



**Office of Parliamentary Counsel**

**Results of the  
2010 Legislation Users Survey**

**May 2010**

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## Contents

I.	Introduction .....	1
	Background and Research Methodology .....	1
II.	Summary of Results.....	3
	Drafting Features being Considered .....	3
	Satisfaction with the Usefulness of the Drafting Features.....	4
	Awareness of the Drafting Features .....	6
	Experience in Working with Commonwealth and Other Types of Legislation ....	7
III.	Survey Results for each Feature .....	8
	Feature 1. Commencement provisions .....	8
	Feature 2. Overviews.....	14
	Feature 3. Guides .....	19
	Feature 4. Decentralised tables of contents.....	23
	Feature 5. Objects provisions .....	27
	Feature 6. Examples.....	32
	Feature 7. Notes .....	37
	Feature 8. Use of asterisks .....	42
	Feature 9. Use of tagging of concepts .....	47
	Feature 10. Questions as headings .....	52
	Feature 11. Subsection headings .....	56
	Feature 12. Use of tables.....	61
	Feature 13. Diagrams .....	66
	Feature 14. Method statements .....	71
	Feature 15. Use of the second person.....	76
	Feature 16. New format including indenting conventions.....	81
	Future Innovations and General Comments .....	86

Attachment A: Survey Questionnaire

Attachment B: Overall Frequency Results

Attachment C: Frequency Results by Legislation User Group

# I. Introduction

## **Background and Research Methodology**

The Office of Parliamentary Counsel (OPC) was established under the Parliamentary Counsel Act 1970. Its principal functions are drafting Bills for introduction into either House of the Parliament and drafting amendments of Bills.

During the 1990s, OPC experimented with a range of innovations to their drafting style. These were all intended to improve the usability of legislation. Some are quite visible (such as outlines) whereas others are less obvious to the reader (such as the use of shorter provisions).

ORIMA Research conducted a survey of legislation users in March 2010 on behalf of OPC to:

- gauge general impressions of the innovations amongst the target groups;
- gauge the extent to which the innovations are useful, and the circumstances in which they are most valuable; and
- seek feedback on potential new innovations.

This report presents the results of this survey.

### **Survey Methodology**

The survey targeted the following groups of legislation users:

- Federal Court Judges, Family Court Judges, Federal Magistrates and AAT members;
- staff of Federal Court Judges, Family Court Judges, Federal Magistrates and AAT members;
- Barristers;
- Lawyers from top tier and second tier law firms;
- Parliament Table Office staff, including House of Representatives Table Office staff and Senate Table Office staff;
- Australian Government Solicitor employees and employees of the Director of Public Prosecutions; and
- Commonwealth Public Servants from instructing areas and advising areas in Departments.

Contact details were provided by OPC based on nominations provided by the courts, firms and agencies.

The survey was conducted online between 15 February and 15 March 2010 (extended from 5 March to allow late respondents to participate). Participants were given access to a password protected survey website, which provided background information to the survey, a copy of each of the examples used to illustrate the 16 features, and access to the online forms for completing the survey. Respondents could access the online forms as many times as they required during the fieldwork period, allowing them to complete the survey in more than one sitting.

- A copy of the questionnaire which includes the 16 feature examples is provided at Attachment A.
- The examples used in the questionnaire are also repeated within the discussion of results in Section III of this report.

## Response Numbers

Responses were received from 224 out of the 378 users of legislation invited to take part in the survey. For reporting purposes, respondents were grouped by legislation user types, as shown in Table 1.

**Table 1: Response Numbers and Rates, Grouped by Respondent Type**

Group	Sample	Count of Responses	Response Rate
Judges/Magistrates	47	24	51%
Judges/Magistrates staff	40	23	58%
Private sector lawyers	120	64	53%
Parliament Table Office staff	16	8	50%
AGS/DPP employees	38	25	66%
Commonwealth Public Servants	117	80	68%
<b>Grand Total</b>	<b>378</b>	<b>224</b>	<b>59%</b>

## Presentation of Results

Percentages presented in this report are based on the total number of valid responses made to the particular question being reported on. Percentage results throughout the report may not add up to 100% due to rounding, or where questions allow for participants to provide more than one answer.

Most of the results shown in this report include a breakdown of responses by the respondent types shown in Table 1, as well as the overall responses. Within each chart, the number of respondents to the question is shown in the row label, to assist with the interpretation of the results.

## II. Summary of Results

Most legislation users are aware of the drafting features covered in this survey and generally find them useful in helping make legislation easier to read and understand, particularly for the lay reader. Most features were found useful by over three-quarters of respondents.

Some respondents commented that the innovations had been a great improvement. Although there was substantial support for nearly all of the features, some respondents were concerned that the apparent over-simplification of legislation through the use of new drafting features could be inappropriate in some cases, as it may cause the lay reader to misinterpret the legislation, or miss subtle complexities of the law. Others emphasised that the focus needed to continue to be on the expression of the law.

### ***Drafting Features being Considered***

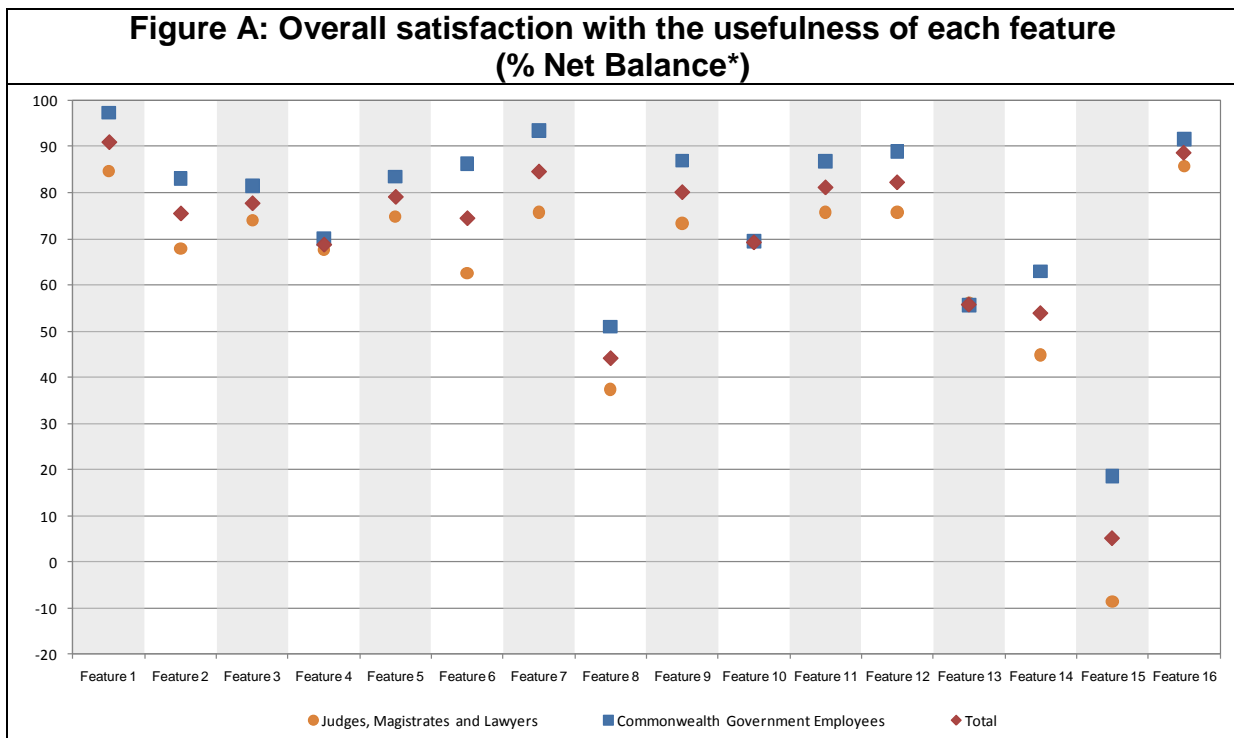
The 16 features which the survey respondents were asked to consider are:

- Feature 1. Commencement provisions
- Feature 2. Overviews
- Feature 3. Guides
- Feature 4. Decentralised tables of contents
- Feature 5. Objects provisions
- Feature 6. Examples
- Feature 7. Notes
- Feature 8. Use of asterisks
- Feature 9. Use of tagging of concepts
- Feature 10. Questions as headings
- Feature 11. Subsection headings
- Feature 12. Use of tables
- Feature 13. Diagrams
- Feature 14. Method statements
- Feature 15. Use of the second person
- Feature 16. New format including indenting conventions

## Satisfaction with the Usefulness of the Drafting Features

Figure A compares the satisfaction results with each of the drafting features across the two main survey groups: *Judges, Magistrates and Lawyers*, and *Commonwealth Government Employees*.

- The satisfaction results are shown as a net balance, which is calculated as the proportion of positive responses (e.g. very satisfied/satisfied), less the proportion of negative responses (e.g. very dissatisfied/dissatisfied).
- A positive net balance indicates that more respondents were positive than negative about a particular feature, while a negative net balance indicates that more respondents were negative about the feature.



\* Net balance = The difference between the percentage of respondents 'Very Satisfied' or 'Satisfied', and those 'Dissatisfied' or 'Very Dissatisfied'.

The majority of features rated very positively, with 12 of the 16 features achieving a net balance satisfaction rate across all respondents of around 70% or more. In particular:

- *Commencement provisions* (Feature 1) and *new format including indenting conventions* (Feature 16) were rated positively by a net balance of around 90% of respondents.
- *Notes* (Feature 7), *use of tagging of concepts* (Feature 9), *subsection headings* (Feature 11) and *use of tables* (Feature 12) were rated positively by a net balance of 80–85% of respondents.

- For a few features (*use of asterisks* (Feature 8), *diagrams* (Feature 13) and *method statements* (Feature 14)) the views were less positive, with a net balance of around 50%.
- In the case of the *use of the second person* (Feature 15), the net balance result was close to zero, indicating that the proportion of respondents dissatisfied with the usefulness of the feature almost matched those satisfied with the feature. Indeed, the negative net balance results for the judges, magistrates and lawyers group indicates that a greater proportion of these respondents were dissatisfied than satisfied with this feature.

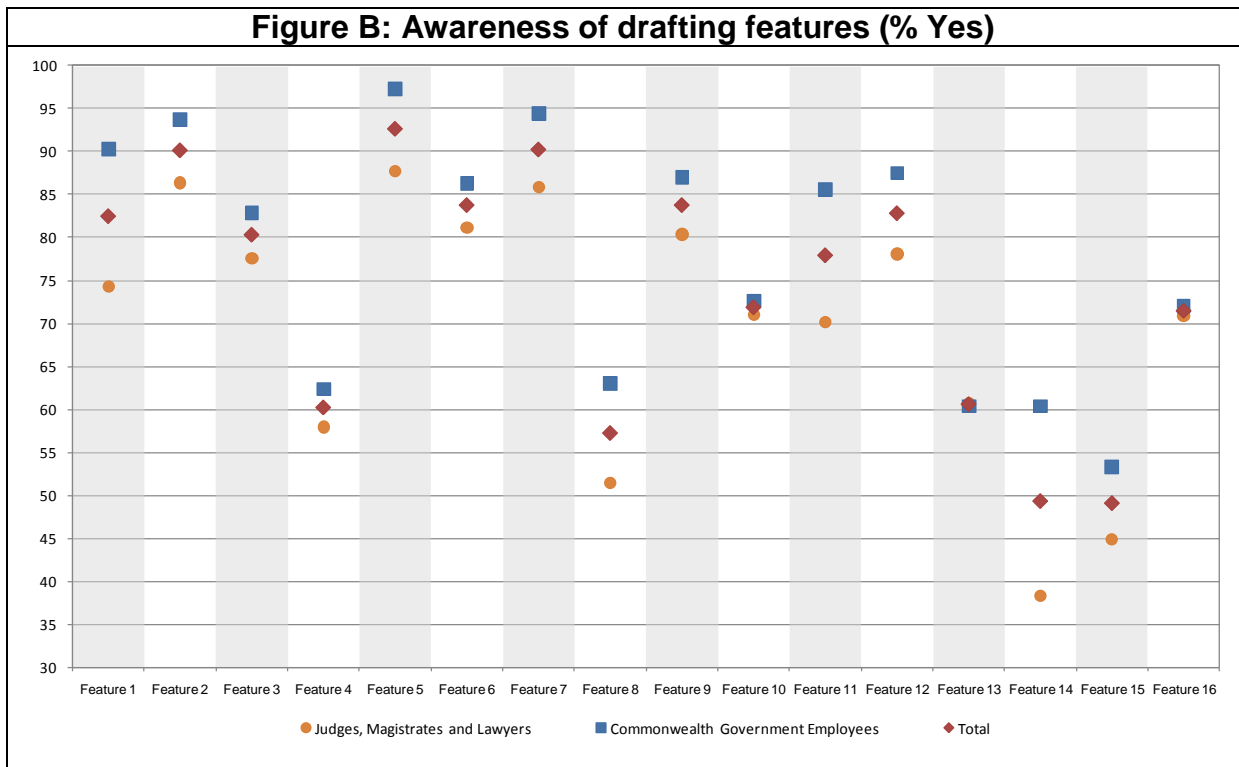
In general, Commonwealth Government employees were more satisfied with the usefulness of the drafting features covered in the survey than the judges, magistrates and private lawyers.

- For a few features (*decentralised tables of contents* (Feature 4), *questions as headings* (Feature 10) and *diagrams* (Feature 13)), the net balance results were almost identical across the two main survey groups.
- The greatest disparity in results was for *examples* (Feature 6) and *use of the second person* (Feature 15), where the net balance results for Commonwealth Government employees was around 25 percentage points higher than that for judges, magistrates and lawyers.

## Awareness of the Drafting Features

Figure B outlines the extent of awareness of respondent groups with each of the 16 drafting features covered in the survey.

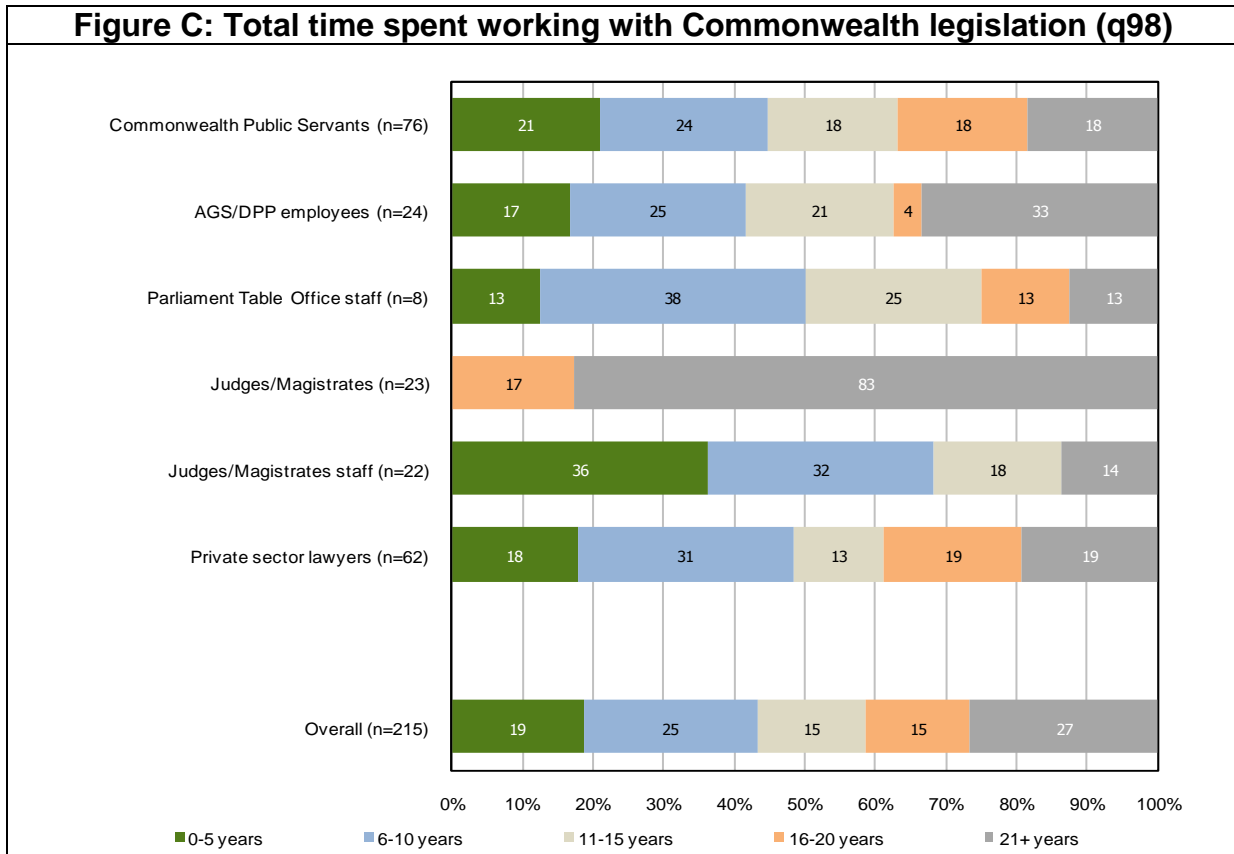
- 90% or more of respondents are aware of *overviews* (Feature 2), *objects provisions* (Feature 5) and *notes* (Feature 7), with around 95% awareness amongst the Commonwealth Government employee respondents.



## Experience in Working with Commonwealth and Other Types of Legislation

Of the legislation users that responded to the survey, 57% have worked with Commonwealth legislation for more than 10 years, with 27% working with the legislation for at least 21 years (see Figure C).

**Figure C: Total time spent working with Commonwealth legislation (q98)**



### III. Survey Results for each Feature

#### Feature 1. Commencement provisions

##### Description of Feature

The general approach for the commencement provisions feature is to have commencement clauses drafted in table format with the commencement of each provision specified in the order that the provisions appears in the Bill. In contrast, older forms of commencement provision relied on a “catch-all” provision, such as subsection 2(1) of the Crimes Legislation Amendment Act (No. 2) 1991.

The standardised commencement table contains a column into which information about commencement dates will be inserted as it becomes available after the Act is passed.

##### Example of Feature 1

Old format	Current format															
<p>Section 2 of the <i>Crimes Legislation Amendment Act (No. 2) 1991</i></p> <p><b>Commencement</b></p> <p>2. (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.</p> <p>(2) Sections 5 to 10 (inclusive), Parts 3, 4, 5, 6, 7 and 9 and sections 40 to 50 (inclusive) commence 28 days after the day on which this Act receives the Royal Assent.</p> <p>(3) Subject to subsections (4) and (5), section 51 and Part 8 commence on a day or days to be fixed by Proclamation.</p> <p>(4) If the commencement of Part 8 is not fixed by a Proclamation published in the Gazette within the period of 6 months beginning on the day on which this Act receives the Royal Assent, the Part is repealed on the first day after the end of that period.</p> <p>(5) If section 51 does not commence under subsection (3) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.</p>	<p><b>2 Commencement</b></p> <p>(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.</p> <hr/> <p><b>Commencement information</b></p> <table border="1"> <thead> <tr> <th data-bbox="842 1384 1038 1417">Column 1</th> <th data-bbox="1038 1384 1273 1417">Column 2</th> <th data-bbox="1273 1384 1458 1417">Column 3</th> </tr> <tr> <th data-bbox="842 1417 1038 1462">Provision(s)</th> <th data-bbox="1038 1417 1273 1462">Commencement</th> <th data-bbox="1273 1417 1458 1462">Date/Details</th> </tr> </thead> <tbody> <tr> <td data-bbox="842 1462 1038 1697">1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table</td> <td data-bbox="1038 1462 1273 1697">The day this Act receives the Royal Assent.</td> <td data-bbox="1273 1462 1458 1697">23 August 1991</td> </tr> <tr> <td data-bbox="842 1697 1038 1798">2. Sections 5 to 10</td> <td data-bbox="1038 1697 1273 1798">The 28th day after this Act receives the Royal Assent.</td> <td data-bbox="1273 1697 1458 1798">20 September 1991</td> </tr> <tr> <td data-bbox="842 1798 1038 1904">3. Parts 3 to 7</td> <td data-bbox="1038 1798 1273 1904">The 28th day after this Act receives the Royal Assent.</td> <td data-bbox="1273 1798 1458 1904">20 September 1991</td> </tr> </tbody> </table>	Column 1	Column 2	Column 3	Provision(s)	Commencement	Date/Details	1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	23 August 1991	2. Sections 5 to 10	The 28th day after this Act receives the Royal Assent.	20 September 1991	3. Parts 3 to 7	The 28th day after this Act receives the Royal Assent.	20 September 1991
Column 1	Column 2	Column 3														
Provision(s)	Commencement	Date/Details														
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	23 August 1991														
2. Sections 5 to 10	The 28th day after this Act receives the Royal Assent.	20 September 1991														
3. Parts 3 to 7	The 28th day after this Act receives the Royal Assent.	20 September 1991														

**Example of Feature 1 (continued)**

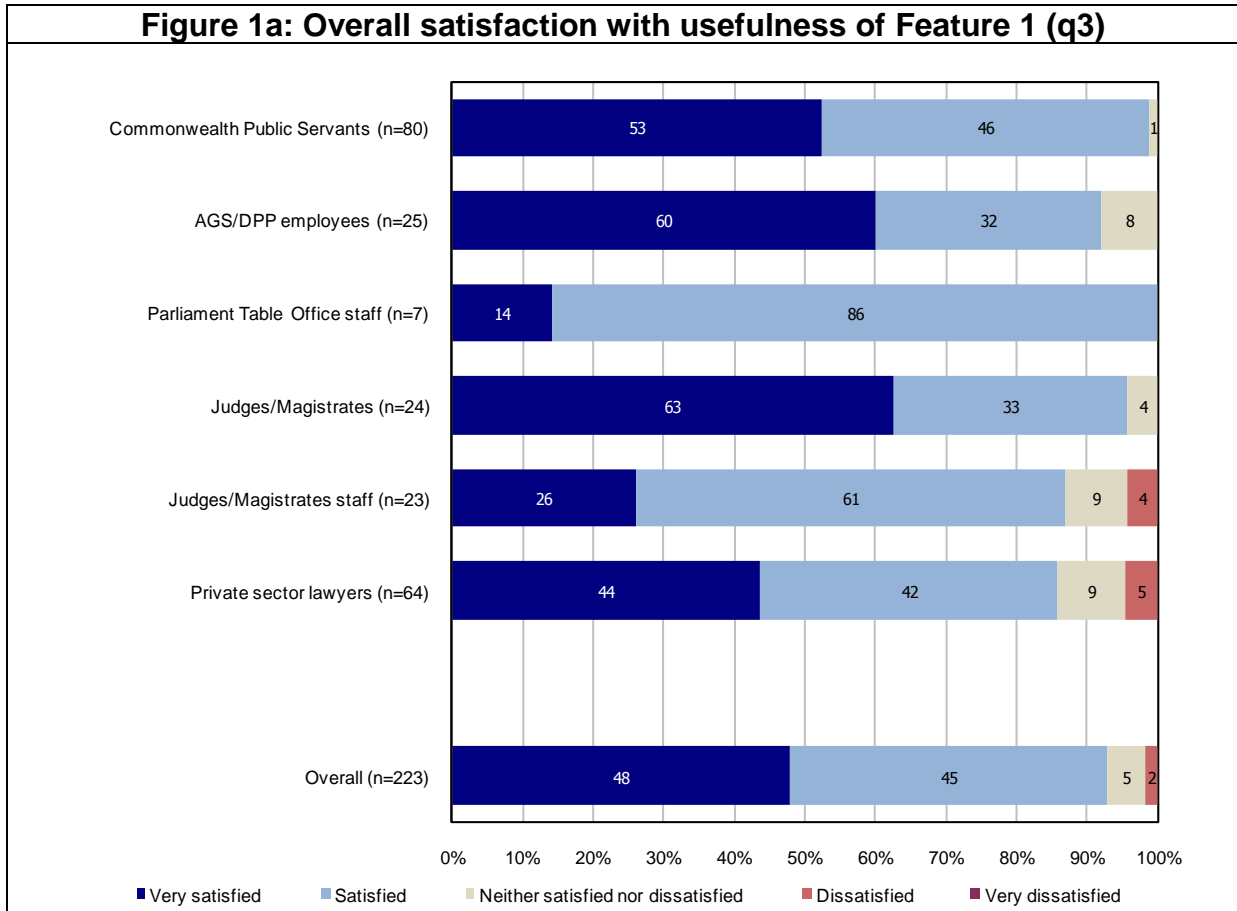
	4. Part 8	A day or days to be fixed by Proclamation.  However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they do not commence at all.	6 December 1991
	5. Part 9	The 28th day after this Act receives the Royal Assent.	20 September 1991
	6. Sections 40 to 50	The 28th day after this Act receives the Royal Assent.	20 September 1991
	7. Section 51	A day or days to be fixed by Proclamation.  However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	23 February 1992
	8. Schedule 1	The 28th day after this Act receives the Royal Assent.	20 September 1991
	Note:	This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.	
	(2)	Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.	

### Awareness and Satisfaction

Over 80% of respondents indicated that they are aware of the current format of *commencement provisions* in legislation, with over 90% of Commonwealth public servants being aware of the feature.

93% of respondents indicated that they are satisfied with the usefulness of the current format of *commencement provisions* (see Figure 1a). At least 85% of respondents within each respondent group were satisfied with this feature.

