)(a)(ii).

It is important to note where a concept you are referring to comes from within legislation as you go. It is not enough to state ‘XXX Act requires YYY’, rather you need to state ‘sZ of XXX Act requires YYY’ or ‘XXX Act requires YYY, at sZ’.

Note that legislation is (as far as possible) logically organised. This means that when an amendment adds a section it is placed alongside related sections, rather than being tacked on at the end. These additional sections are notated with the number of a section and a letter suffix, as in this example from the Local Government Act 2002:

S17A Delivery of Services

This is distinct from the (a) that denotes a paragraph and should be written exactly as it appears in the legislation, without a space or any other notation. If used when starting a sentence write the word “Section” in full, i.e., “Section 17A...” not “S17A...”.

Description	Example
Act, in text	‘... enacted in 2002, the Local Government Act 2002 introduced ...’ ⁴
Act, footnote	⁴ Local Government Act 2002, s14

Section, in text	'Section 16 of the Building Act 2004 establishes the purpose of the building code.'
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Secondary legislation

Refers to Orders in Council, and includes regulations, rules, orders, and instruments in their own right.

Description	Example
In text, common name	'The building code sets the performance criteria for buildings in New Zealand.' ³
Footnote	³ Building Regulations 1992, Schedule 1 – The building code

Plans and Policy statements

Until 2019, there were no specific requirements for the structure and content of statutory plans and policy statements in New Zealand. This has led to significant variety in planning documents between different local authorities. While National Planning standards were introduced in 2019, the soonest that any local authorities are required to implement them by is 2026, though some may do so earlier.

Plans and policy statements are usually divided into chapters, though some may also be divided into parts. These chapters usually relate to a specific resource or area and may be further divided into area/resource specific sections. These divisions are not consistent between plans, nor is the notation used. For example, the [Christchurch District Plan](#) uses numbers to identify chapters, while the [Auckland Unitary Plan](#) uses letters.

The major distinction between plans and policy statements is the application of rules in plans and methods in policy statements. Note that unitary plans will have features of both plans and policy statements.

Policy Statements	Plans
Objectives	Objectives
Policies	Policies
Methods	Rules

Referencing style

The New Zealand Law Style Guide does not include specific requirements for referencing statutory plans and policy statements. The following principles have been developed for LWST602 and should be applied throughout the course. As with other referencing the goal is to provide the reader with sufficient detail to understand the point you are making, and for that reader to find what you are referring to. In general, plans and policy statements should be referenced in a similar way to legislation, citing the narrowest division that is applicable to your analysis.

The name of a policy statement includes the date, and the full reference should include the date at which the statement was last revised or republished.

The name of a plan does not include the date, however your footnote should include the date at which you accessed the plan.

Unlike legislation, a link to the plan or policy statement should be provided.

Plans and policy statements may be operative, partially operative, or proposed. If there exists both an operative and proposed plan, you must note which you are referring to.

Description	Example
National Policy Statement, footnote	⁸ National Policy Statement on Freshwater Management 2020, < https://environment.govt.nz/acts-and-regulations/national-policy-statements/national-policy-statement-freshwater-management/ >
Regional Policy Statement	⁶ Canterbury Regional Policy Statement 2013 (Rev. July 2021), < https://www.ecan.govt.nz/your-region/plans-strategies-and-bylaws/canterbury-regional-policy-statement >
Plan, in text	"... Christchurch District Plan (CDP) ..." ¹
Plan, footnote	¹ Christchurch District Plan, accessed 25/4/22, < https://districtplan.cc.govt.nz/pages/plan/book.aspx?exhibit=DistrictPlan >
Plan Policy, footnote	⁴ Auckland Unitary Plan, at D6.3(2), accessed 25/4/22, < https://www.aucklandcouncil.govt.nz/plans-projects-policies-reports-bylaws/our-plans-strategies/unitary-plan/Pages/default.aspx >
Plan Rule, in text	"Rule 14.4.1.3:RD15 allows for ..." "... an animal shelter is allowed for under the CDP ..." ²
Plan Rule, footnote	² CDP, above n 1, at 14.4.1.3:RD15

Cases

A case is the decision of a court, resulting from a prosecution, appeal, or a civil dispute. In each example there is an unresolved question (or many questions) that needs to be resolved.

Conventions

When it is occurring, the case is referred to as a 'proceeding', with those involved in the case known as 'parties', with the different names for each party shown below. There may be more than one of each type.

Parties to a case		
Type	Making the claim	Defending the claim
Prosecution	Plaintiff	Defendant
Civil case	Plaintiff	Defendant
Appeal	Appellant	Respondent

The name of the case is derived from the name of the appellant and the first respondent. While the 'v' in the name of a case stands for 'versus', it is spoken as 'and'.

When cited, the name of the case should be italicised.

For some cases you will note that one of the parties is referred to as 'R', particularly in criminal cases. This 'R' refers to the Crown, or government, and is derived from the Latin Rex (for King) or Regina (for Queen).