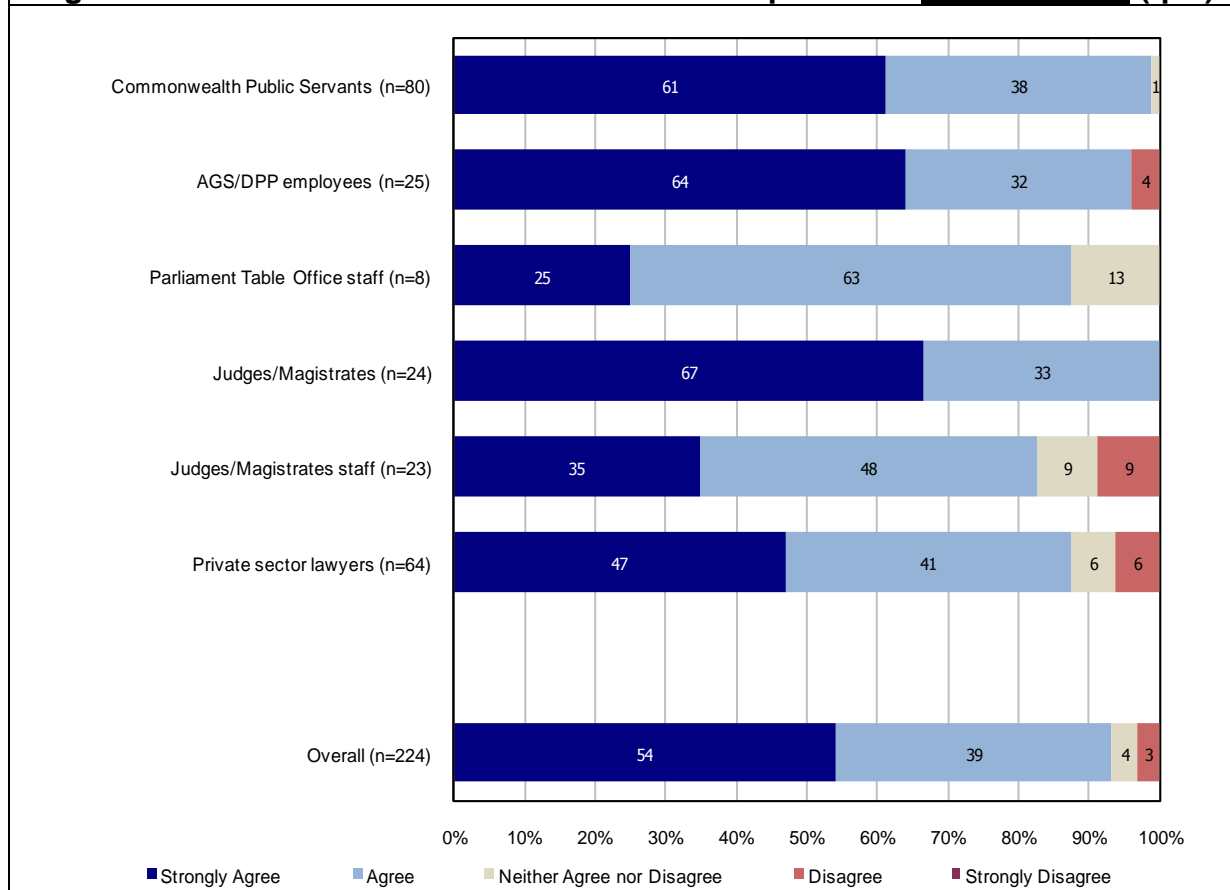
**Figure 1a: Overall satisfaction with usefulness of Feature 1 (q3)**



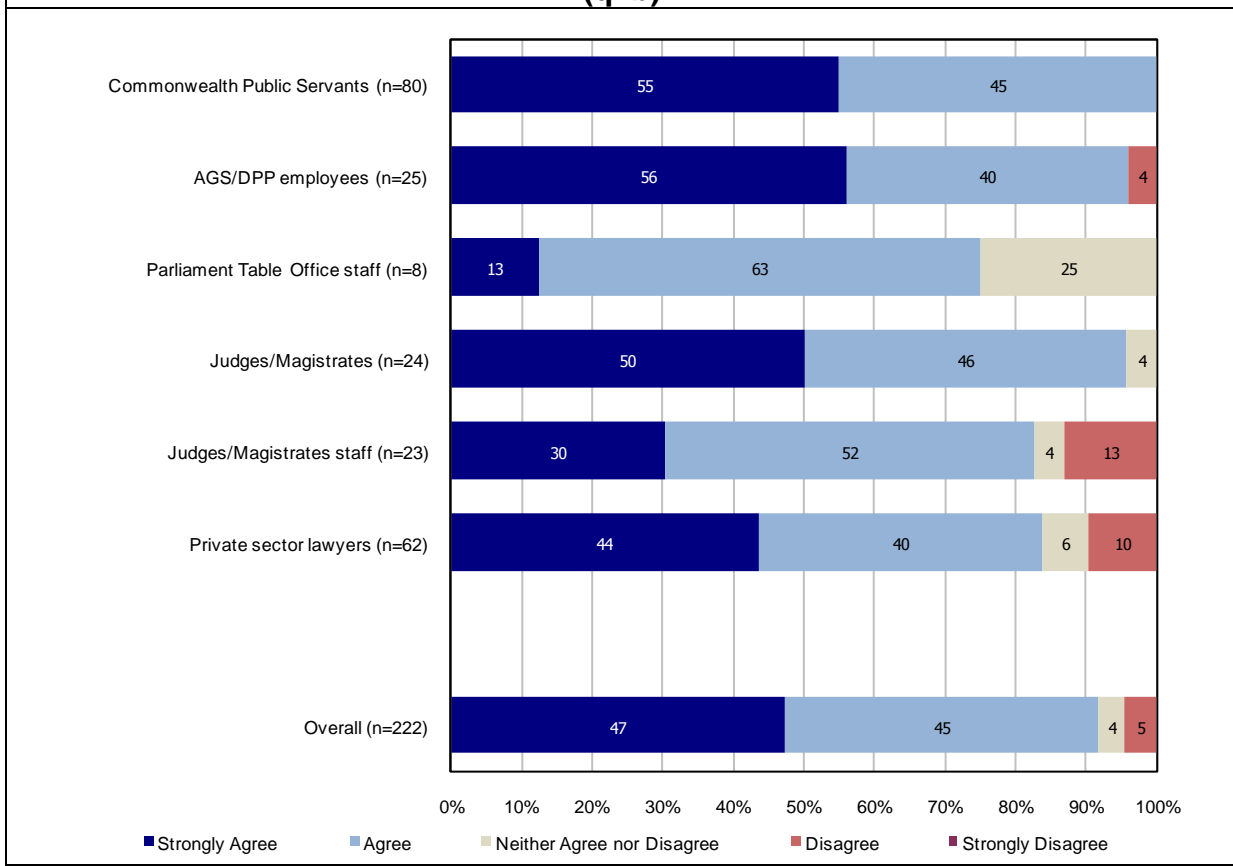
### Feature attributes

The vast majority of respondents agreed that the current format makes *commencement provisions* easier to read (93%), easier to understand (92%) and reduces the ambiguity of commencement provisions (95%) (see the three figures below).

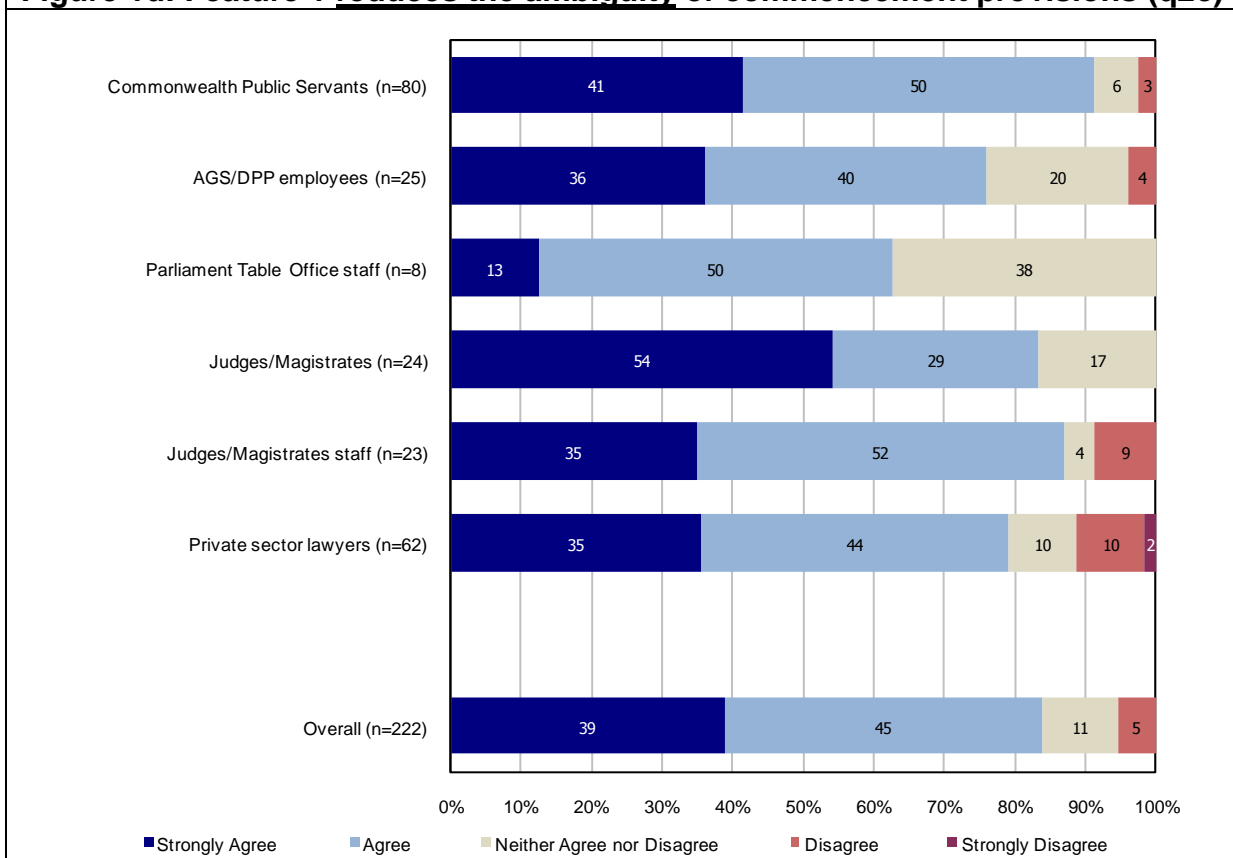
**Figure 1b: Feature 1 makes the commencement provision easier to read (q2a)**



**Figure 1c: Feature 1 makes the commencement provision easier to understand (q2b)**



**Figure 1d: Feature 1 reduces the ambiguity of commencement provisions (q2c)**



## Benefits, Strengths and Weaknesses of Feature

Legislation users reported that they would find the current format of *commencement provisions* to be most useful in cases where legislation users needed to reference commencement details quickly (such as when there are tight time constraints), or where the legislation is complex and includes convoluted, multiple or staggered commencement dates.

Comments on the format included that it “offers greater clarity and reduced risk of misinterpretation”, and is a “vast improvement on the old approach”. Many respondents commented that the table format was very useful, making legislation “far quicker and easier to interpret”, “easier to find the relevant commencement provision”, and “far quicker and easier to interpret”.

Many respondents applauded the inclusion of the actual commencement date, saying that it was “extremely useful”, and “will save a lot of research time and make law more accessible”.

Some respondents noted that the new format “looks cluttered” and may not be necessary in simple situations. Other concerns were that the table format can be more ambiguous, as it can “leave out some details which the full language of a narrative form supplies”. There was also concern that the format would “quickly lose its usefulness” for Acts that are heavily amended.

Some respondents suggested the meaning of the dates in the third column may require clarification (i.e. whether the dates relate to the intended dates of effect of the provisions or had some other intent), and that referencing ‘sections’ rather than ‘parts’ may be more useful.

Several respondents clarified that while they may have identified some weaknesses in the feature, these did not outweigh the benefits of the new format.

## Feature 2. Overviews

### Description of Feature

*Feature 2 includes an overview or summary to give readers a brief introduction to a large unit of legislative text. The purpose of overviews and summaries is to assist readers in beginning to understand complex or lengthy legislation, as well as assisting the reader to determine the relevance of the unit of legislation to them.*

*Division 3 of Chapter 1 of the Aged Care Act 1997 is an example of an overview designed to assist and guide readers to obtain an overall idea of the scheme of the Act before confronting the detail.*

### Example of Feature 2

#### Current format

#### *Aged Care Act 1997*

#### **Division 3—Overview of this Act**

#### **3-1 General**

This Act provides for the Commonwealth to give financial support:

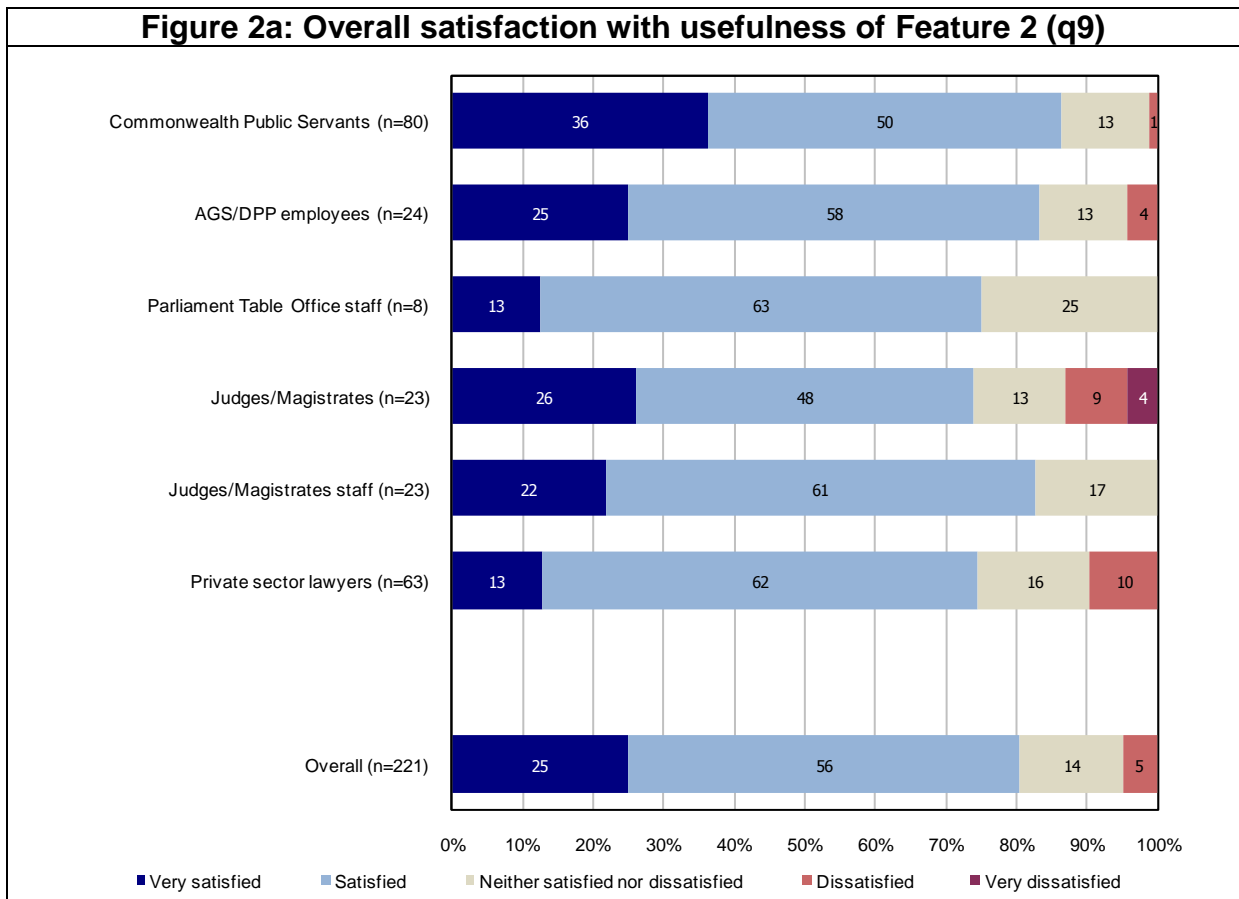
- (a) through payment of subsidies for the provision of aged care; and
- (b) through payment of grants for other matters connected with the provision of aged care.

Subsidies are paid under Chapter 3 (but Chapters 2 and 4 are also relevant to subsidies), and grants are paid under Chapter 5.

## Awareness and Satisfaction

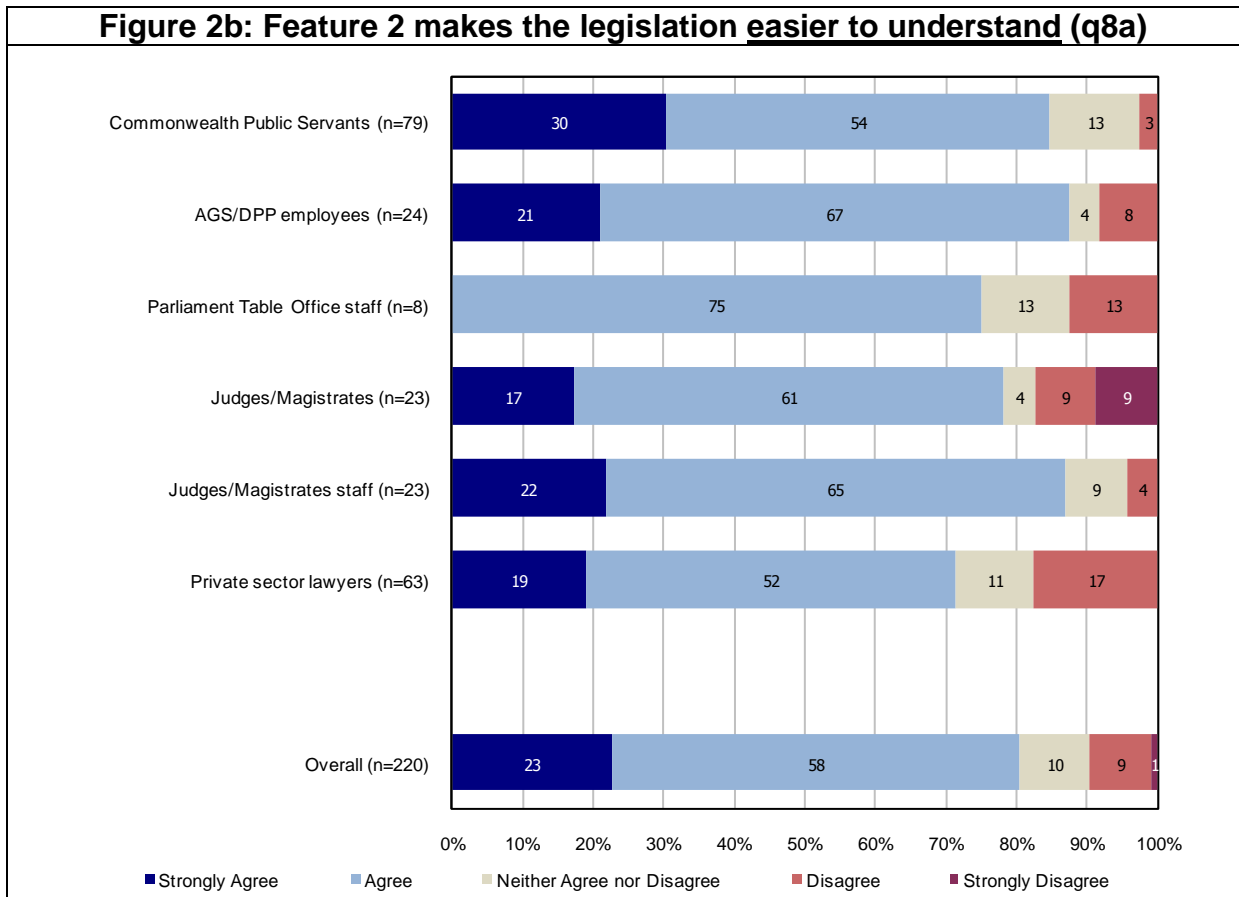
90% of respondents are aware of the *overviews* feature in legislation.

Over 80% of respondents were satisfied with the usefulness of the *overviews* feature (see Figure 2a). Commonwealth public servants (86%), AGS and DPP employees (83%) and the staff of Judges and Magistrates (83%) were the most satisfied.

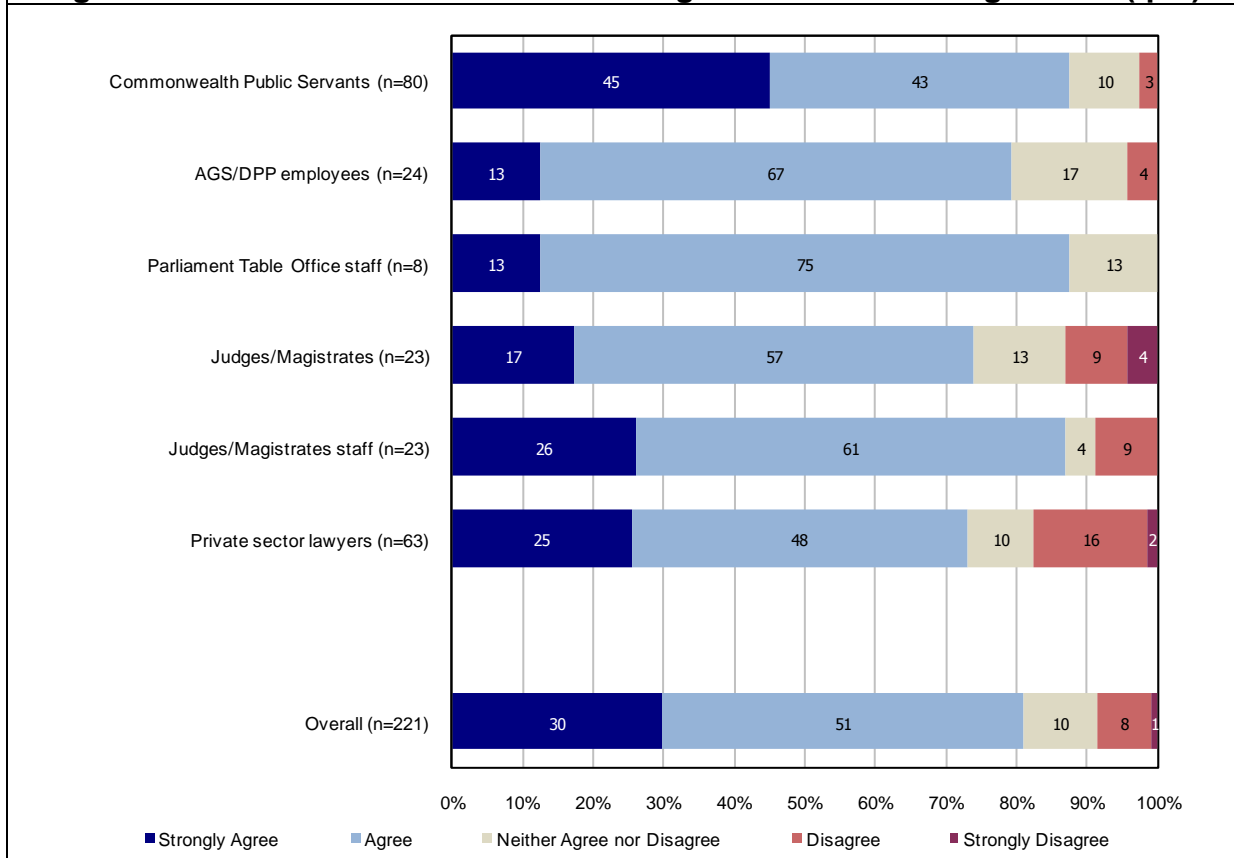


### Feature attributes

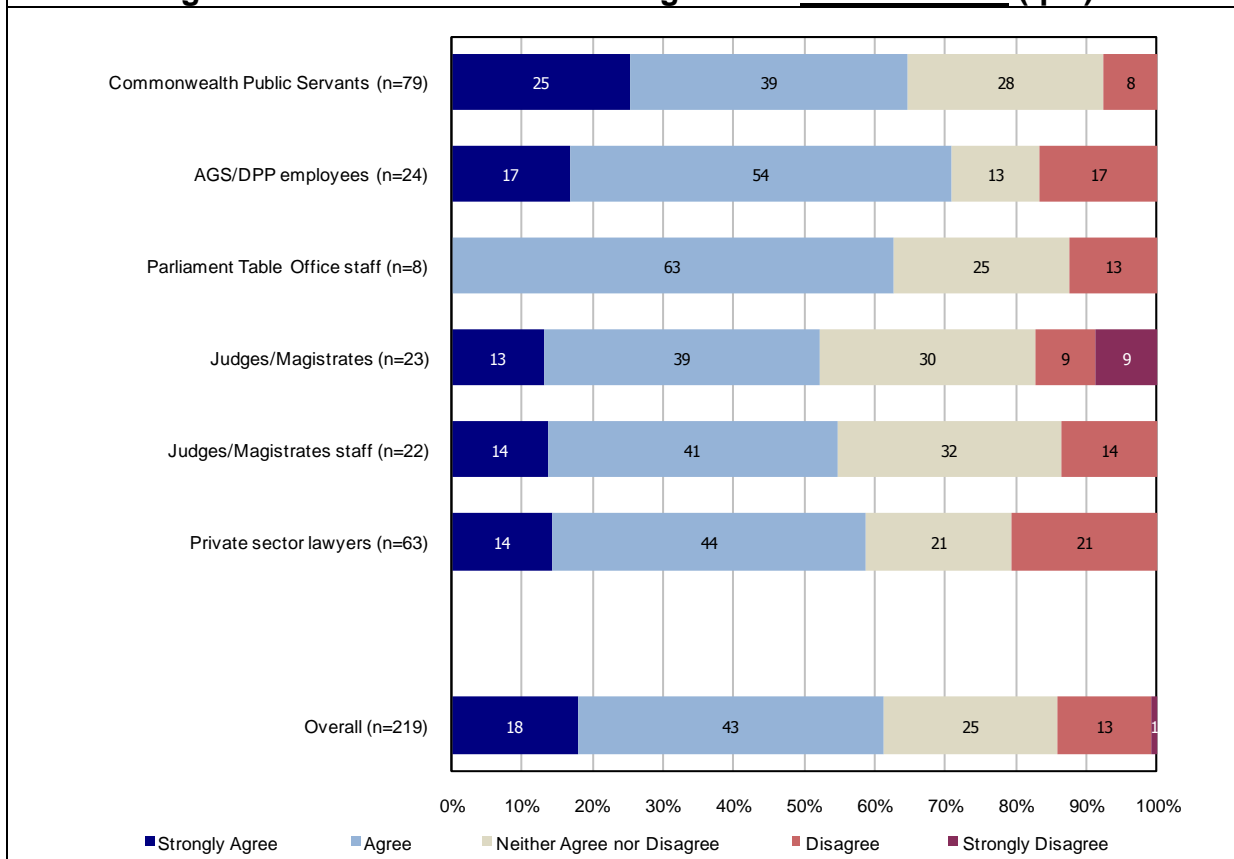
Most respondents agreed that the *overviews* feature makes the legislation easier to understand (81%) (see Figure 2b), and assists in determining the relevance of legislation (81%) (see Figure 2c). 61% of legislation users indicated that the *overviews* feature makes the legislation easier to read (see Figure 2d).



**Figure 2c: Feature 2 assists in determining the relevance of legislation (q8b)**



**Figure 2d: Feature 2 makes the legislation easier to read (q8c)**



## Benefits, Strengths and Weaknesses of Feature

Respondents reported that circumstances where *overviews* were of most value were where the legislation was long and/or complex, or when they needed to quickly ascertain the relevancy of the legislation to their needs. It was noted that it can “provide a quick introduction to the area” and “helps you orient yourself”.

Strengths of the *overviews* feature included that it could provide a “plain English explanation of the complex provisions that follow”, and could “help users understand the policy objectives of the Act” and to determine its relevance. It was also seen as being useful for the “lay person” as it “may well assist in determining the scope and relevance of the legislation”.

Weaknesses of the feature noted by respondents included that it could sometimes be so simple that it loses value, e.g. “in some ways the ‘plain English’ explanation for very complex provisions has to be so high level it can border on meaningless”, or it sometimes was “merely stating the obvious”. Some respondents felt that the use of *overviews* could add length to legislation without adding value. Others were concerned that a lay reader may “rely on the feature for interpretation”, rather than looking at the legislation itself.

## Feature 3. Guides

### Description of Feature

*Guides are included to summarise a large unit of legislative text for readers and are given prominence by appearing in boxes.*

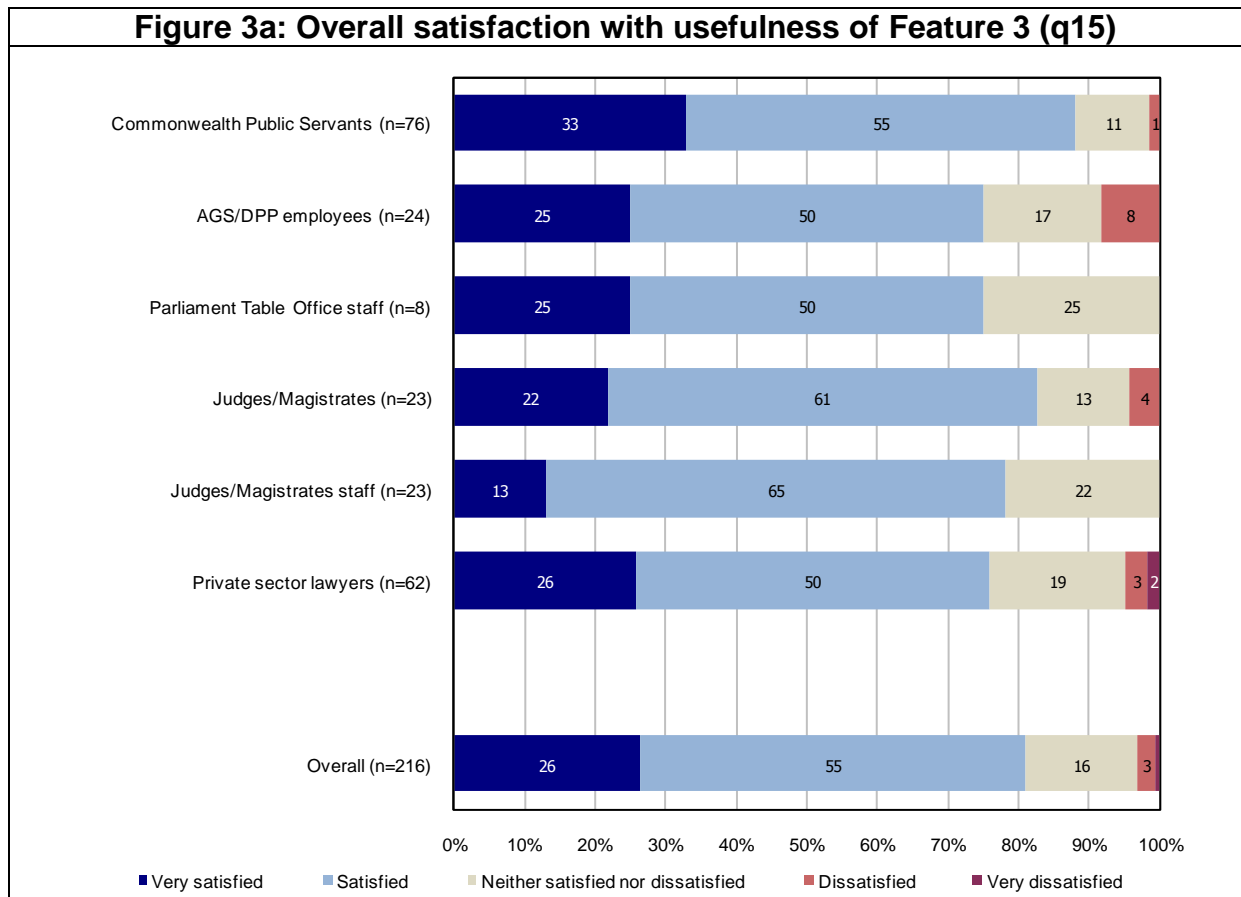
### Example of Feature 3

Current format
<p><i>Aged Care Act 1997</i></p> <p><b>Division 44—What is the amount of residential care subsidy?</b></p> <p><b>44-1 What this Division is about</b></p> <div style="border: 1px solid black; padding: 10px;"><p>Amounts of residential care subsidy payable under Division 43 to an approved provider are worked out under this Division in respect of each residential care service. The amount in respect of a residential care service is determined by adding together amounts worked out, using the residential care subsidy calculator in section 44-2, in respect of individual care recipients in the service.</p></div>

## Awareness and Satisfaction

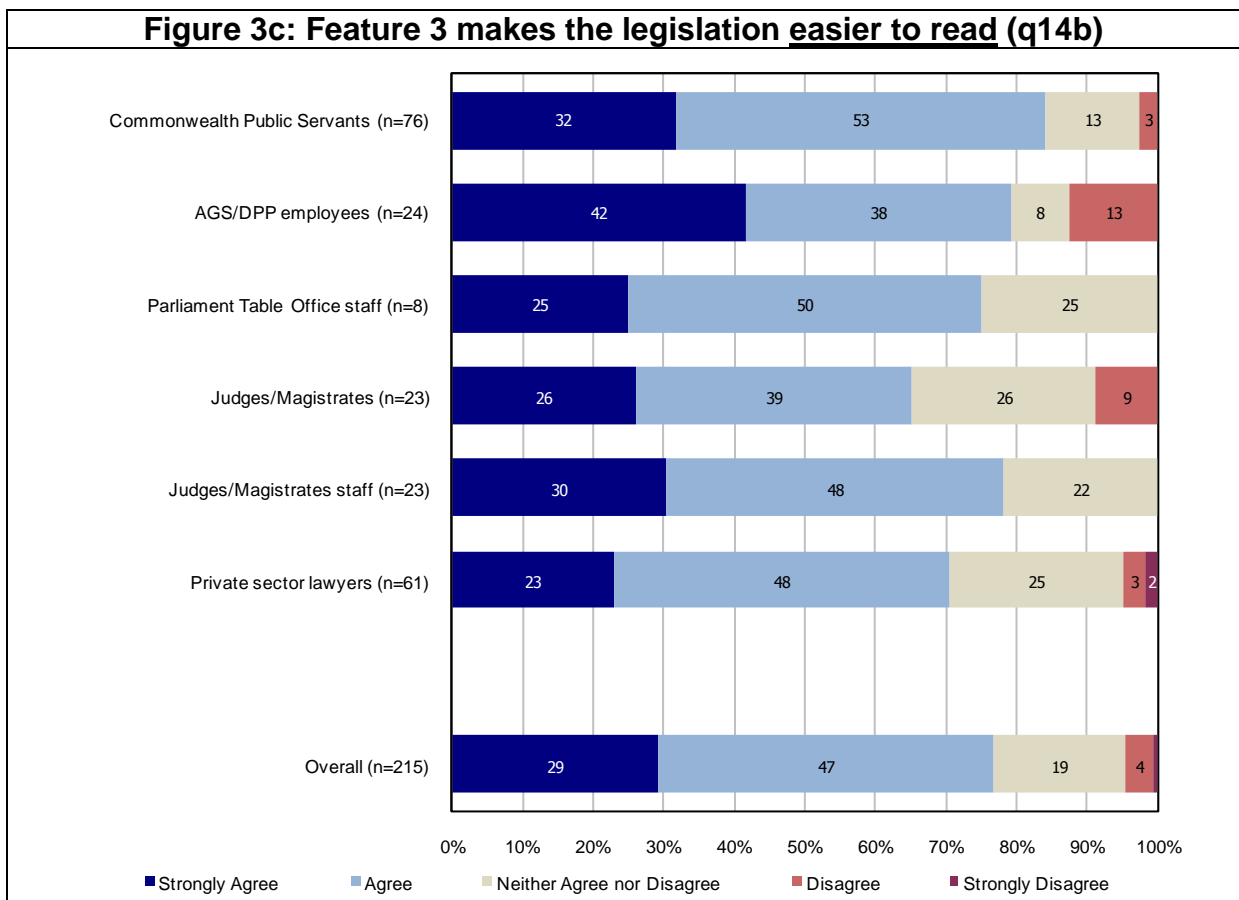
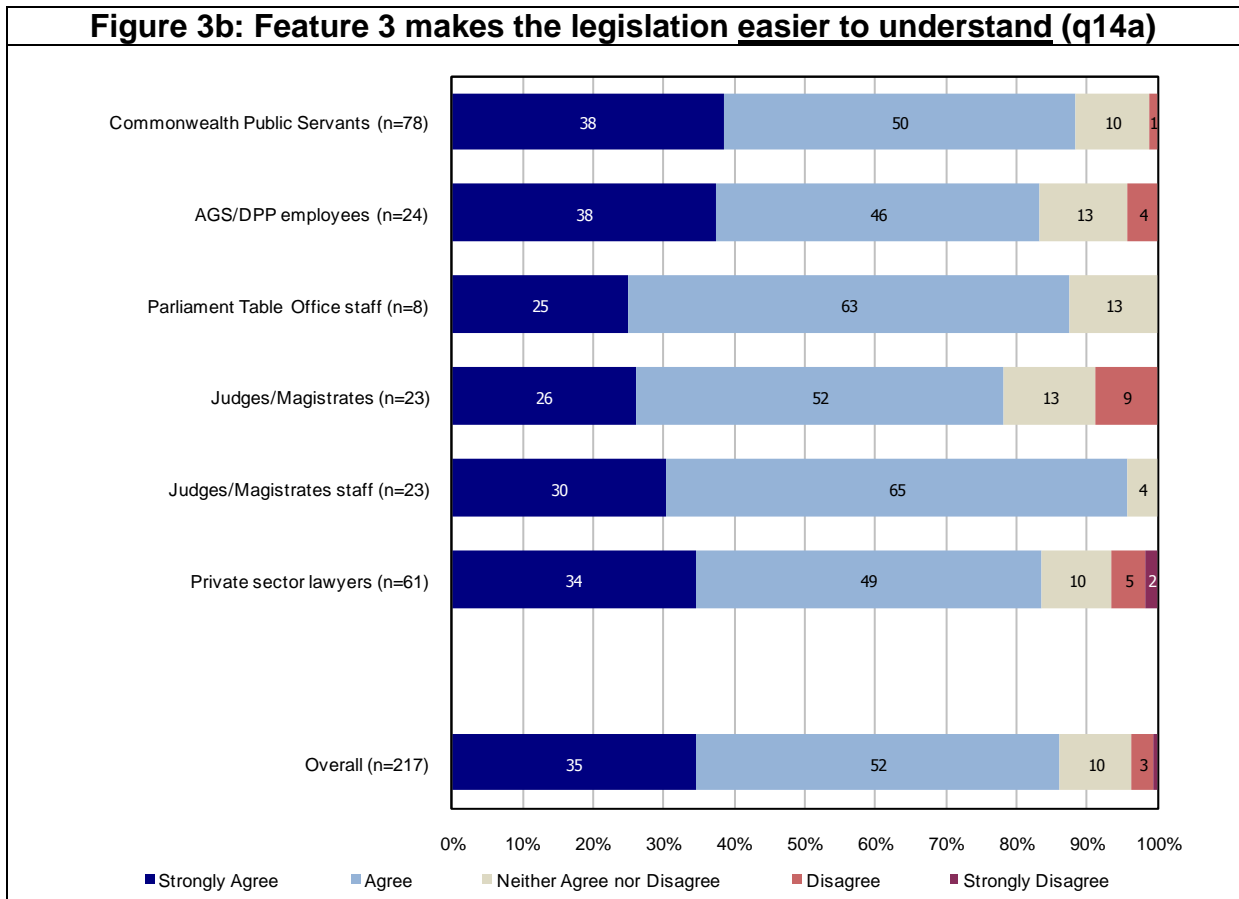
80% of respondents are aware of the *guides* feature, with 100% of Judges and Magistrates and Parliament Table Office staff aware of the feature.

Just over 80% of respondents are satisfied with the usefulness of *guides* (see Figure 3a), with similar results across each of the respondent groups.



## Feature attributes

As shown in the next two figures, most respondents agreed that *guides* make the legislation both easier to understand (86%) and easier to read (77%).



## Benefits, Strengths and Weaknesses of Feature

Circumstances where *guides* were felt to be of most value were when users were reading an unfamiliar piece of legislation, as it could help them quickly assess the relevance of the legislation and to find the parts of the Act which more relevant to their work. It was also useful in explaining lengthy and/or complex provisions, in providing a “high level picture”, and in permitting “rapid scanning of the Act”.

Strengths of *guides* included that they can be a “useful summary of legislation”, and provided a “great handle on how to navigate the Act and find relevant provisions”. They were seen as being “more helpful than Overviews”, as they are “more specific, and, if there are a range of provisions which could apply, help me to identify which provisions I should be looking at”. It was noted that “Guides usually contain helpful signposts to the key concepts and sections in a division”.

A few respondents were positive about the “boxed formatting”, saying that it made it clear that the *guides* were part of the introduction to the legislation.

Some weaknesses mentioned by respondents included that the guides have to be at a “very high level, and can easily be misleading as a result”, or may be “written in a manner that is too general and/or does not add value”. It was noted that guides did not always “point out that there were exceptions to the general rule/operation of certain provisions”, and that readers may not get a “full appreciation or understanding of the sections overall” if they only focused on the guides.

## Feature 4. Decentralised tables of contents

### Description

*Decentralised tables of contents are often used in very large principal Acts in order to assist in the navigability of large units of legislative text. These tables of contents appear in addition to the main table of contents included at the beginning of the Act.*

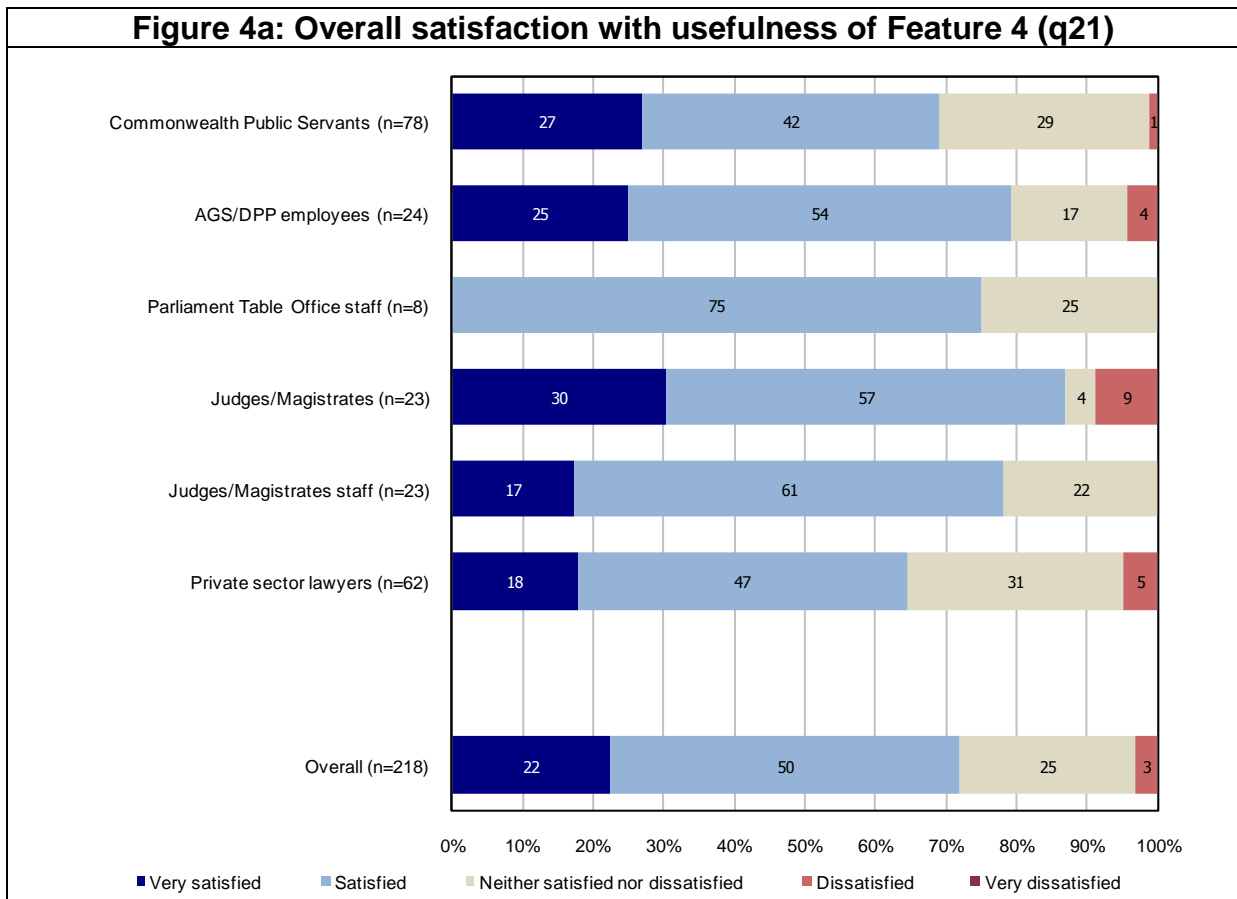
### Example of Feature 4

Current format	
<b>Table of Subdivisions</b>	
44-A	Working out the amount of residential care subsidy
44-B	The basic subsidy amount
44-C	Primary supplements
44-D	Reductions in subsidy
44-E	The income test
44-F	Other supplements

### Awareness and Satisfaction

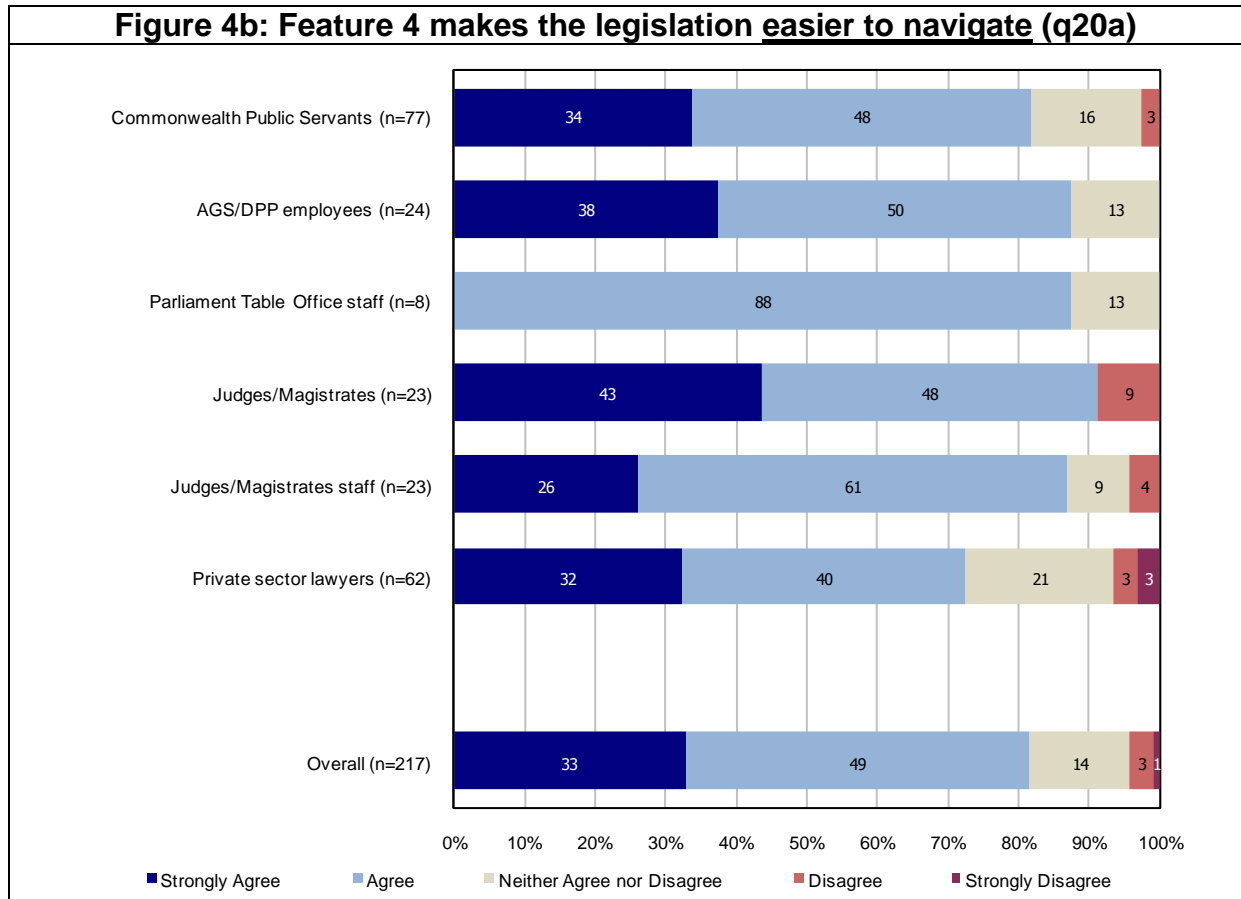
60% of respondents are aware of the *decentralised table of contents* feature, with 83% of Judges and Magistrates being aware of this feature.

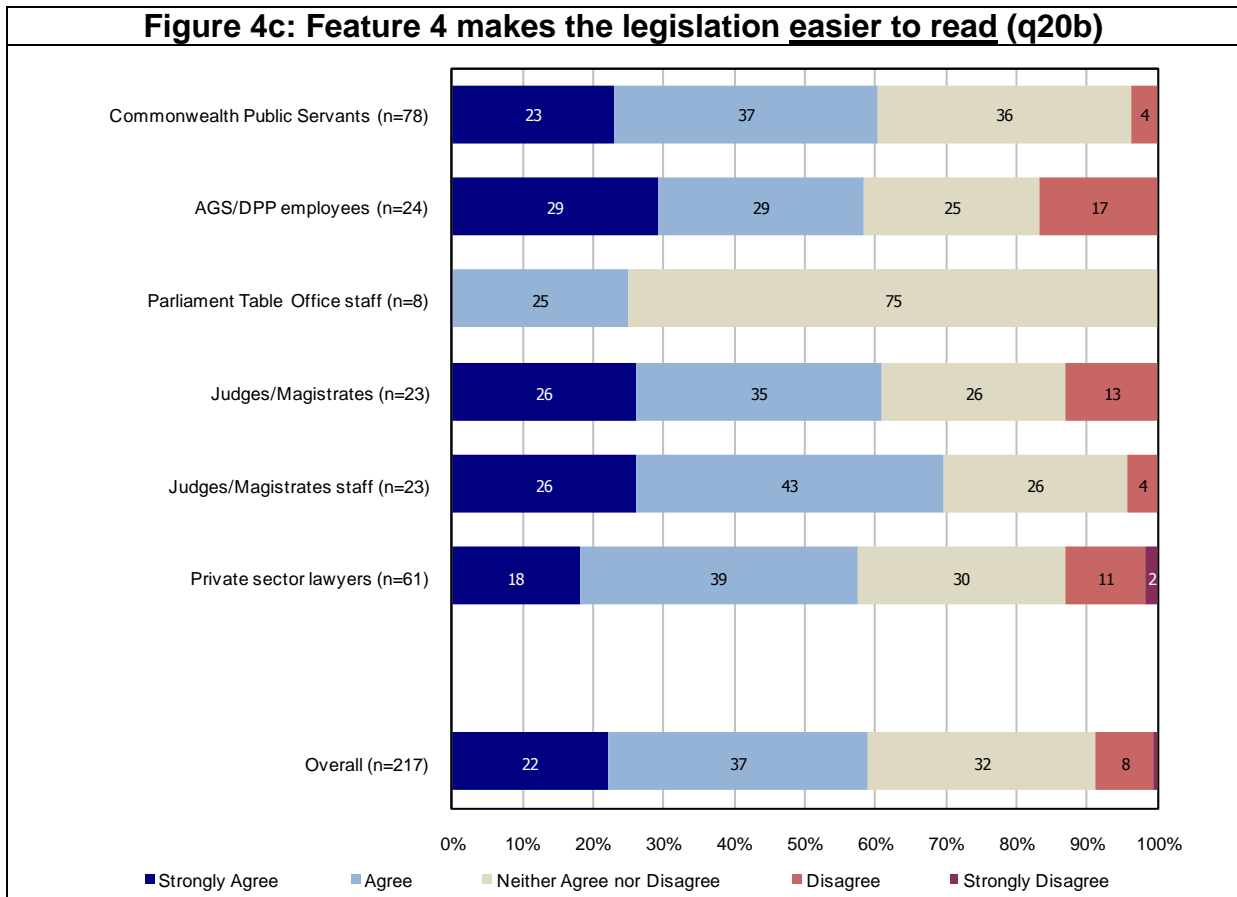
Over 70% of respondents are satisfied with the usefulness of *decentralised tables of contents* (see Figure 4a), with 87% satisfaction amongst the Judges and Magistrates.