When referring to or quoting from a case ('pin-point reference') the citation should be for the numbered paragraph/s, rather than the page number.

Full citation for cases

The best form of citation for cases is the neutral citation provided by the court. These were introduced between 2001 and 2015, being implemented in the Environment Court from 2010. The neutral citation includes the date, court, and reference number.

The neutral citation is possible because cases in the courts are now centralised, whereas in the past different courts around the country would maintain their own records. Because of this, cases of

importance were collated into Law Reports and distributed around the country. This was not true for all cases, with some cases remaining ‘un-reported’. For these cases the name, court in which they were heard, location or registry, filing number of the case, and the date, must all be used. Note that the Supreme Court and Court of Appeal had only one registry, as such it is not necessary to note the location.

While the Style Guide prefers the use of the reported case rather than the filing number format and always requires reference to a reported case if one exists, the preference for LWST602 is for the neutral citation and filing number. This is due to past editorialising in law reports that serve legal rather than planning needs. As such, the full text of a decision is preferred to a reported case, and reference to a reported case will only be expected if your source material was a law report.

Law reports take the form of periodicals, with the year and volume. Cases cited using law reports use the page on which they first appear as the reference, and the page number is used as a pinpoint reference.

Description	Example
Case with neutral citation, NZ Law Style Guide	<i>Environmental Defence Society v New Zealand King Salmon Co Ltd</i> [2014] NZSC 38 (2014) 17 ELRNZ 442
Case with neutral citation, LWST602 preferred	<i>Environmental Defence Society v New Zealand King Salmon Co Ltd</i> [2014] NZSC 38
Reported case, NZ Law Style Guide	<i>Zdrahal v Wellington City Council</i> [1995] 1 NZLR 700, (1994) 2 HRNZ 196 (HC)
Unreported case prior to neutral citation, LWST preferred	<i>Lynton Dairy v Canterbury Regional Council</i> NZEnvC Christchurch C108/05, 22/08/2005
Prosecution	<i>Bay of Plenty Regional Council v Faulkner</i> [2021] NZDC 21536
Sentencing	<i>Bay of Plenty Regional Council v Faulkner</i> [2022] NZDC 2754

In text citation for cases

The case should be referred to in text with the name, but not the full case citation (though this should be a footnote). Some cases have common names, for example *King Salmon* can be used in place of *Environmental Defence Society v New Zealand King Salmon Co Ltd*. In circumstances where the name of a case is particularly long, but there is no common name, an abbreviation may be adopted. Notate this in the same fashion as the common name.

Description	Example
First citation, in text	“... in <i>Environmental Defence Society v New Zealand King Salmon Co Ltd</i> (<i>King Salmon</i>) ... ¹ ”
Initial footnote	¹ <i>Environmental Defence Society v New Zealand King Salmon Co Ltd</i> [2014] NZSC 38 (2014) 17 ELRNZ 442, at [316]
Further citations, different paragraph	<i>King Salmon</i> ²
Footnote, no gaps	² At [318]
Footnote, source unclear from context	⁵ <i>King Salmon</i> , above, n 1, at [321]

Commentary

Commentary is expert opinion produced for practitioners on the application of law. Of all the law specific sources, legal commentary has the most in common with academic referencing. This may take

the form of section-by-section analysis of legislation and interpretation of it in the courts or opinions relating to concepts found within the law.

Such commentary is often produced in ‘loose-leaf’ form (and now online), with material contained in binders. This enables supplements to be issued on a regular basis and reflects the pace of change within legal practice. This material is very useful when researching the application of the law and the relevance of cases, including the initial application of concepts in caselaw and further development of them. One such commentary of particular interest to those working in planning and environmental management is *Salmon Environmental Law*, edited by retired High Court Judge Peter Salmon QC.

Commentary is also available in journal articles and edited books. These typically have more depth on a particular issue, at the cost of going out of date quickly. Edited books on law topics will usually have a statement along the lines of “The law is stated as far as possible as at 31 March 2014.”² See the next section for referencing journal articles.

Examples

Description	Example
Online commentary, footnote	⁹ Peter Salmon QC (ed) <i>Salmon Environmental Law</i> (online looseleaf ed, Thomson Reuters, accessed 25 April 2022) at [C2A.01(1)]

Other sources

As there is no reference list, all other references must be included as footnotes. The style for a journal article is given below. Other sources may be found in the Style Guide.

Description	Example
Journal article, in text	“Pirini and High ¹ argue ...”
Journal article, footnote – include starting page	¹ Pirini, M., & High, A. (2021). Dignity and Mana in the “Third Law” of Aotearoa New Zealand. <i>New Zealand Universities Law Review</i> , 29, 623.
Journal article, subsequent citations	⁵ Pirini and High, above n 1.
Journal article, quote – use starting page	⁵ Pirini and High, above n 1, at 627.

² Grant Morris *Law alive: The New Zealand legal system in context* (3rd ed, Oxford University Press, South Melbourne) at p.vii