### Feature attributes

Most respondents agree that *decentralised tables of contents* make the legislation easier to navigate (82%), with 59% indicating the feature makes legislation easier to read (see Figures 4b and 4c).





### Benefits, Strengths and Weaknesses of Feature

Respondents noted that *decentralised tables of contents* were of most value when dealing with lengthy and/or complex legislation, such as where “an area of law covers many aspects, e.g. applying similar concepts to different situations or different types of entities”. The feature was particularly helpful when reviewing a particular piece of legislation for the first time or researching a new area. It was seen as useful when “assisting clients to find relevant provisions within legislation”, and as valuable for electronic searching, and saved users from “having to refer back to the main table of contents when navigating larger legislation”.

Particular strengths of the *decentralised tables of contents* was that it “makes things easier to find in the legislation”, and was “useful for large legislation”. It provided a “useful map of the Division or Subdivision”, and could act as a useful “navigation aid”.

There was some concern that this feature can add unnecessarily to the length of legislation, and several respondents noted that they preferred to use the table of contents at the beginning of the legislation and found the decentralised table of little use.

## Feature 5. Objects provisions

### Description

*Objects provisions are sometimes included at the beginning of Acts. Some objects provisions give a general understanding of the purposes of the legislation. Other objects provisions set out general aims or principles that help the reader to interpret the detailed provisions of the legislation. Objects provisions are readily identifiable by section headings or other obvious formatting.*

### Example of Feature 5

#### Current format

#### *Fuel Quality Standards Act 2000*

#### **3 Objects of Act**

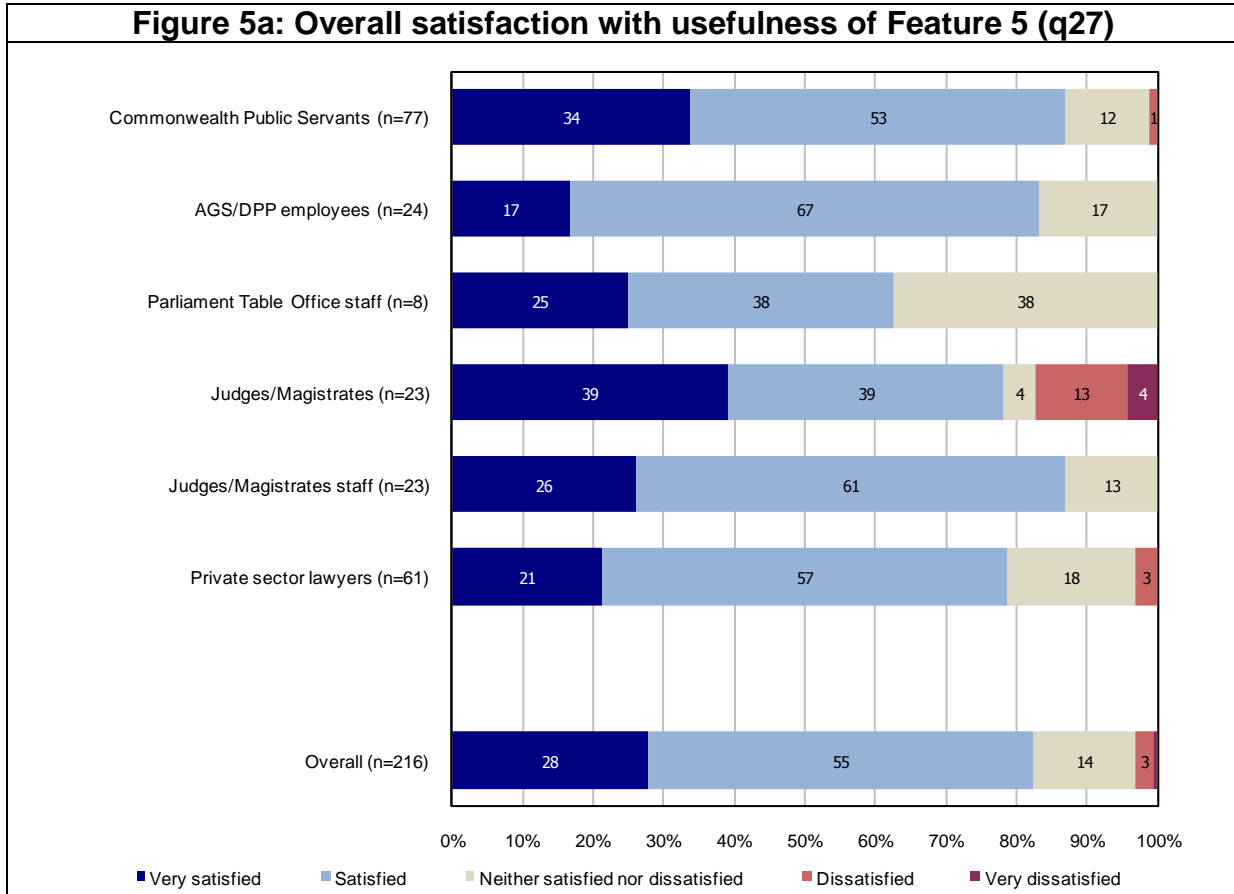
The objects of this Act are to:

- (a) regulate the quality of fuel supplied in Australia in order to:
  - (i) reduce the level of pollutants and emissions arising from the use of fuel that may cause environmental and health problems; and
  - (ii) facilitate the adoption of better engine technology and emission control technology; and
  - (iii) allow the more effective operation of engines; and
- (b) ensure that, where appropriate, information about fuel is provided when the fuel is supplied.

## Awareness and Satisfaction

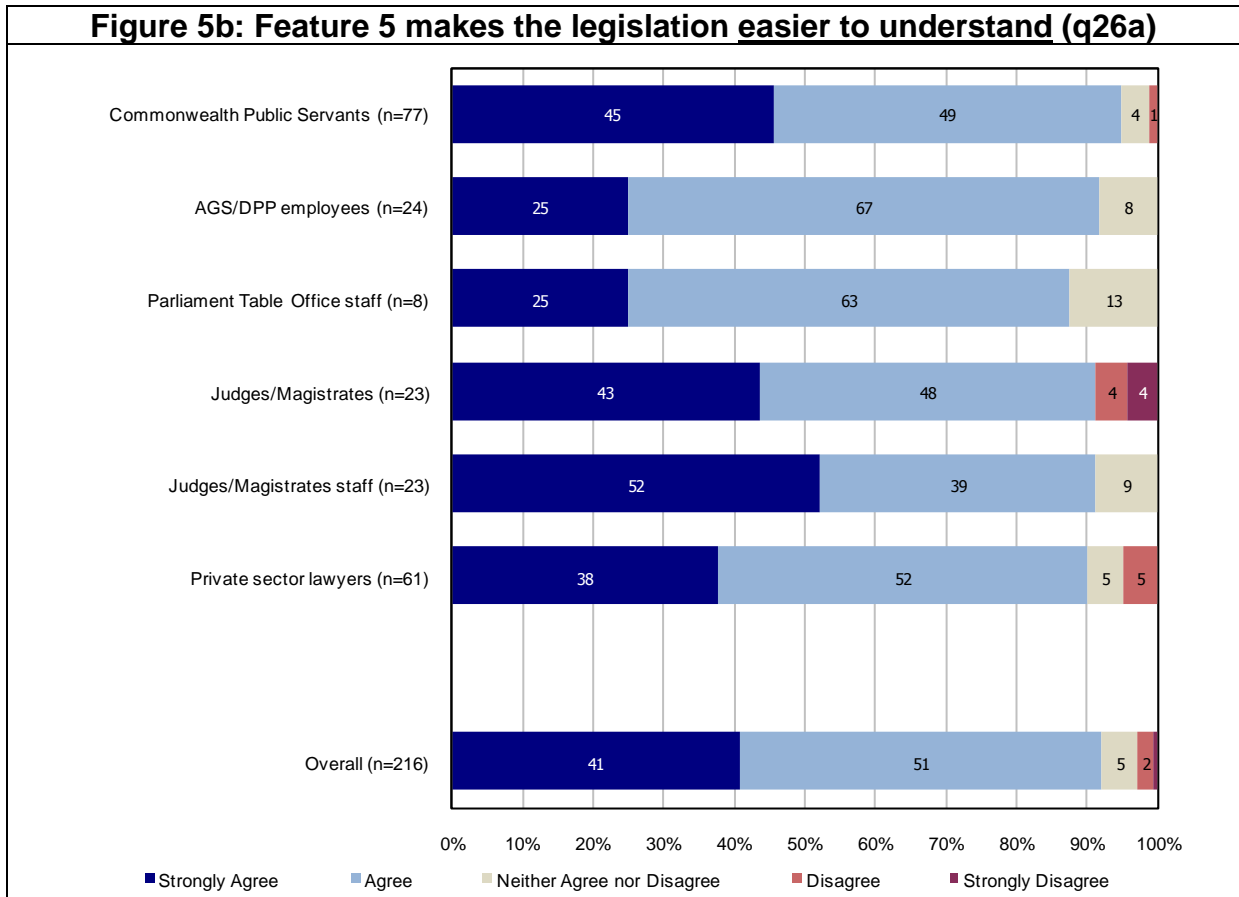
Over 90% of respondents are aware of *objects provisions*.

82% of respondents are satisfied with the usefulness of *objects provisions* in legislation (see Figure 5a).

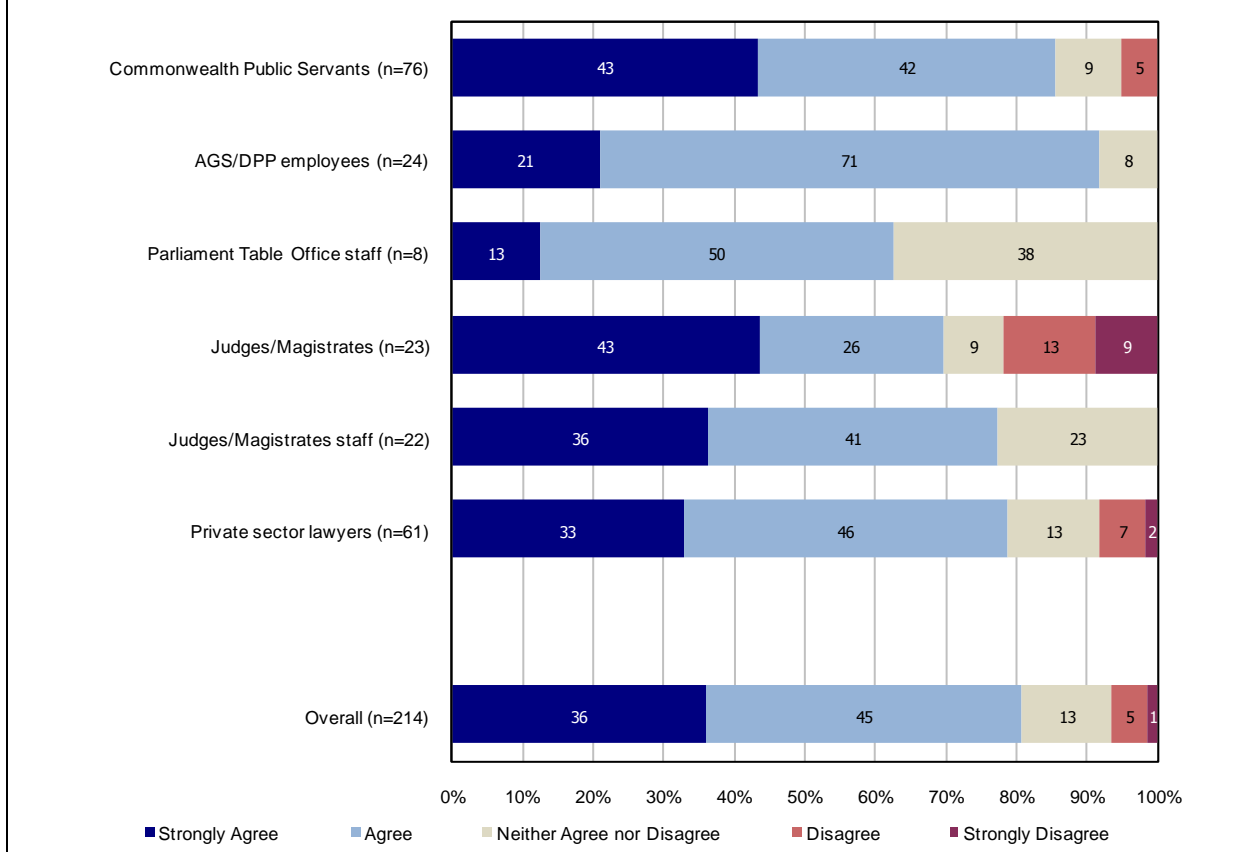


### Feature attributes

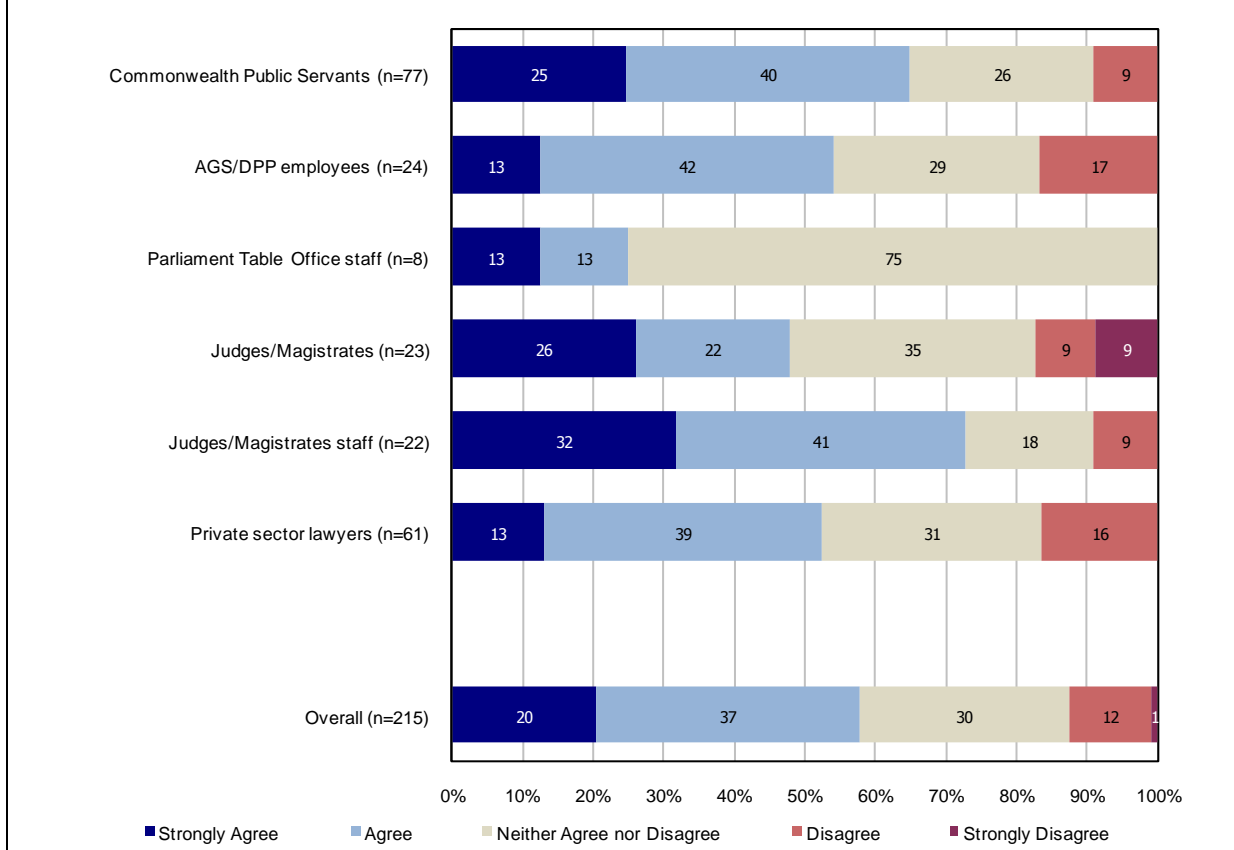
Most respondents agreed that *objects provisions* make the legislation easier to understand (92%) and assists in interpreting the legislation (81%) (see Figures 5b and 5c). Just over half of respondents agreed that *objects provisions* make the legislation easier to read (see Figure 5d). While 70% of Judges and Magistrates agreed that this feature makes legislation easier to interpret, 13% disagreed and a further 9% strongly disagreed.



**Figure 5c: Feature 5 makes the legislation easier to interpret (q26b)**



**Figure 5d: Feature 5 makes the legislation easier to read (q26c)**



## Benefits, Strengths and Weaknesses of Feature

*Objects provisions* were seen as useful in determining the “application of a specific rule that may be open to alternative interpretations”. They could show “how an Act must be taken together with the legislation”, and could also act as a “useful statement of policy” or to “understand the intent of the legislation”. They could help in “determining extent of powers” and “resolving inconsistencies”. They were also helpful when assisting clients to find legislation that performed certain tasks or when researching in order to gain key words and phrases.

Particular strengths of *objects provisions* were that they could “serve as a useful summary of the Act”, and could be helpful in “settling varying views on the meaning of legislation”. They were seen as being “valuable to courts and other users... refuting narrow black letter interpretation”. They could be “very important when interpreting an Act and [therefore] special care should be given to their drafting”, and they “could be very powerful when properly thought through”.

Some respondents noted that *objects provisions* worked “provided the object is accurate”. They could sometimes “merely state the obvious”, or could sometimes describe “what the provisions are about rather than the purpose of the provisions”. Sometimes they were seen as “political statements”, and could be “watered down in consultation or by stakeholders who don’t like clear statements of the policy purposes of the provisions”. There was also concern that they add “length to legislation and create confusions with lay users”.

## Feature 6. Examples

### Description

Examples are often a good way of explaining the operation of a complex provision. Worked examples may be particularly useful for provisions requiring complex calculations.

### Example of Feature 6

#### Current format

#### *Aged Care Act 1997*

#### 30-3 Meaning of *distinct part*

- (1) For the purposes of this Part, *distinct part*, in relation to a residential care service, means a specific area of the service that:
- (a) is physically identifiable as separate from all the other places included in the service; and
  - (b) includes sufficient living space for the care recipients to whom residential care is provided in respect of the places in the area; and
  - (c) meets any other requirements specified in the Extra Service Principles.



Example: A wing of a service with a separate living and dining area for residents living in the wing might constitute a "distinct part" of the service.

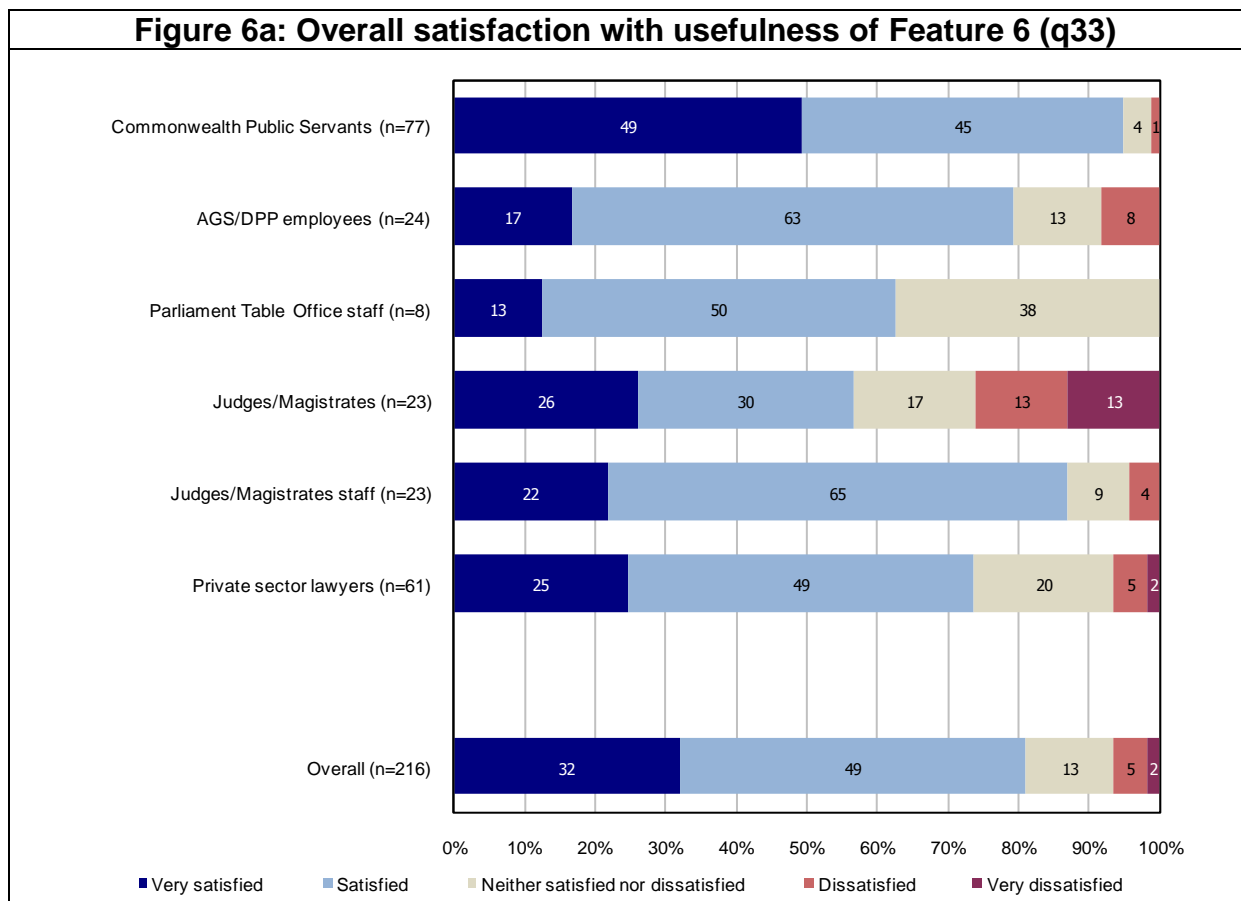
Note: If the Secretary approves an application for \*extra service status for a distinct part of a service, all the places in that distinct part will be extra service places at a particular time as long as the requirements of section 31-1 are met.

- (2) The Extra Service Principles may specify characteristics that must be present in order for an area to be physically identifiable as separate for the purposes of paragraph (1)(a).

## Awareness and Satisfaction

Eighty four per cent of respondents are aware of the use of *examples* in legislation, with 96% of AGS and DPP employees aware of this feature.

Just over 80% of respondents are satisfied with the usefulness of *examples* in legislation (see Figure 6a). The level of satisfaction was lowest for Judges and Magistrates (56%), with 13% dissatisfied and a further 13% very dissatisfied.

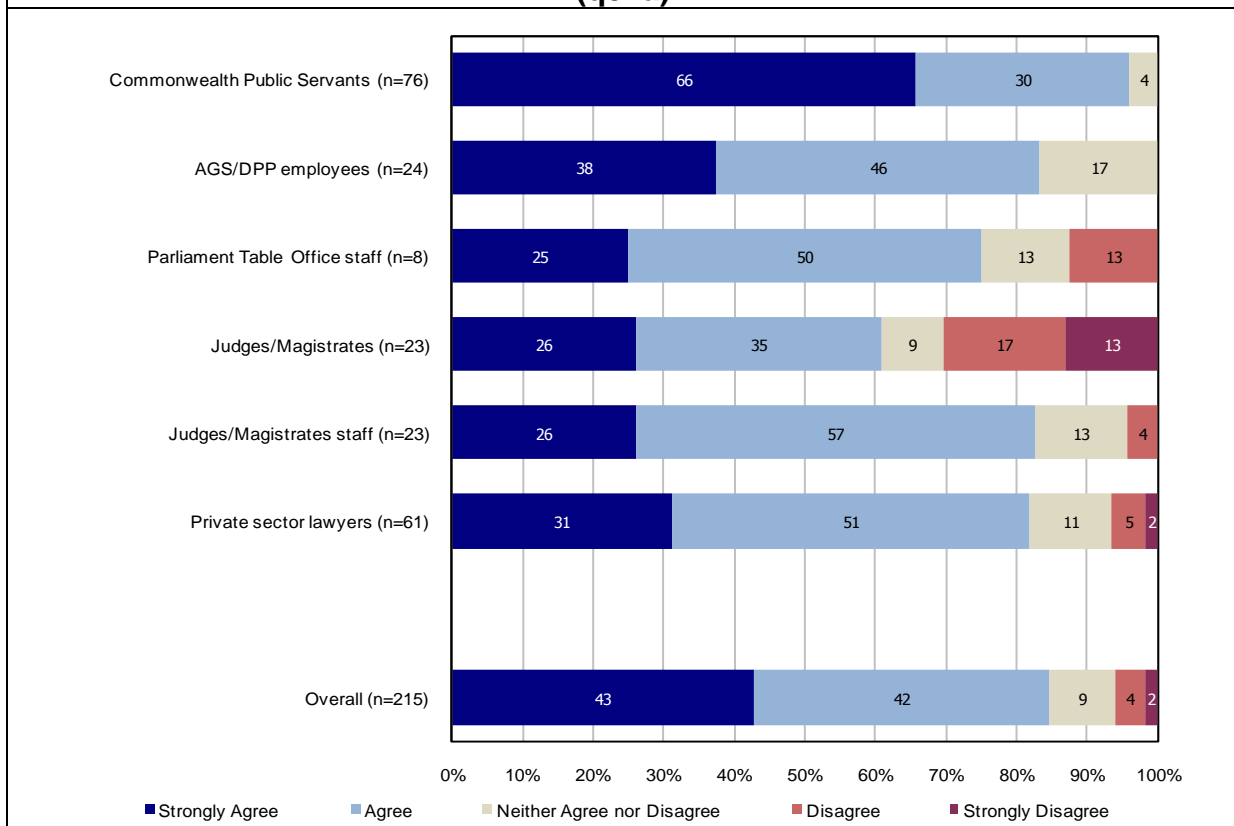


### Feature attributes

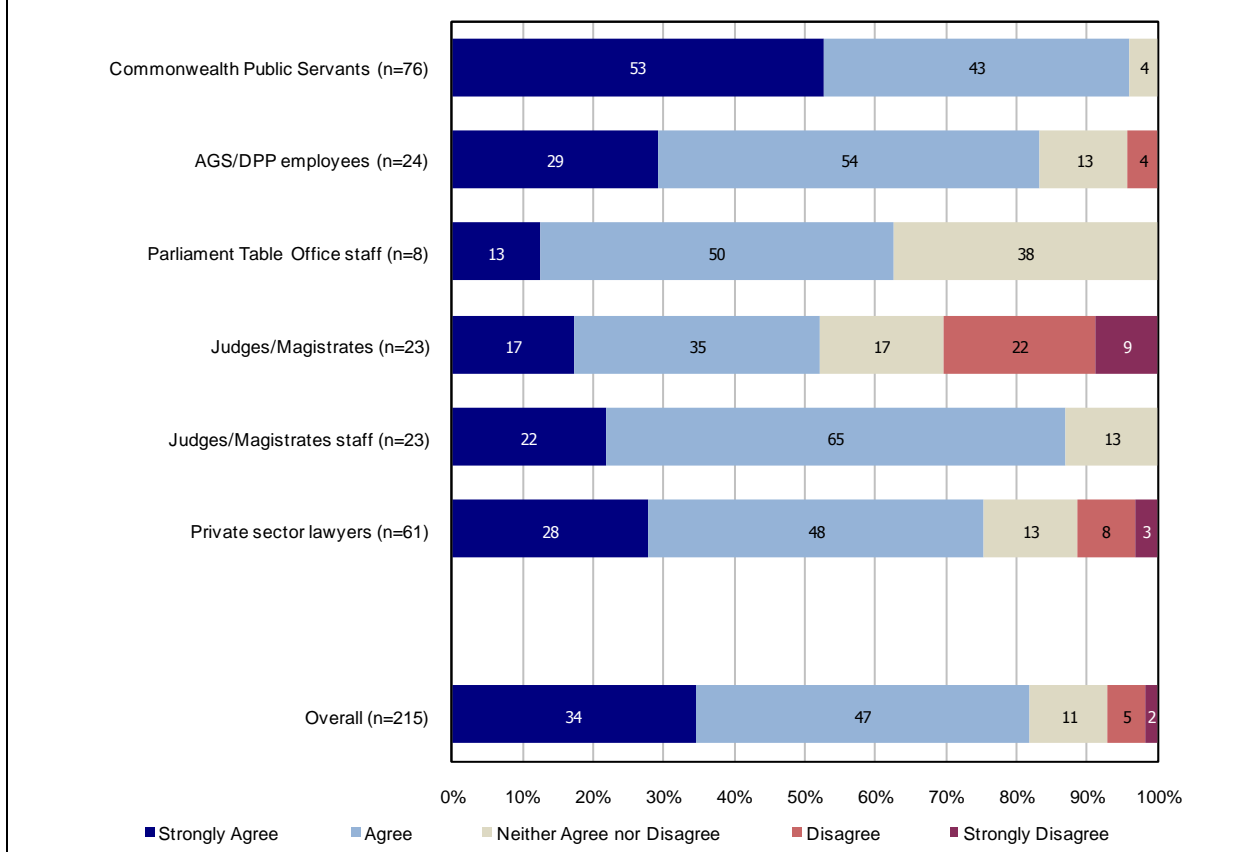
As shown in the next three figures, most respondents agreed that *examples*:

- assist in explaining the operation of complex provisions (85%);
  - make the legislation easier to understand (82%); and
  - make the legislation easier to read (67%).
- On average, private sector legislation users were less likely than Commonwealth Government employees to report that *examples* make the legislation easier to read.

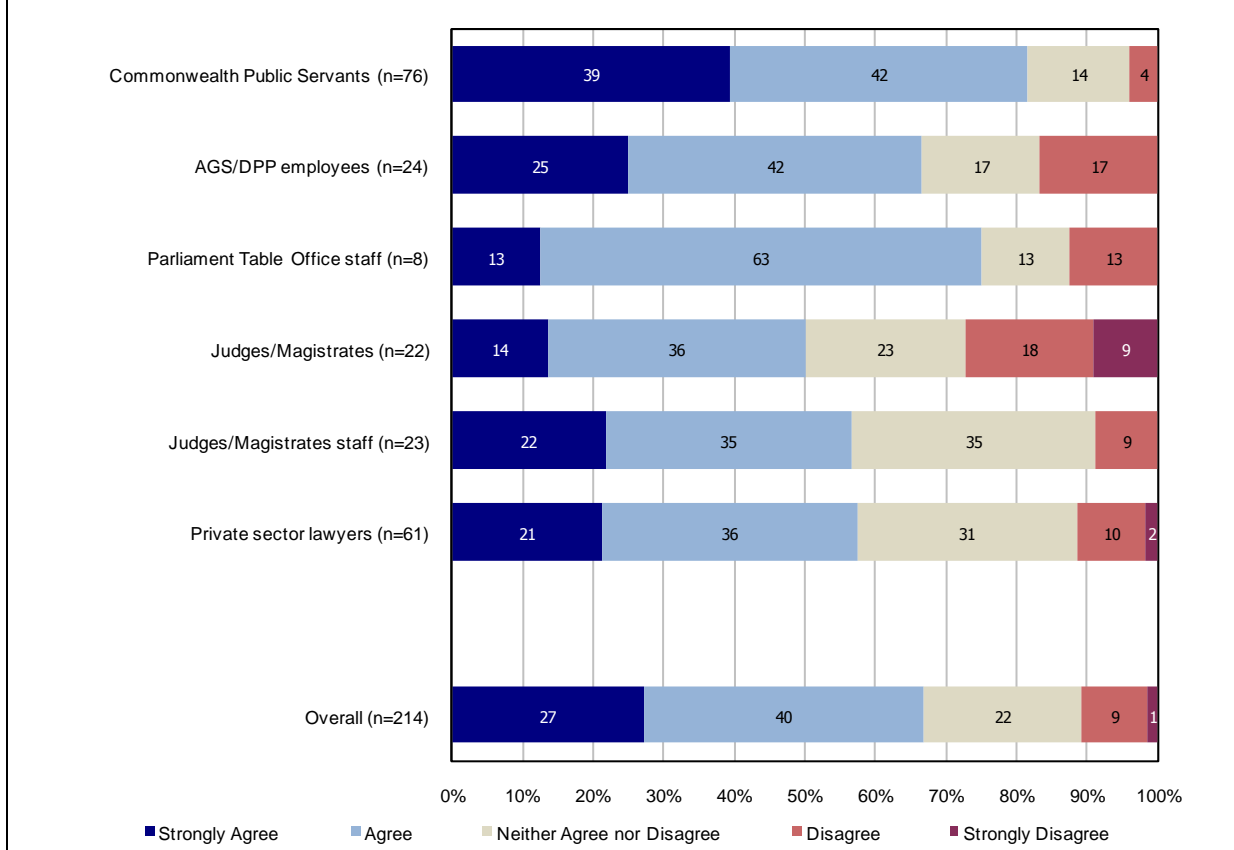
**Figure 6b: Feature 6 assists in explaining the operation of complex provisions (q32a)**



**Figure 6c: Feature 6 makes the legislation easier to understand (q32b)**



**Figure 6d: Feature 6 makes the legislation easier to read (q32c)**



## Benefits, Strengths and Weaknesses of Feature

Respondents found *examples* to be of most value when they were being used to explain complex provisions, calculations and formulae. They were felt to “often be the fastest way to understand what [a complex] mechanism is doing”, and could help ensure that “intended coverage of provisions is understood”. They were useful in helping ensure “the policy intention is clear to the reader”. Some also found *examples* useful when the “legislation uses industry specific words that [they] are not familiar with”.

Particular strengths of *examples* included their value in explaining complex provisions or “elaborating meanings where it is not obvious”. Examples could reflect a “range of scenarios [which] may be of a great value to the reader”. They were seen to be of value to helping the lay reader and general community understand the legislation. It was also noted that the “more complex examples are most useful”.

A weakness of *examples* in legislation is that they can be misleading if they are not accurate and aligned correctly with the detail of the legislation, and it needed to be made clear that they “are merely an aid to interpretation”. Some were concerned that an example could act to limit the apparent scope of a section or skew it to one direction. Sometimes the examples provided in legislation were so clear cut that they did not assist the reader – rather they needed to cover situations where it was not so obvious as to what would be within the scope of the provision. Some respondents considered that examples may also distract users from the proper statutory interpretation, which is especially dangerous for those who do not use legislation frequently.

## Feature 7. Notes

### Description

*Notes to provisions are now often included in legislation. They might explain, the purpose, origin or operation of the provision, or refer the reader to related provisions or to defined terms used in the provision.*

### Example of Feature 7

#### Current format

#### *Aged Care Act 1997*

#### 30-3 Meaning of *distinct part*

- (1) For the purposes of this Part, *distinct part*, in relation to a residential care service, means a specific area of the service that:
- (a) is physically identifiable as separate from all the other places included in the service; and
  - (b) includes sufficient living space for the care recipients to whom residential care is provided in respect of the places in the area; and
  - (c) meets any other requirements specified in the Extra Service Principles.

Example: A wing of a service with a separate living and dining area for residents living in the wing might constitute a "distinct part" of the service.



Note: If the Secretary approves an application for \*extra service status for a distinct part of a service, all the places in that distinct part will be extra service places at a particular time as long as the requirements of section 31-1 are met.

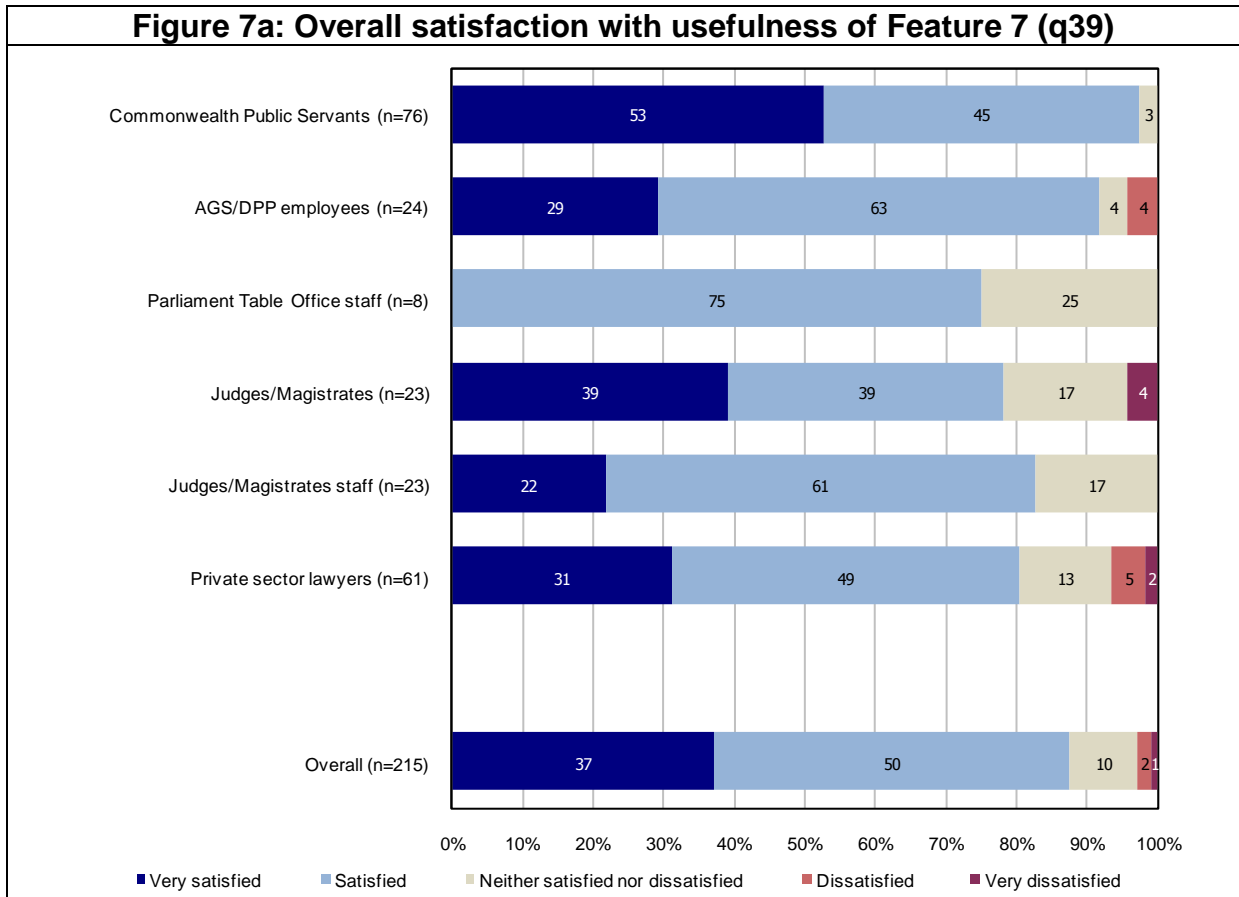
- (2) The Extra Service Principles may specify characteristics that must be present in order for an area to be physically identifiable as separate for the purposes of paragraph (1)(a).

## Awareness and Satisfaction

Almost all (90%) respondents are aware of the use of *notes* in legislation, with 96% of AGS and DPP employees aware of this feature.

Eighty seven per cent of respondents are satisfied with the usefulness of *notes* in legislation (see Figure 7a), with 97% of Commonwealth public servants satisfied with the usefulness of the feature.

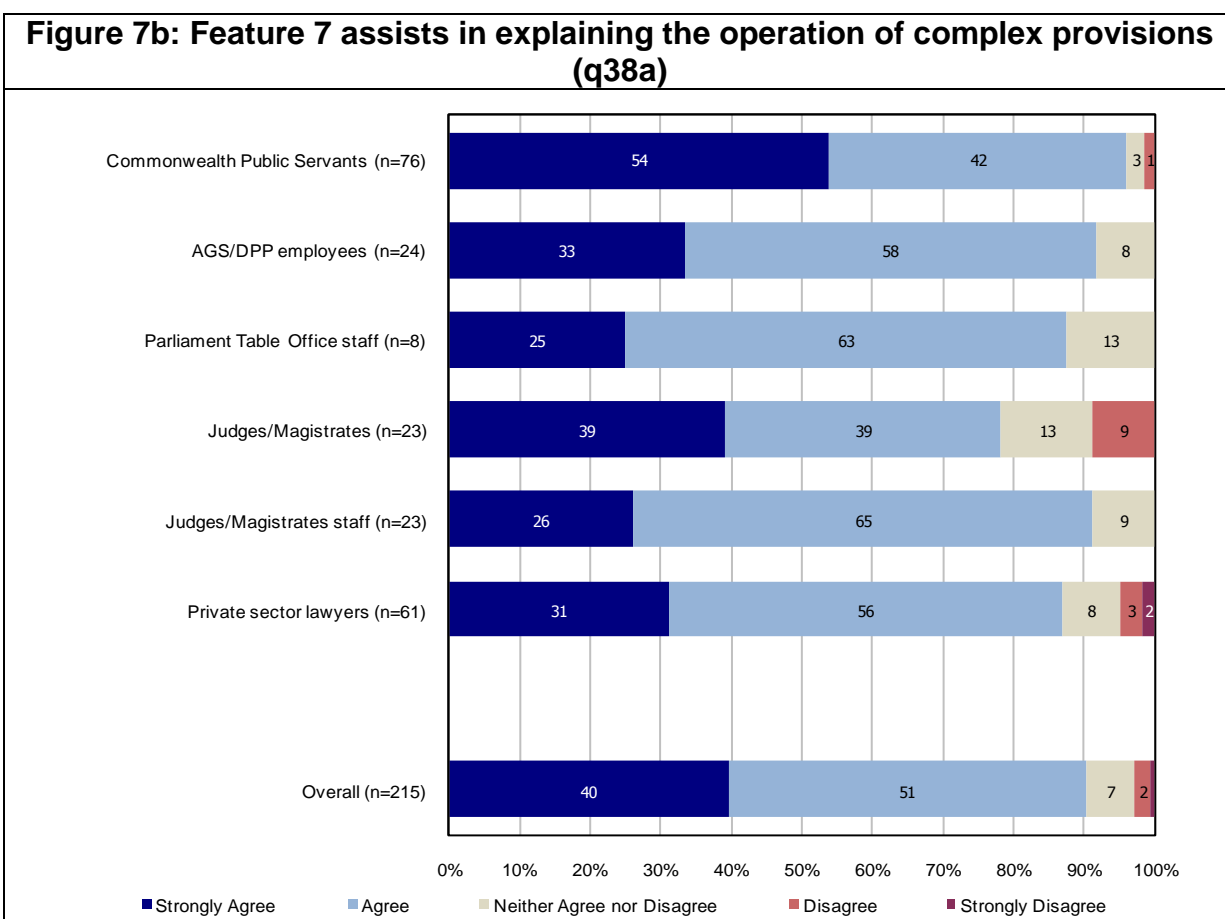
**Figure 7a: Overall satisfaction with usefulness of Feature 7 (q39)**



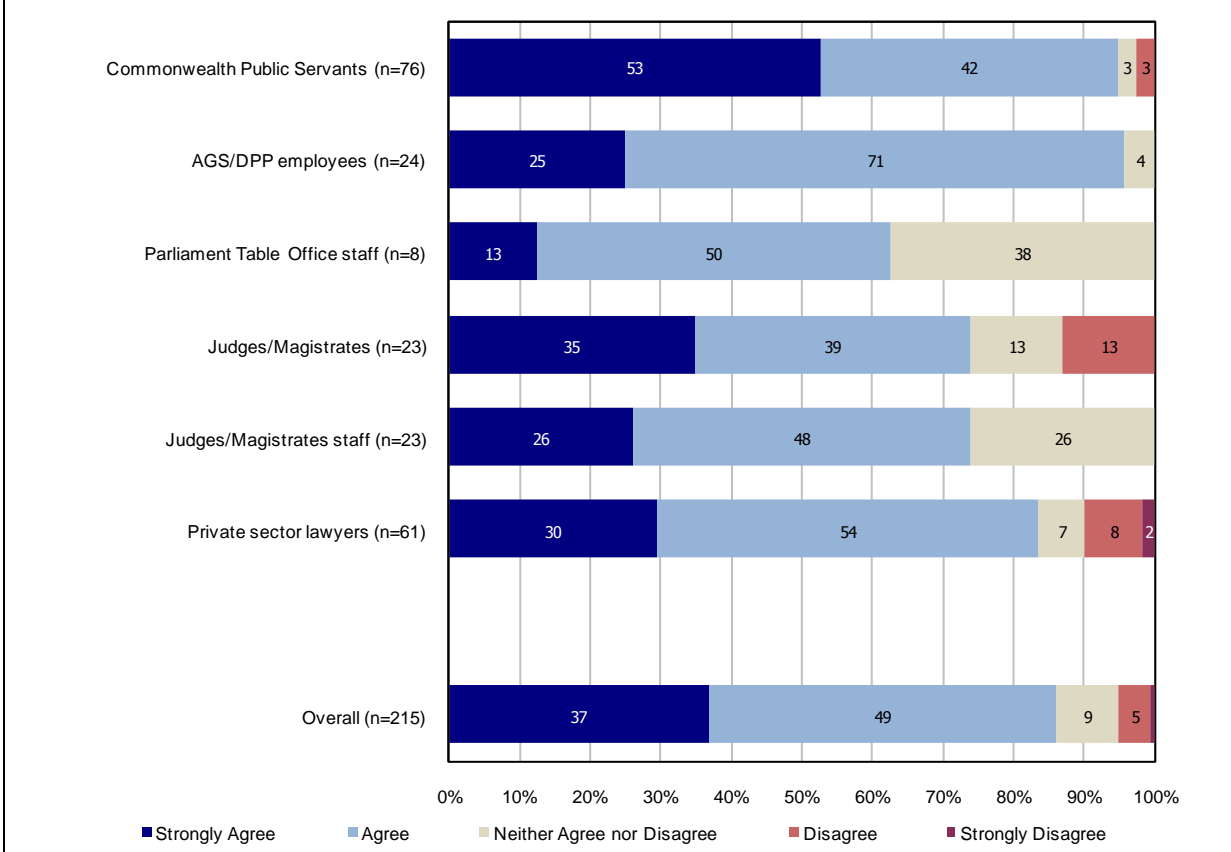
## Feature attributes

As shown in the next three figures, most respondents agreed that *notes*:

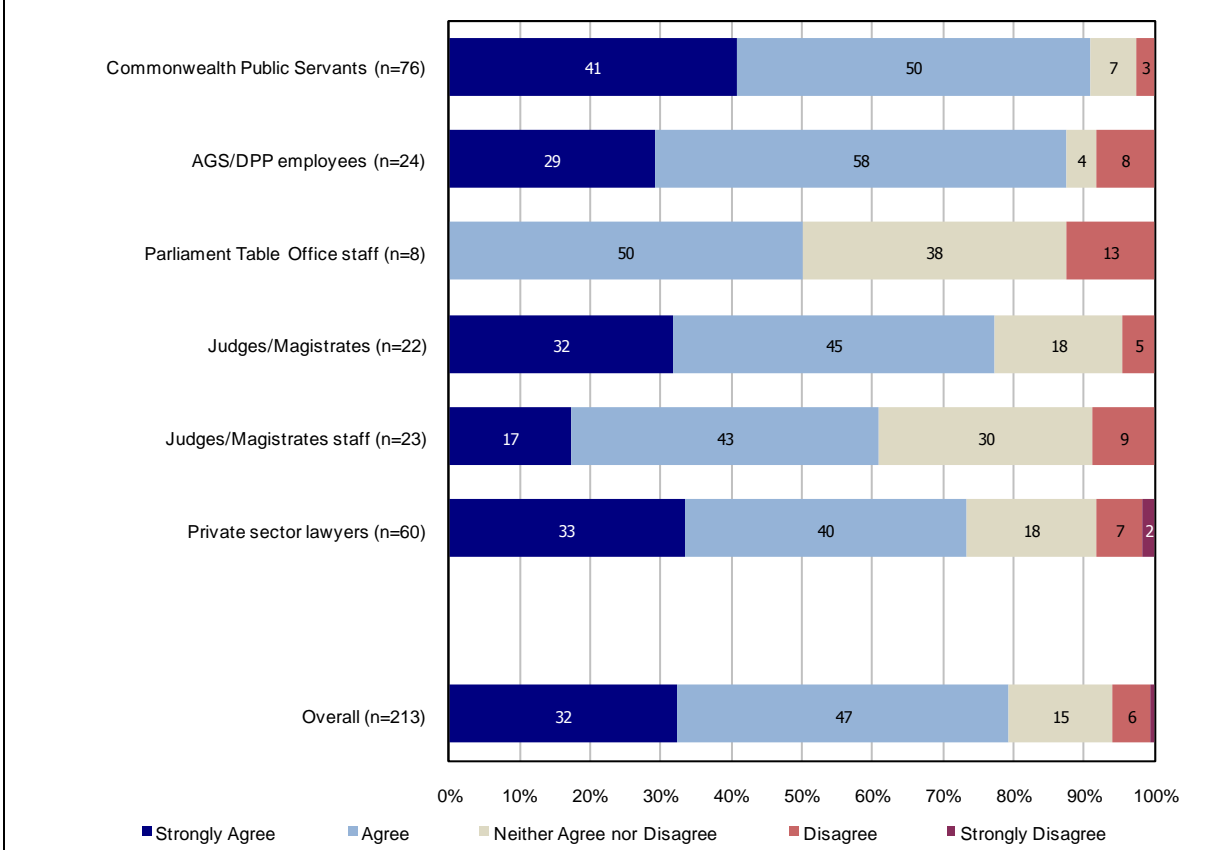
- assist in explaining the operation of complex provisions (90%);
- make the legislation easier to understand (86%); and
- make the legislation easier to read (79%).



**Figure 7c: Feature 7 makes the legislation easier to understand (q38b)**



**Figure 7d: Feature 7 makes the legislation easier to read (q38c)**



## Benefits, Strengths and Weaknesses of Feature

*Notes* were seen to provide most value when providing navigational and contextual information (“signposts to a related provision”), particularly when there are “complex interactions with other provisions”. They could provide “clarity on a provision without complex drafting”, and help to “explain why a provision is there when its role isn’t obvious”. They could also be good for referring to related definitions.

Particular strengths of *notes* included that they could provide “additional information in a truncated way”. They helped to “improve navigability” and “add clarity”, and made it easier to give a “complete picture of the law [by] making the reader aware of special features that may not readily come to mind when reading the provisions of the law themselves”.

Weaknesses of *notes* included that it was not always obvious if a note was operative or not, which could “potentially lead to misinterpretation”. In order to be useful “they need to be current; however, notes tend to be forgotten to be amended when amendments are made to legislation”. They could be “overused” or “overdone”, for example by repeating the same note after each provision in a sequence of provisions. It was also noted that with too many notes “it all becomes complicated by information overload”, and they may “serve to confuse if they are ambiguous, long winded or relevant only in a small number of cases”.

## Feature 8. Use of asterisks

### Description

Some legislation uses asterisks to identify defined terms, with a standard footnote on every page referring the reader to a Dictionary at the back of the Act. Every definition used in the Act is either set out, or signposted, in the Dictionary. At the beginning of the Act, interpretative provisions are included to explain how asterisks are used.

### Example of Feature 8

#### Current format

#### *Aged Care Act 1997*



#### 8-6 States, Territories and local government taken to be approved providers

- (1) Each of the following is taken to have been approved under this Part as a provider of \*aged care:
- (a) a State or Territory;
  - (b) an \*authority of a State or Territory;
  - (c) a \*local government authority.

The approval is taken to be in respect of all types of aged care.

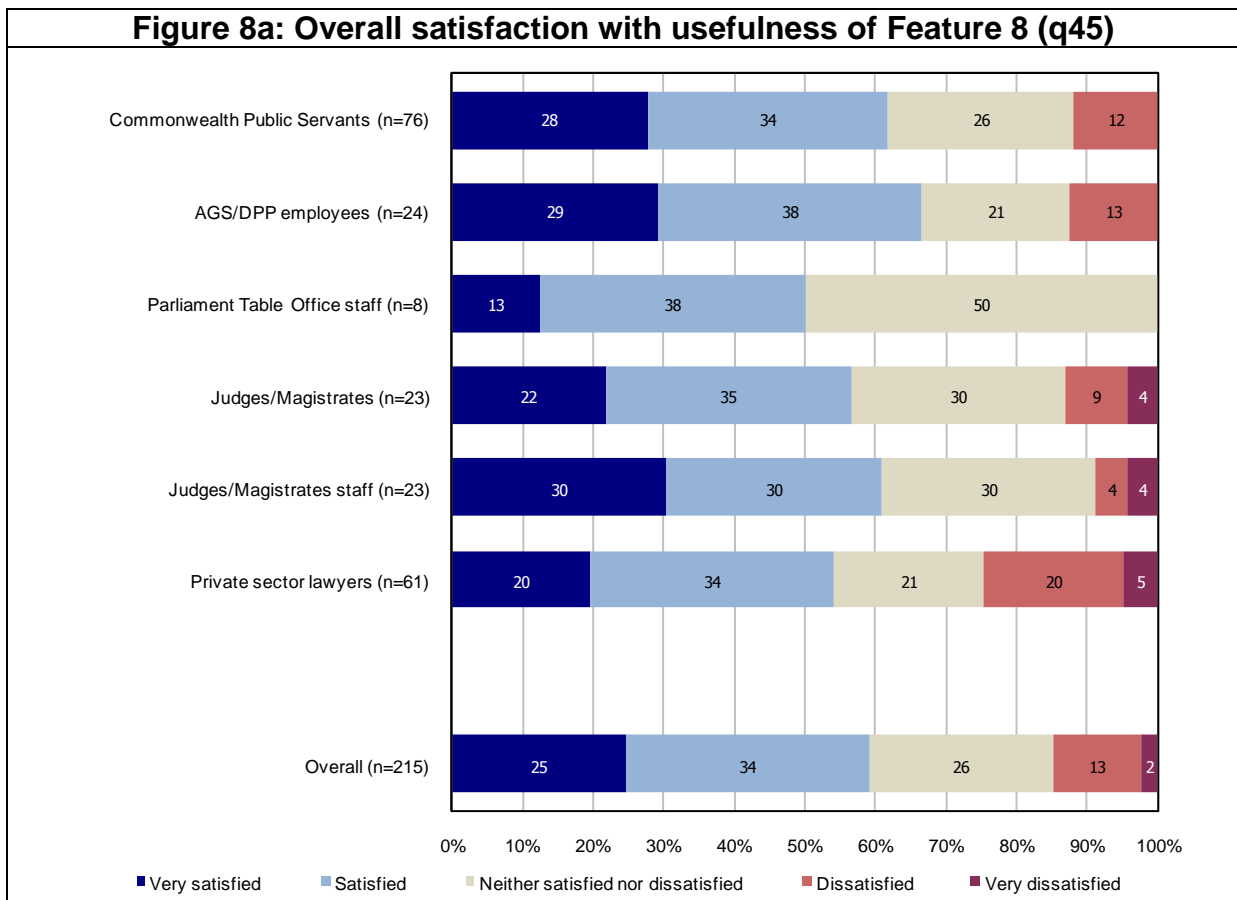
- (2) Subsection (1) ceases to apply in relation to a State, Territory, \*authority of a State or Territory or \*local government authority if the approval:
- (a) lapses under section 10-2; or
  - (b) is revoked under section 10-3; or
  - (c) is revoked or suspended under Part 4.4.
- (3) If a State, Territory, \*authority of a State or Territory or \*local government authority to which subsection (1) has ceased to apply subsequently applies under section 8-2 for approval as a provider of \*aged care, for the purposes of the application:
- (a) the applicant is taken to be a \*corporation; and
  - (b) if the applicant is a State or Territory—paragraphs 8-3A(a) and (b) do not apply.

### Awareness and Satisfaction

Only 57% of respondents are aware of the use of *asterisks* in legislation. On average, Commonwealth Government employees are more aware of the use of *asterisks* in legislation than private sector legislation users.

Fifty nine per cent of respondents are satisfied with the usefulness of *asterisks* in legislation (see Figure 8a), with similar satisfaction levels across the respondent groups.

- One-quarter of private sector lawyers were dissatisfied or very dissatisfied with the usefulness of this feature.

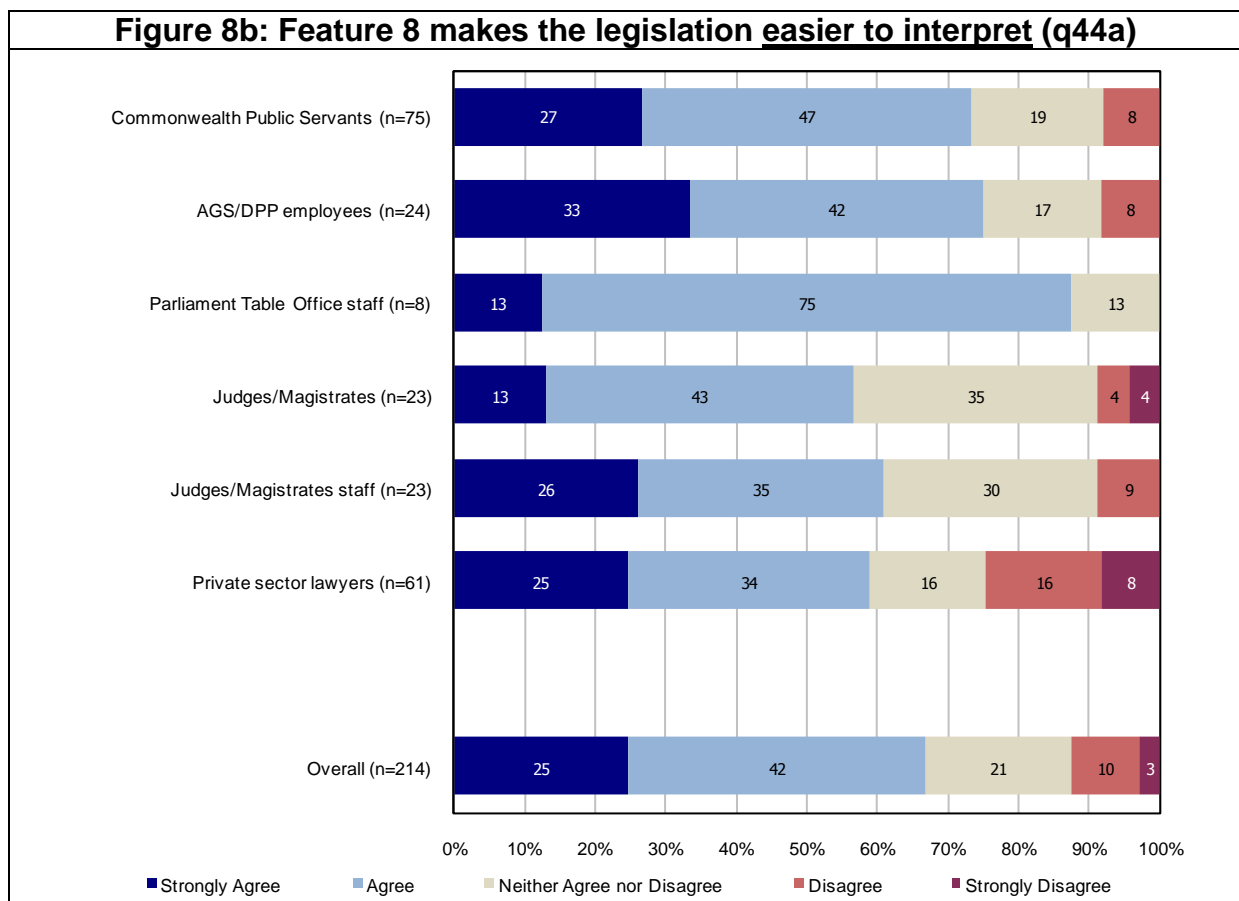


### Feature attributes

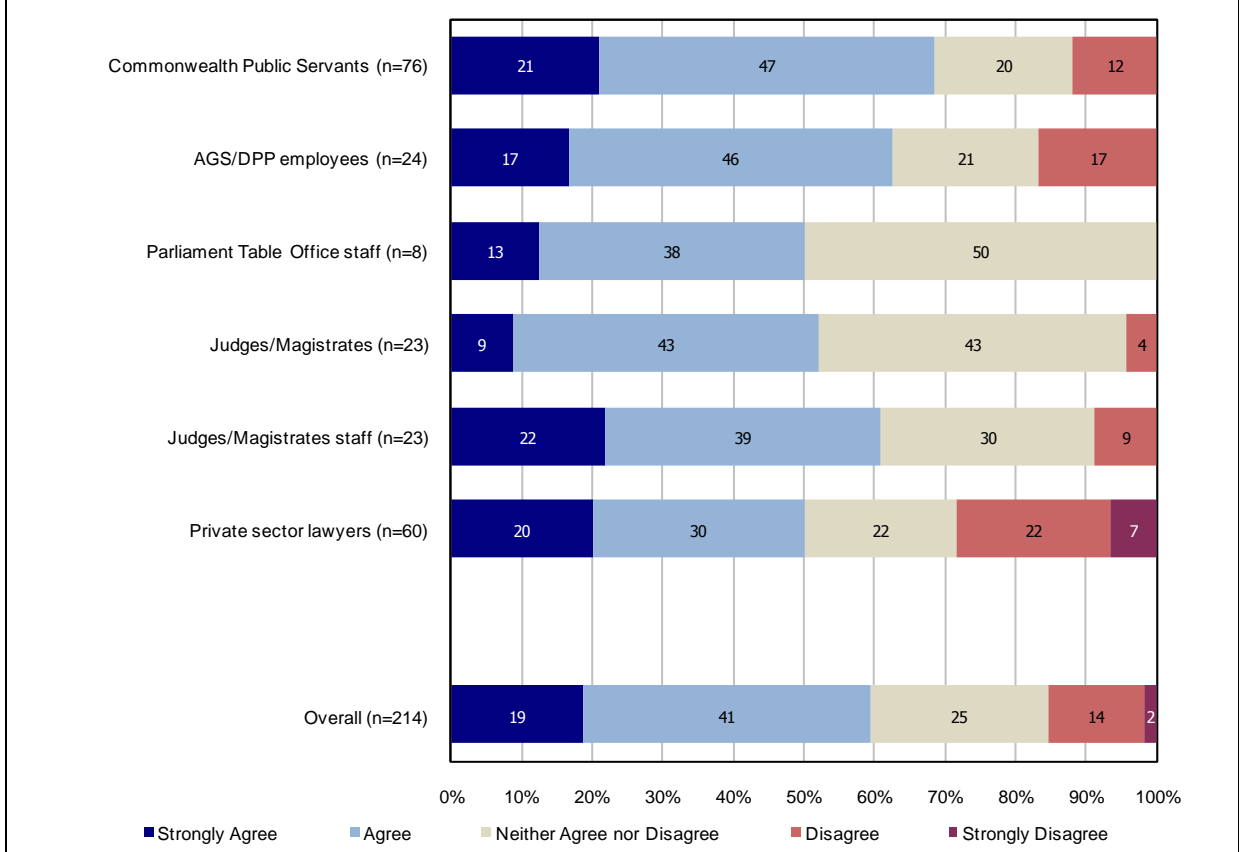
As shown in the next four figures, the majority of respondents agreed that the use of *asterisks* in legislation:

- makes the legislation easier to interpret (67%);
- reduces the ambiguity of legislation (59%);
- makes the legislation easier to understand (60%); and
- makes the legislation easier to read (55%).

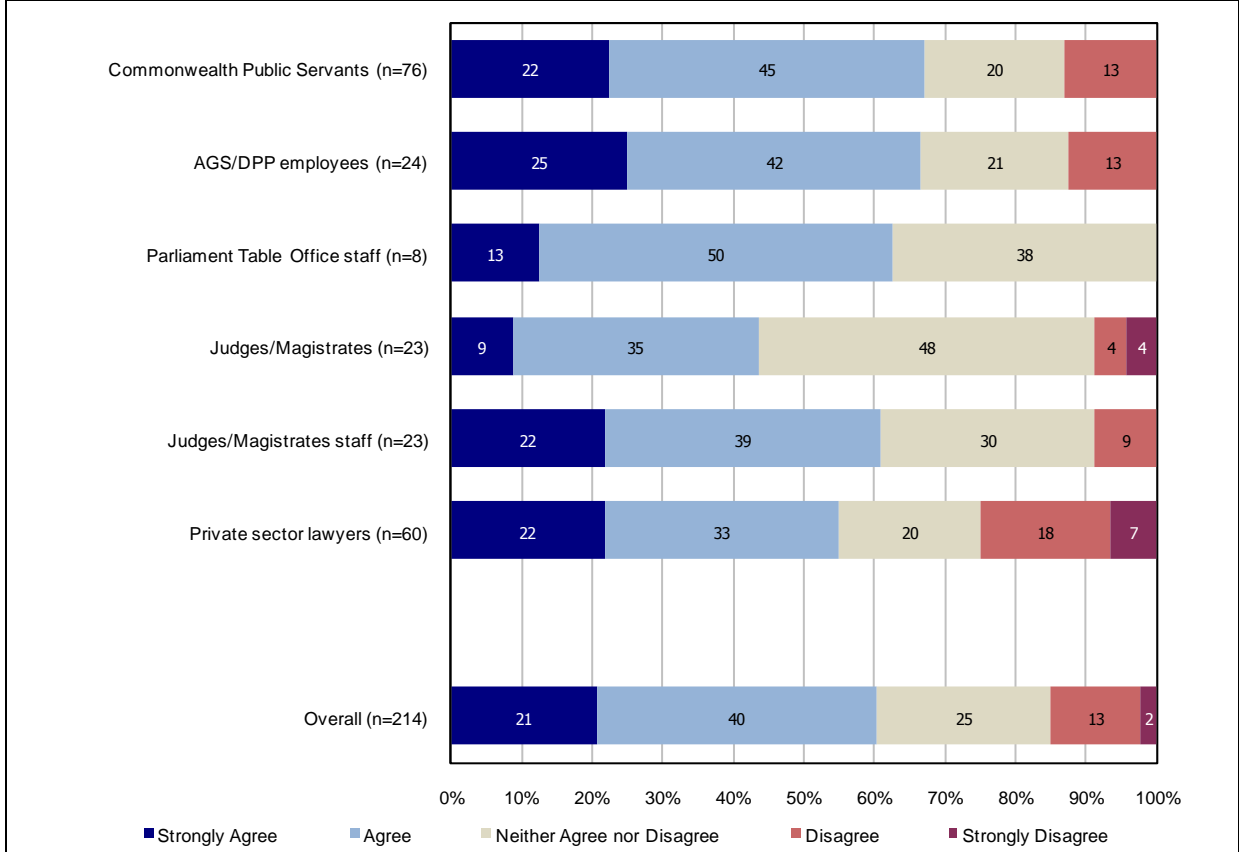
Nearly one-quarter of all respondents disagreed that asterisks made legislation easier to read (see Figure 8e). Private sector lawyers were the most negative in their views on the use of asterisks, with 24–31% disagreeing with each of the four aspects shown.

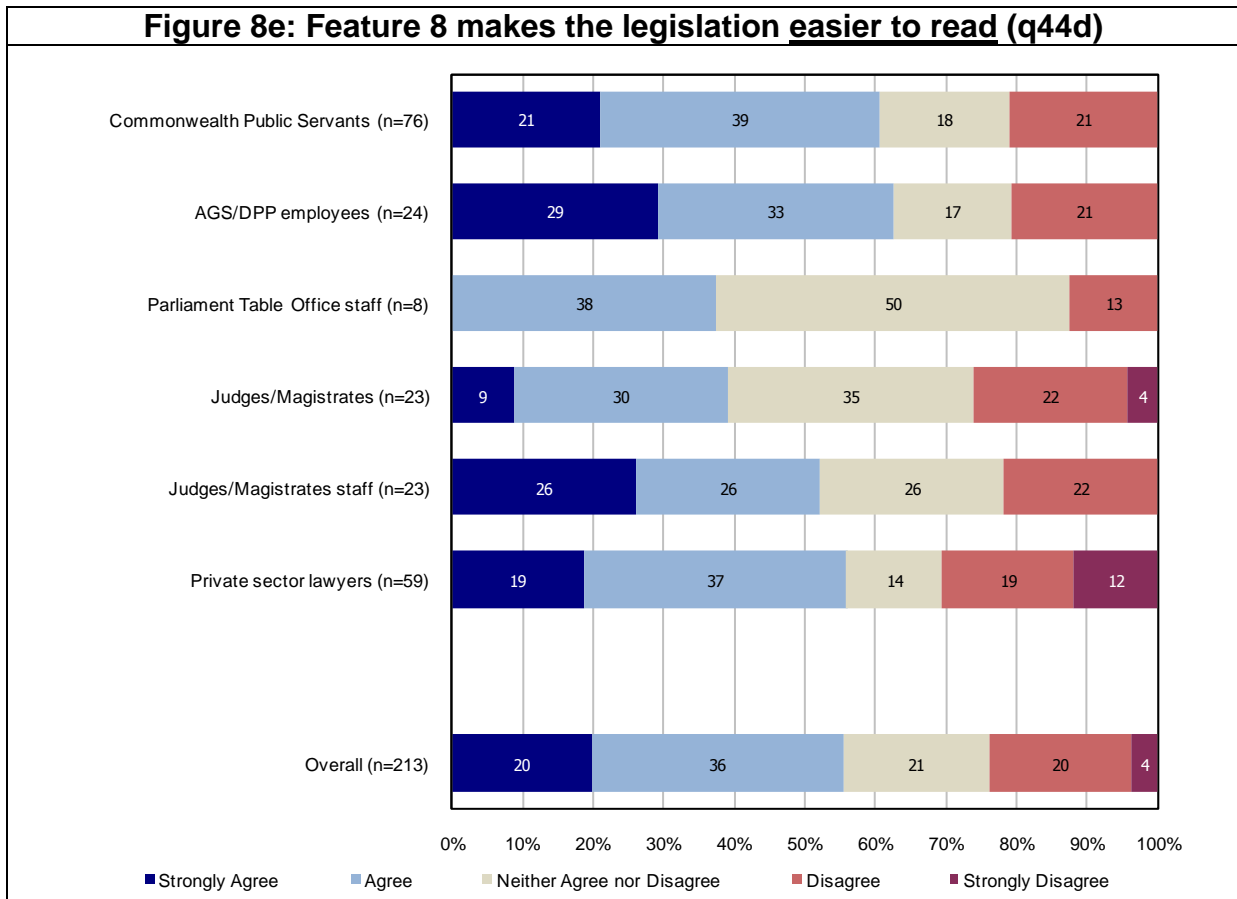


**Figure 8c: Feature 8 reduces the ambiguity of legislation (q44b)**



**Figure 8d: Feature 8 makes the legislation easier to understand (q44c)**





### Benefits, Strengths and Weaknesses of Feature

*Asterisks* were found to be of most value in circumstances when users were dealing with new or unfamiliar legislation, as they helped identify which terms were being defined (and which were not being defined) within the legislation. It is particularly useful where “a term has a specific meaning for the purpose of the legislation”, and not an otherwise “commonly understood meaning”.

Particular strengths of the use of *asterisks* include helping in the correct interpretation of legislation and reducing ambiguity in different definitions, and acting as a “time saving device that avoids the need to undertake searches of each term to determine whether it has been defined or not”.


Weaknesses of *asterisks* included that they could be repetitive and distracting, and that it was not always clear whether a single word or phrase was being defined. There were suggestions for using bolding or italicising to clarify the word(s) being defined. It was also noted that asterisks needed to be used in a consistent and accurate manner to be fully useful, for example “if a term that is defined in the dictionary is not asterisked, confusion arises about whether the definition applies to the term”.

## Feature 9. Use of tagging of concepts

### Description

Tagging of concepts can be done by using a label (appearing in bold, italicised text) to create a definition for a limited part of the Act. The label appears immediately after the thing that it describes. This device relies on a narrative flow of text, in which the reader will begin reading from the beginning of the appropriate unit, and will keep the label in his or her head while reading the unit.

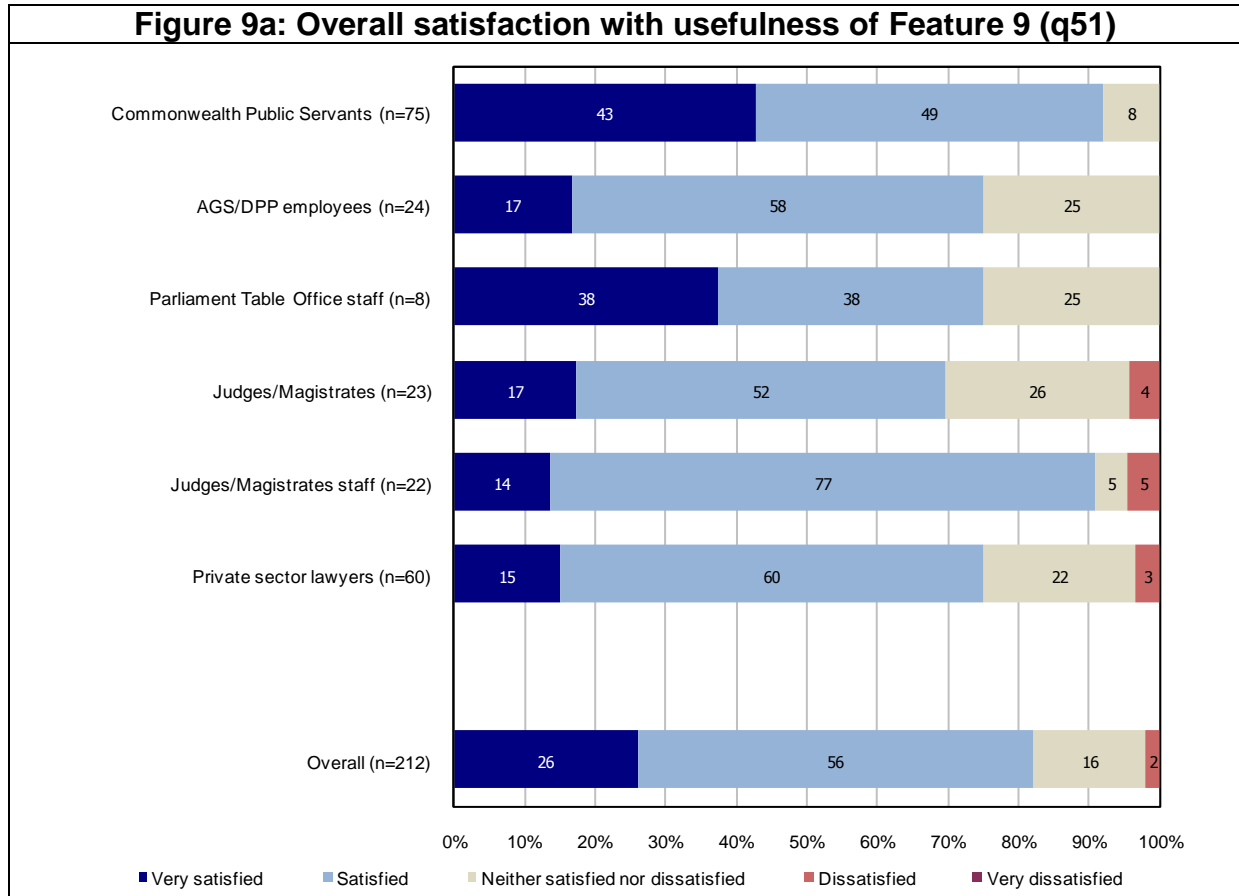
### Example of Feature 9

Current format
<p><i>Aged Care Act 1997</i></p> <p><b>57-21AA Refunding of accommodation bond balance—former approved providers</b></p> <p>(1) If:</p> <ul style="list-style-type: none"> <li>(a) an accommodation bond is paid to a person by a care recipient for entry to a residential care service or flexible care service conducted by the person; and</li> <li>(b) the person ceases to be an approved provider in respect of the residential care service or flexible care service;</li> </ul> <p style="text-align: center;"></p> <p>the person (the <i>former approved provider</i>) must refund the accommodation bond balance in respect of the accommodation bond to the care recipient.</p> <p>(2) The accommodation bond balance must be refunded under subsection (1):</p> <ul style="list-style-type: none"> <li>(a) if the care recipient dies within 90 days after the day on which the former approved provider ceased to be an approved provider in respect of the residential care service or flexible care service that provided the care recipient with care (the <i>90 day period</i>)—within 14 days after the day on which the former approved provider is shown the probate of the will of the care recipient or letters of administration of the estate of the care recipient [...]</li> </ul>

## Awareness and Satisfaction

Most (84%) respondents are aware of the use of *tagging of concepts* in legislation.

Eighty two per cent of respondents are satisfied with the usefulness of the *tagging of concepts* (see Figure 9a), with 91–92% of Commonwealth Public Servants and Judges and Magistrates satisfied with the feature’s usefulness.

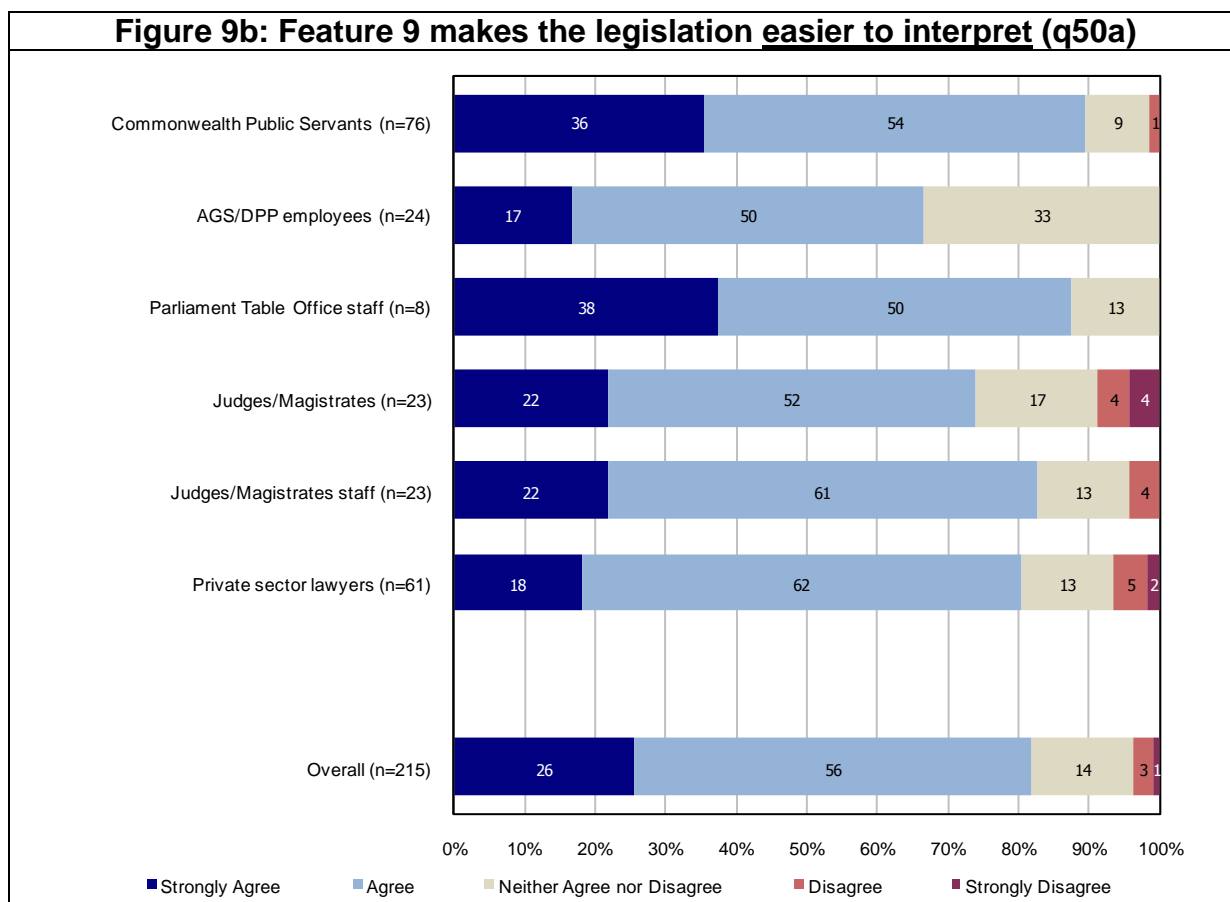


### Feature attributes

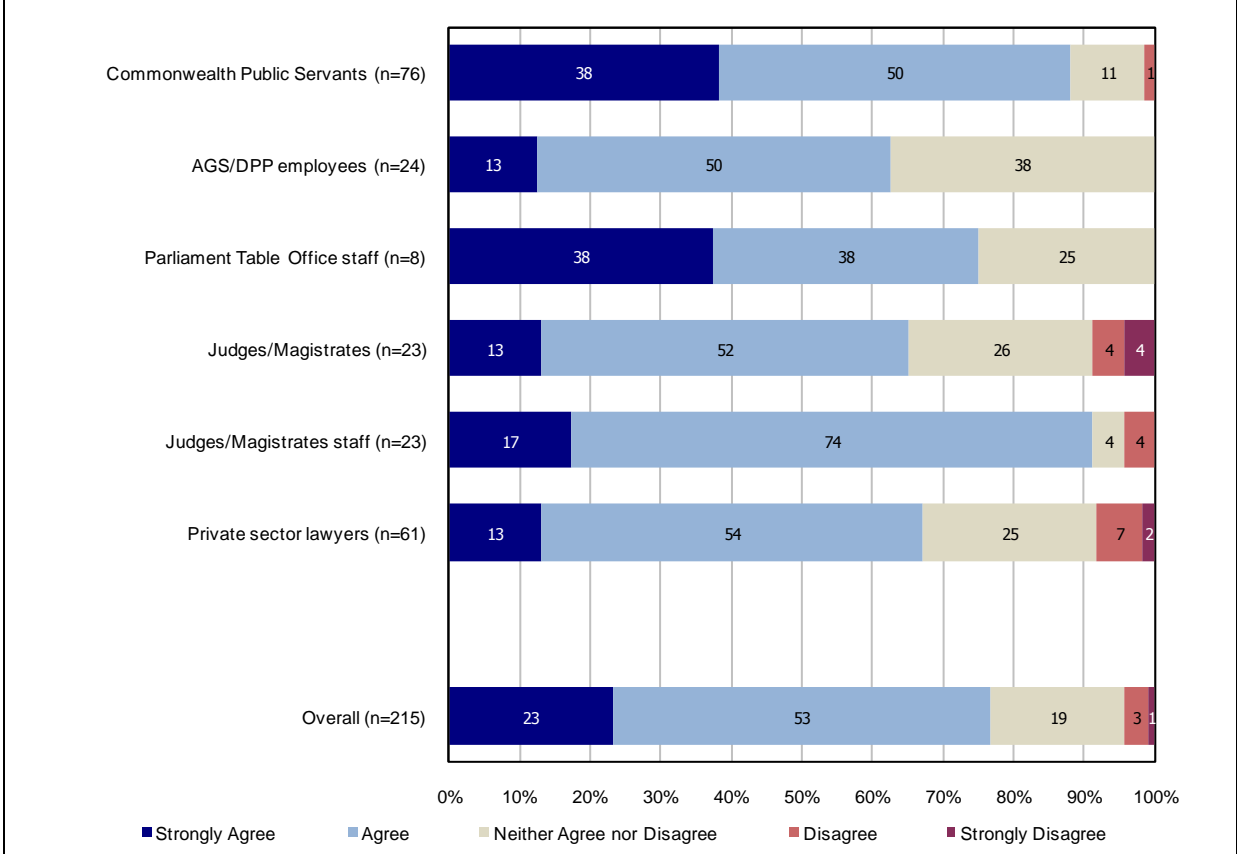
As shown in the next four figures, most respondents agreed that the use of *tagging of concepts*:

- makes the legislation easier to interpret (82%);
- reduces the ambiguity of legislation (77%);
- makes the legislation easier to understand (76%); and
- makes the legislation easier to read (78%).

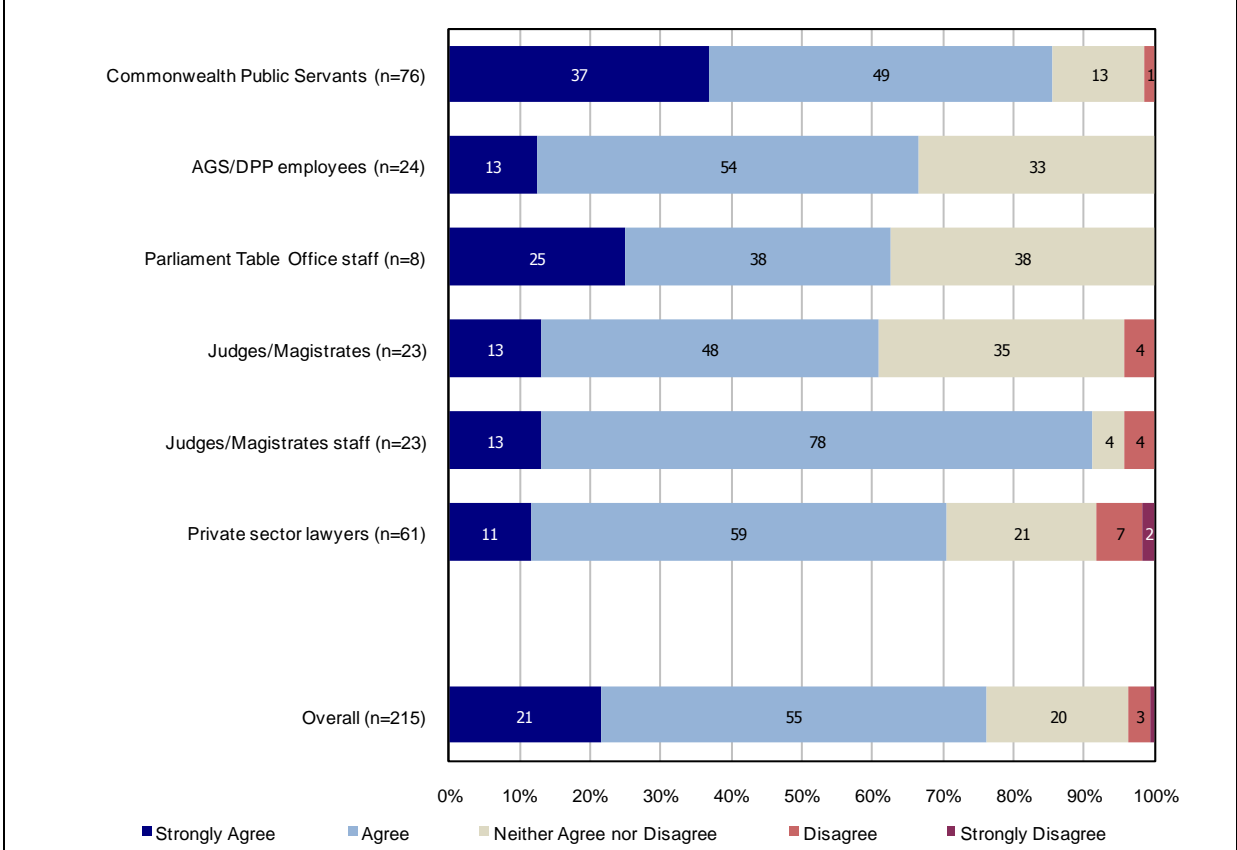
**Figure 9b: Feature 9 makes the legislation easier to interpret (q50a)**

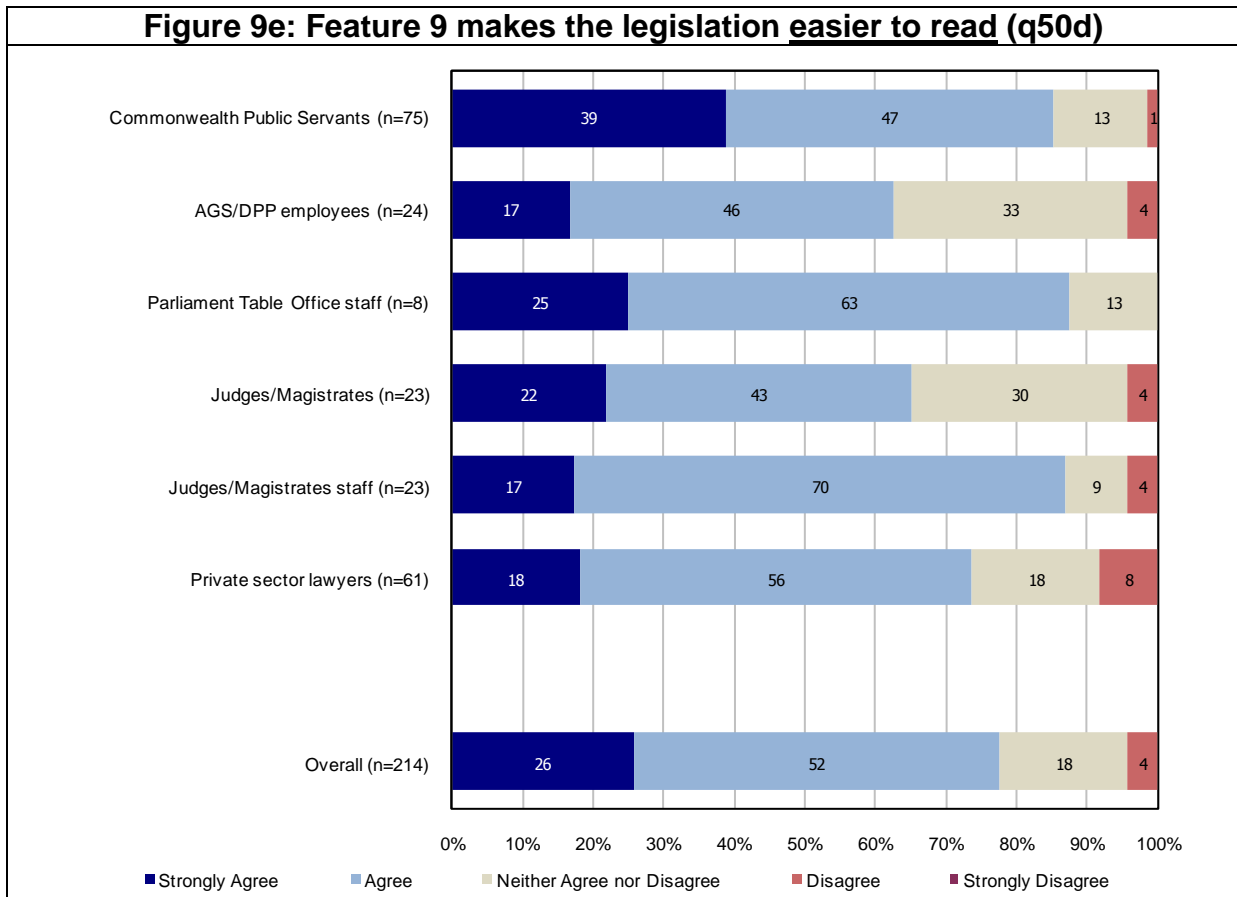


**Figure 9c: Feature 9 reduces the ambiguity of legislation (q50b)**



**Figure 9d: Feature 9 makes the legislation easier to understand (q50c)**





### Benefits, Strengths and Weaknesses of Feature

The *tagging of concepts* were found to be of most value in circumstances where terms or concepts are used repeatedly within part of the legislation, allowing these terms or concepts to be used each time without having to repeat the definition, thereby helping to keep things “shorter and cleaner”. It was also useful when it is “easier to define a concept in the narrative manner, rather than make a free-standing definition for the concept”.

Strengths of this feature which were highlighted included that it made legislation more concise and clear by avoiding unnecessary repetition. It also made the legislation easier to read as users did not have to keep referring back to the definitions at the front or back of the legislation, and it could be used to avoid the unnecessary introduction of a new definition in the definitions section. It was contrasted positively with other techniques such as referring to “the first mentioned item”. Another reason it was seen as being effective was that it “does not interrupt the narrative flow of the relevant provision”.


Weaknesses of the feature mentioned by respondents included that it was sometimes used when a definition would be more appropriate. The technique also relied on the reader reading the relevant text in its entirety. There were also concerns that it may not always be clear to some readers that the label only applies for the section. Some respondents noted that the tags were sometimes “awkward”, and that “the better ones are those which have more natural tags, ie phrases that would occur in everyday speech”.

## Feature 10. Questions as headings

### Description

Section (or subsection) headings are posed as questions, as a means of directing the reader to the issue to be addressed by the provision.

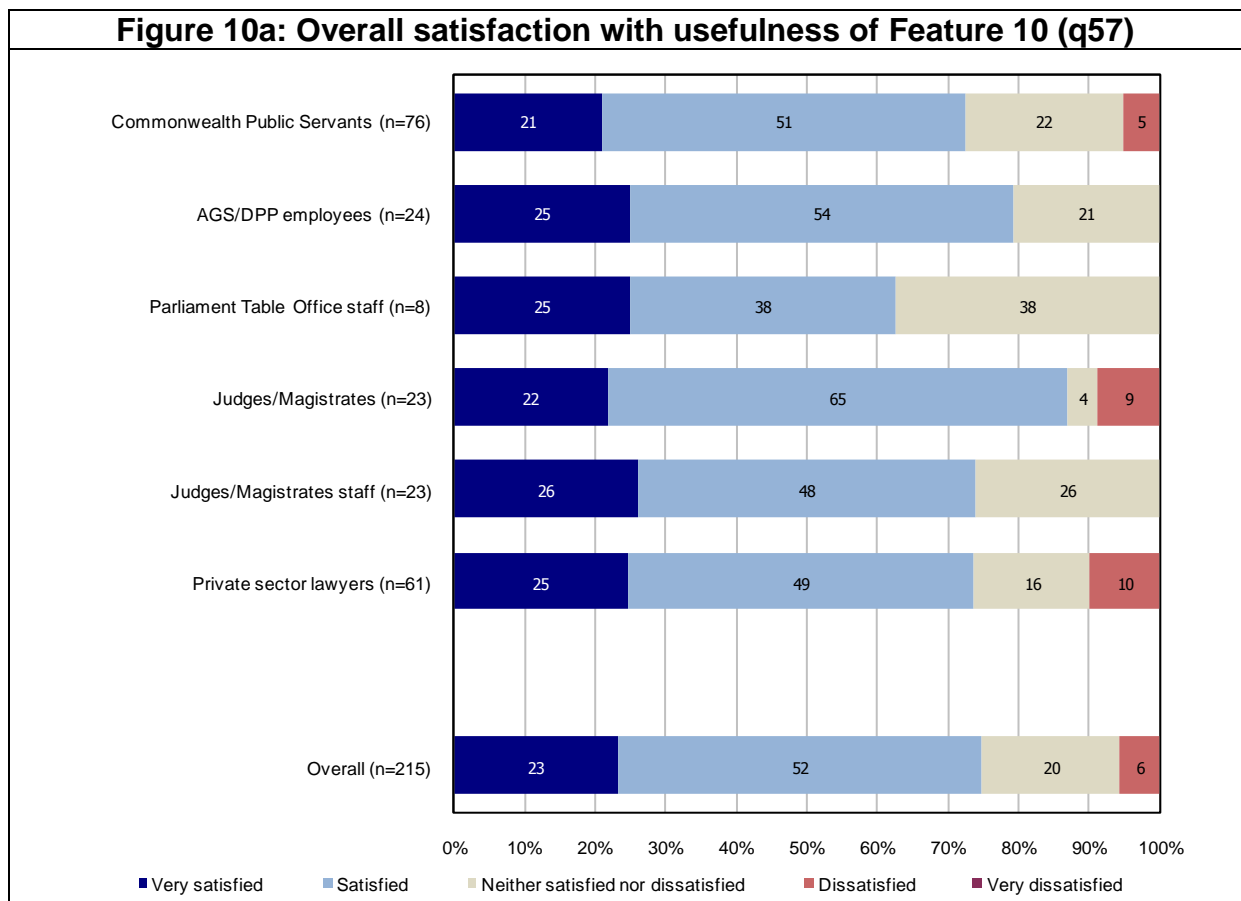
### Example of Feature 10

Current format
<p><i>Aged Care Act 1997</i></p> <p><b>27-1 When do classifications cease to have effect?</b> </p> <ol style="list-style-type: none"><li>(1) A classification that has an expiry date under section 27-2 ceases to have effect on that date, unless it is renewed under section 27-6.</li><li>(2) A classification that does not have an expiry date under section 27-2 continues to have effect but may be renewed under section 27-6 if a reappraisal is made under section 27-4.</li></ol>

## Awareness and Satisfaction

Nearly three-quarters of respondents are aware of the use of *questions as headings* in legislation.

Three-quarters of respondents are satisfied with the usefulness of *questions as headings* in legislation (see Figure 10a), with 87% of Judges and Magistrates satisfied with the usefulness of the feature.

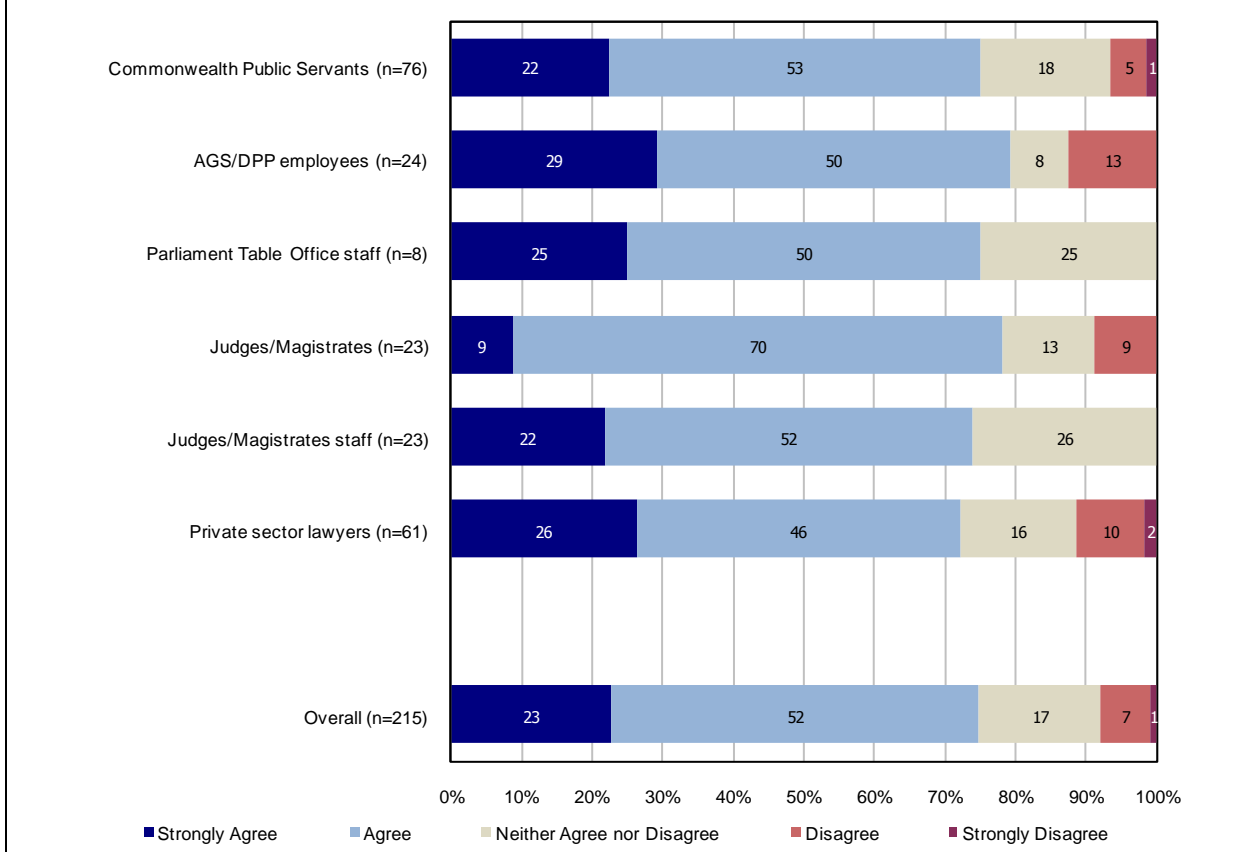


## Feature attributes

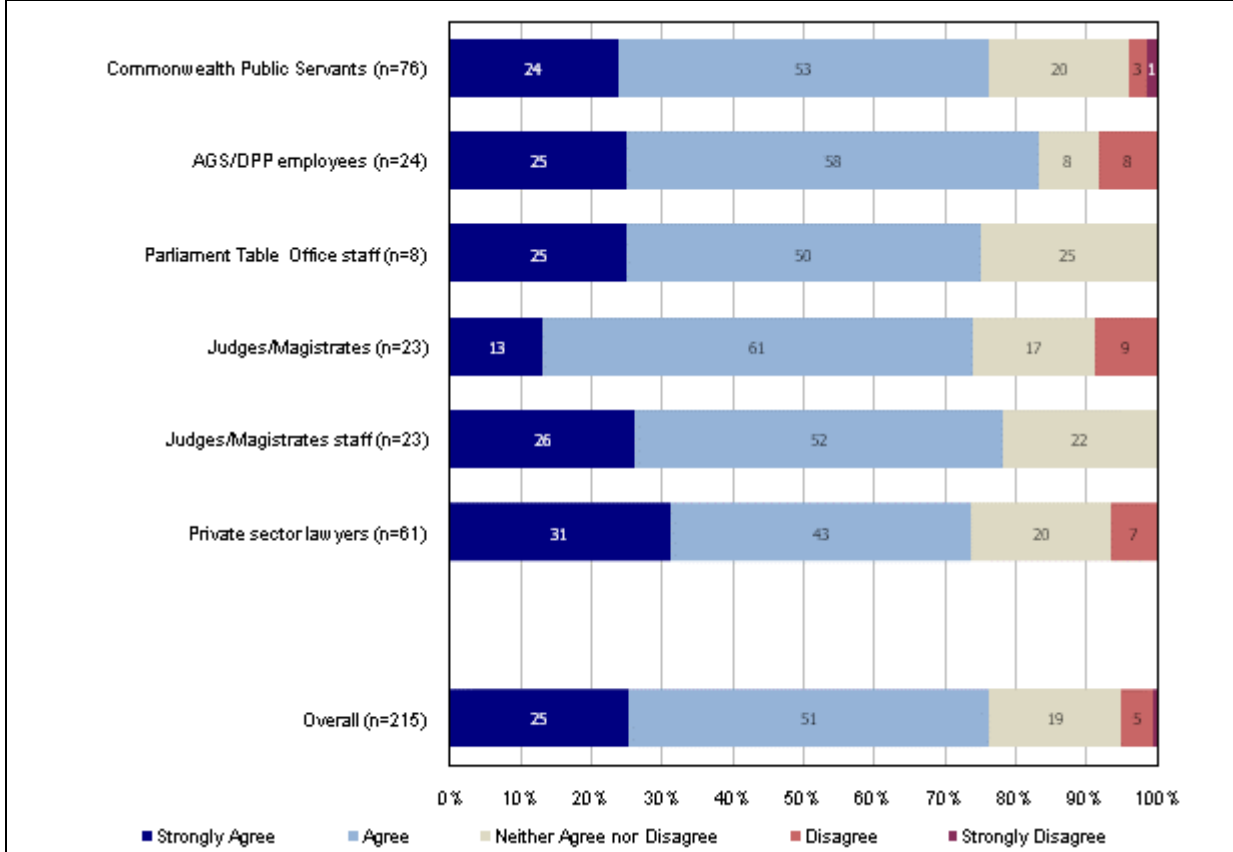
As shown in the next two figures, around three-quarters of respondents agreed that the use of *questions as headings*:

- makes the legislation easier to understand (75%); and
- makes the legislation easier to read (76%).

**Figure 10b: Feature 10 makes the legislation easier to understand (q56a)**



**Figure 10c: Feature 10 makes the legislation easier to read (q56b)**



## Benefits, Strengths and Weaknesses of Feature

The use of *questions as headings* were seen to be of most value in helping to understand what the provision was intended to achieve, particularly when “the effect of the provision is complex, and cannot be summarised in few words”. It was seen as useful in helping to find specific sections, or when dealing with provisions with “set commencement and end dates, or when [the legislation] deals with benefits/obligations which are contingent upon specific circumstances”. One respondent noted that *questions as headings* could be useful “when the provisions are drafted to close a ‘loophole’ in the existing legislation”.

Particular strengths of the feature included that it could be used to “make the legislation simpler and more readable than a longer, more complicated heading”, and that the good use of questions could make the legislation more accessible and “user friendly”. As well as assisting the lay person, it was also seen as “useful for directing the minds of counsel”. Some respondents noted that it was a very effective tool when the question was the same as that in the reader’s mind, and that the feature “contributes to faster comprehension”.

Some respondents felt that the use of *questions as headings* could be off-putting for frequent users of legislation, and it was noted that not all legislation would lend itself to this “question and answer” style. It was suggested that the technique should be used “sparingly, with understanding of the intended audience for the legislation”. Some saw the feature as patronising, saying it “reduces the force of the legislative statement” and “lacks authoritiveness”, and that “questions should be confined to examples”. A risk was seen if “other information relevant to the question is found in other sections”, or if the question is not phrased correctly and the reader considers it not applicable.

## Feature 11. Subsection headings

### Description

*Subsection headings are included in italicised text before the relevant subsection. This is a way of breaking up longer sections and improving navigability, particularly in Acts where rewriting whole sections is undesirable.*

### Example of Feature 11

#### Current format

#### 27-4 Reappraisal at initiative of approved provider

- (1) A reappraisal of the level of care needed by a care recipient may be made at the initiative of an approved provider in accordance with this section.



*Reappraisal after first year of effect of classification or renewal*

- (2) A reappraisal of the level of care needed by a care recipient may be made if:
- the classification of the care recipient has been in effect for more than 12 months; or
  - if the classification of the care recipient has been renewed—the most recent renewal of the classification has been in effect for more than 12 months.



*Reappraisal if needs of care recipient have changed significantly*

- (3) A reappraisal of the level of care needed by a care recipient may be made if the care needs of the care recipient change significantly.
- (4) The Classification Principles may specify the circumstances in which the care needs of a care recipient are taken to change significantly.



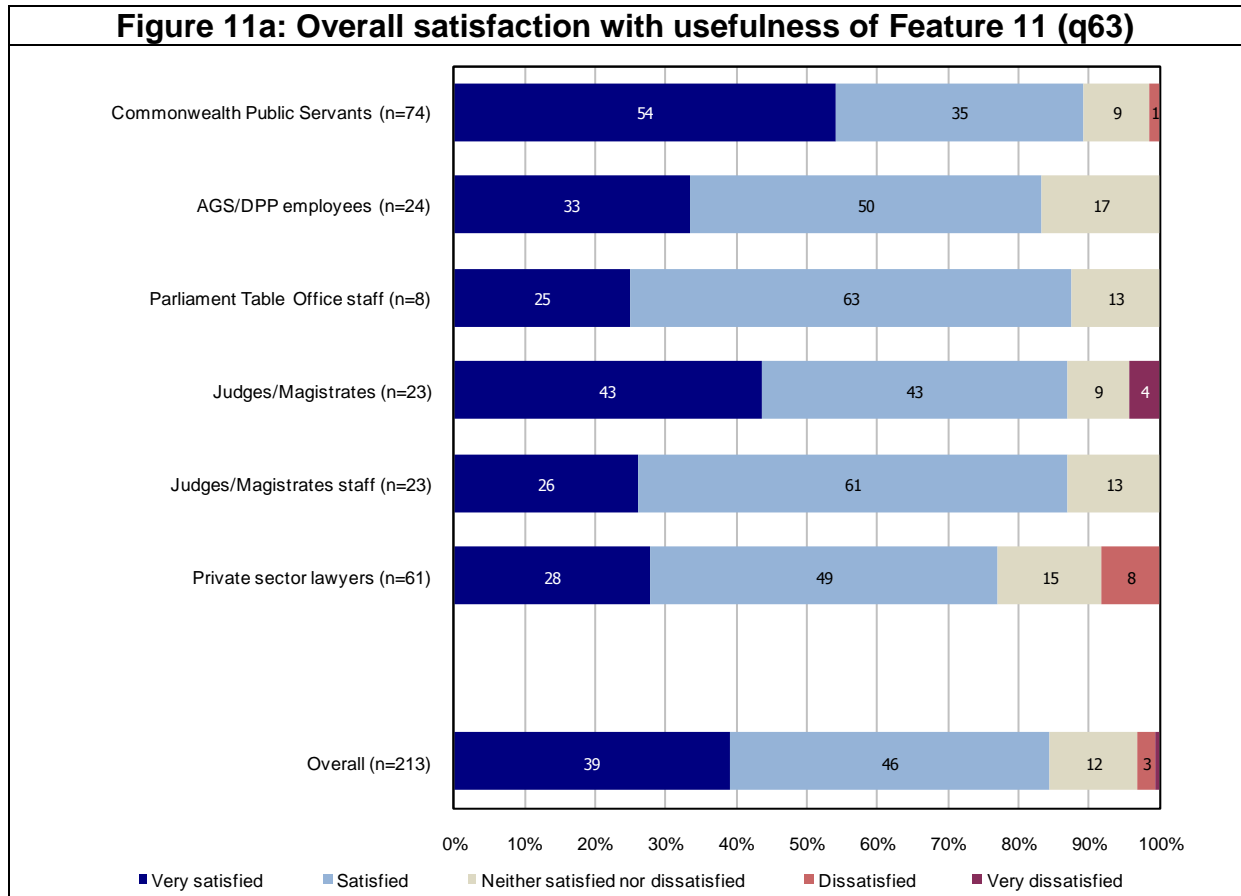
*Reappraisal if care recipient enters another aged care service*

- (5) If a care recipient enters an aged care service (the *later service*) that is a residential care service or a flexible care service within 28 days after another residential care service or flexible care service ceased to provide residential care or flexible care to the care recipient (other than because the care recipient was on leave), a reappraisal of the level of care needed by the care recipient may be made during the period:
- beginning 7 days after the day on which the care recipient entered the later service; and
  - ending 2 months after the day on which the care recipient entered the later service.

## Awareness and Satisfaction

Over three-quarters of respondents are aware of the use of *subsection headings* in legislation.

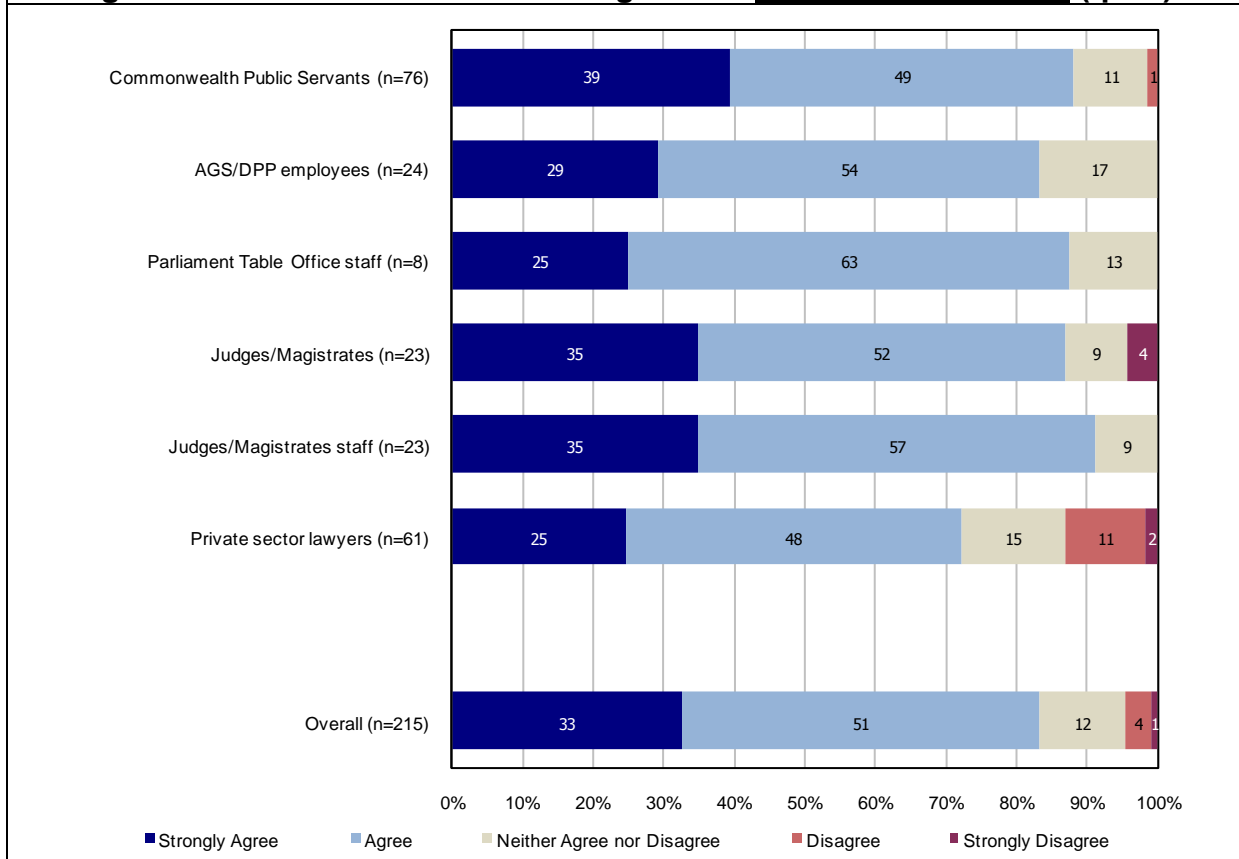
Most (84%) of the respondents are satisfied with the use of *subsection headings* in legislation (see Figure 11a), with similar rates reported across the various user groups.



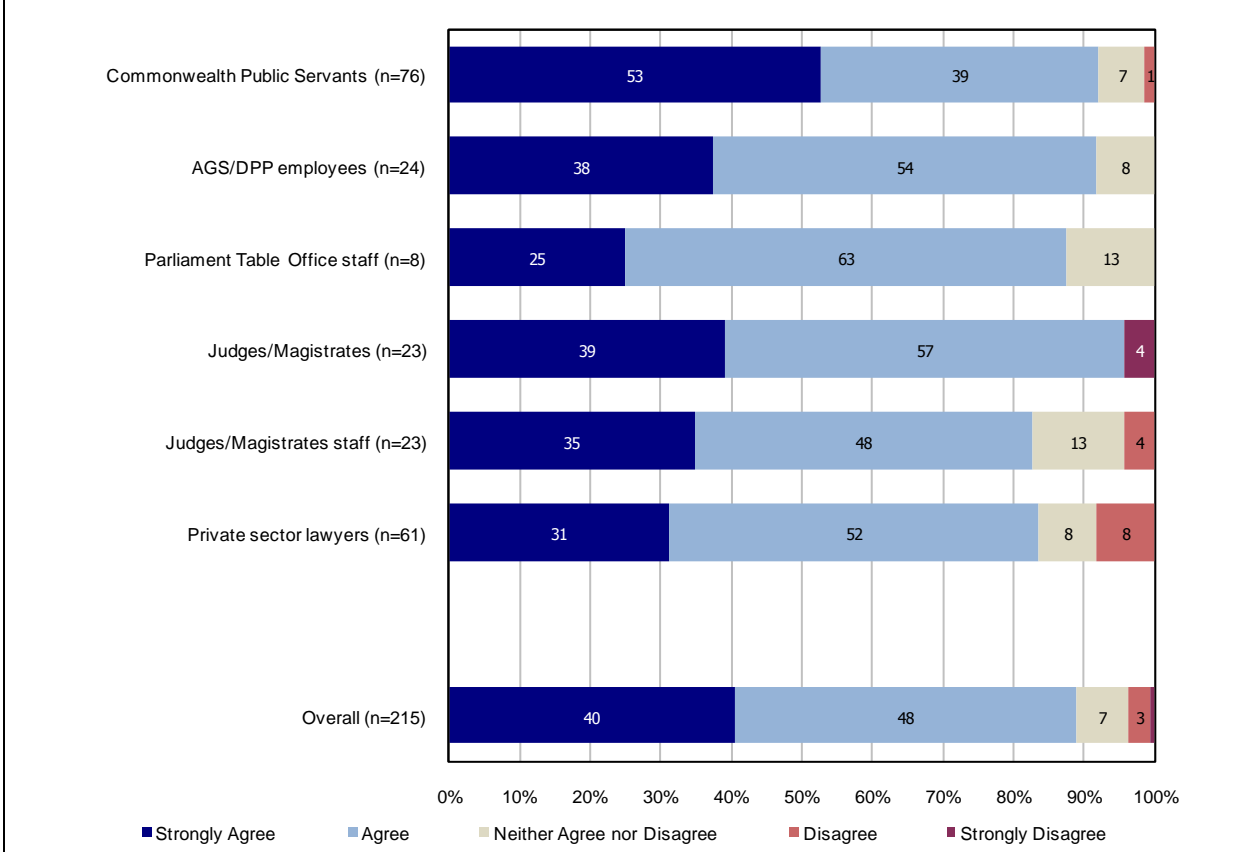
### Feature attributes

Most respondents agreed that the use of *subsection headings* makes the legislation easier to understand (83%), navigate (88%) and read (85%) (see the three figures below).

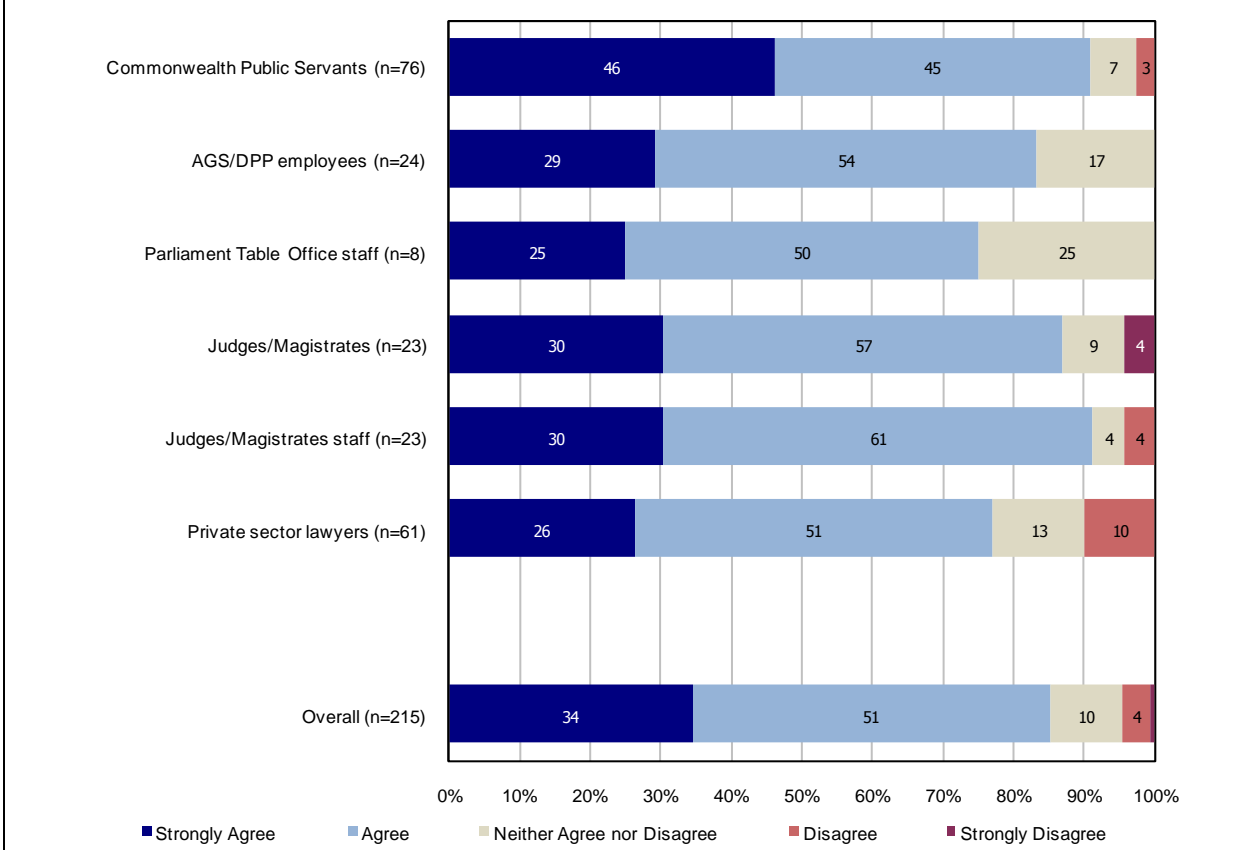
**Figure 11b: Feature 11 makes the legislation easier to understand (q62a)**



**Figure 11c: Feature 11 makes the legislation easier to navigate (q62b)**



**Figure 11d: Feature 11 makes the legislation easier to read (q62c)**



## Benefits, Strengths and Weaknesses of Feature

Areas where *subsection headings* were of most value included lengthy and/or complicated provisions, or “lengthy sections were different subsections relate to discrete topics”. They were seen as useful for readers not familiar with a particular piece of legislation, and were helpful in navigations and “focusing the reader on the relevant part of a provision”. They could be useful for “identifying differences in key elements which are related but not the same”, and were helpful for researchers trying to find a particular situation or scenario.

Particular strengths of the feature were that it was “a good navigational tool” and “improves readability”, breaking up the “walls of text” and making the reading of “some legislation less intimidating and exhausting”. It provided “a sense of what the detailed provisions are doing”, and can be “a reflection of a sound structure and... a checklist of whether all the circumstances that need to be covered have been covered”. Good *subsection headings* were seen to “have a narrative flow, you can see the story just from reading the headings”.

A risk with *subsection headings* was that they could be overused – “ideas that belong together should be kept together”, and it was felt that they were “best suited to fairly complex provisions, or significant provisions (ie the things that people will be frequently looking for)”. It was important that they were accurate and kept up to date with amendments to the legislation, as “instances where the heading is inconsistent with the ultimate content of the relevant subsection... could be confusing for readers”. Some respondents also found them to be “hard to discern at times” and “distracting”.

## Feature 12. Use of tables

### Description

Tables are a useful way of organising a large volume of information. In particular, tables allow quick recognition of the similarities and differences in different cases dealt with in the legislation, and may also reveal the conceptual basis for those similarities and differences very readily. Tables may be operative, or merely an explanation or summary of operative provisions.

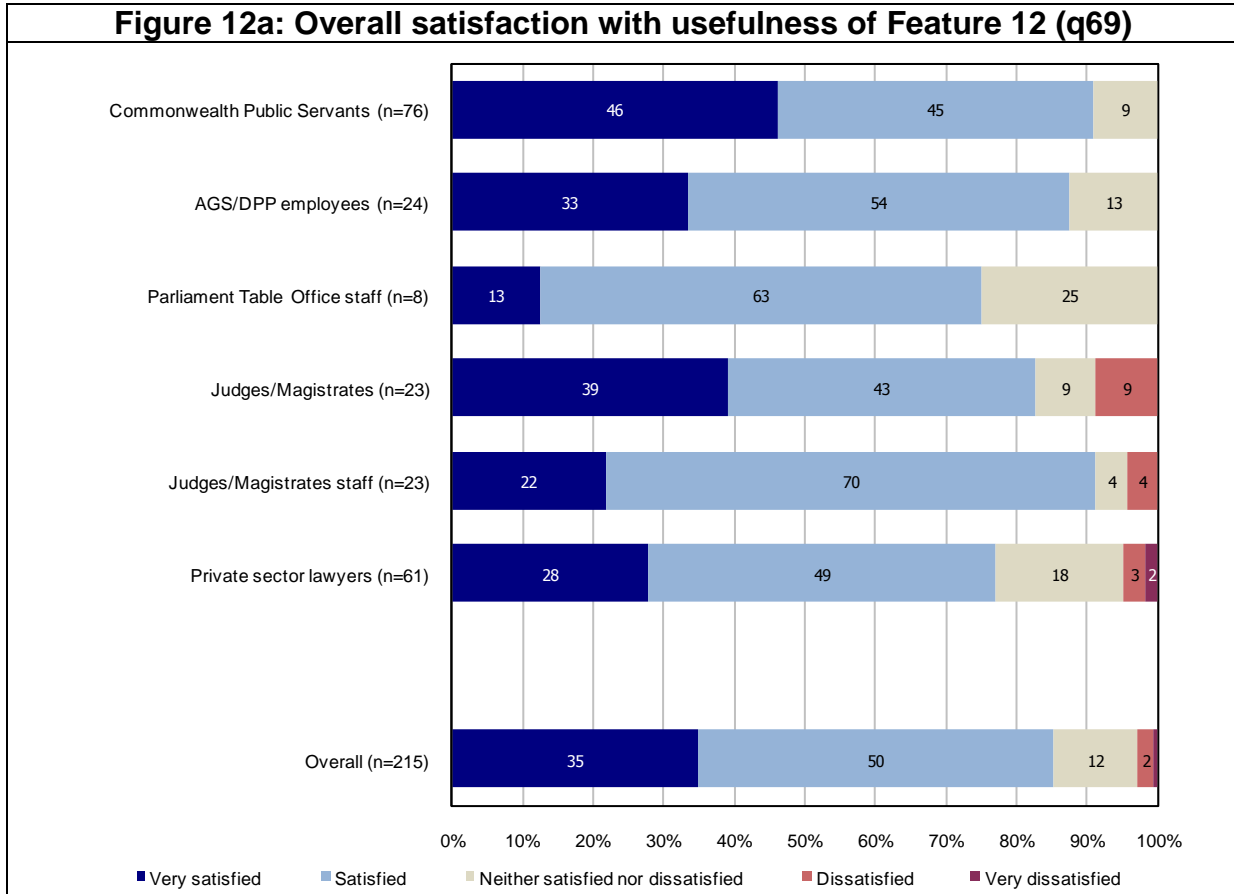
### Example of Feature 12

Current format																																															
<b>5-2 Which approvals etc. may be relevant</b>																																															
The following table shows, in respect of each kind of payment under Chapter 3, which approvals and similar decisions under this Chapter may be relevant.																																															
<table border="1"> <thead> <tr> <th colspan="5">Which approvals etc. may be relevant</th> </tr> <tr> <th rowspan="2"></th> <th rowspan="2">Approvals or decisions</th> <th colspan="3">Kind of payment</th> </tr> <tr> <th>Residential care subsidy</th> <th>Community care subsidy</th> <th>Flexible care subsidy</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Approval of providers</td> <td>Yes</td> <td>Yes</td> <td>Yes</td> </tr> <tr> <td>2</td> <td>Allocation of places</td> <td>Yes</td> <td>Yes</td> <td>Yes</td> </tr> <tr> <td>3</td> <td>Approval of care recipients</td> <td>Yes</td> <td>Yes</td> <td>Yes</td> </tr> <tr> <td>4</td> <td>Classification of care recipients</td> <td>Yes</td> <td>No</td> <td>Yes</td> </tr> <tr> <td>5</td> <td>Decisions relating to extra service places</td> <td>Yes</td> <td>No</td> <td>No</td> </tr> <tr> <td>6</td> <td>Certification of residential care services</td> <td>Yes</td> <td>No</td> <td>No</td> </tr> </tbody> </table>					Which approvals etc. may be relevant						Approvals or decisions	Kind of payment			Residential care subsidy	Community care subsidy	Flexible care subsidy	1	Approval of providers	Yes	Yes	Yes	2	Allocation of places	Yes	Yes	Yes	3	Approval of care recipients	Yes	Yes	Yes	4	Classification of care recipients	Yes	No	Yes	5	Decisions relating to extra service places	Yes	No	No	6	Certification of residential care services	Yes	No	No
Which approvals etc. may be relevant																																															
	Approvals or decisions	Kind of payment																																													
		Residential care subsidy	Community care subsidy	Flexible care subsidy																																											
1	Approval of providers	Yes	Yes	Yes																																											
2	Allocation of places	Yes	Yes	Yes																																											
3	Approval of care recipients	Yes	Yes	Yes																																											
4	Classification of care recipients	Yes	No	Yes																																											
5	Decisions relating to extra service places	Yes	No	No																																											
6	Certification of residential care services	Yes	No	No																																											
Note 1:	Classification of care recipients is relevant to flexible care subsidy only in respect of some kinds of flexible care services.																																														
Note 2:	Allocation of funding for residential care grants, community care grants and flexible care grants is dealt with in Parts 5.1, 5.2 and 5.2A respectively, and not in this Chapter.																																														

## Awareness and Satisfaction

Over 80% of respondents are aware of the use of *tables* in legislation.

Eighty five per cent of respondents are satisfied with the usefulness of *tables* in legislation (see Figure 12a).

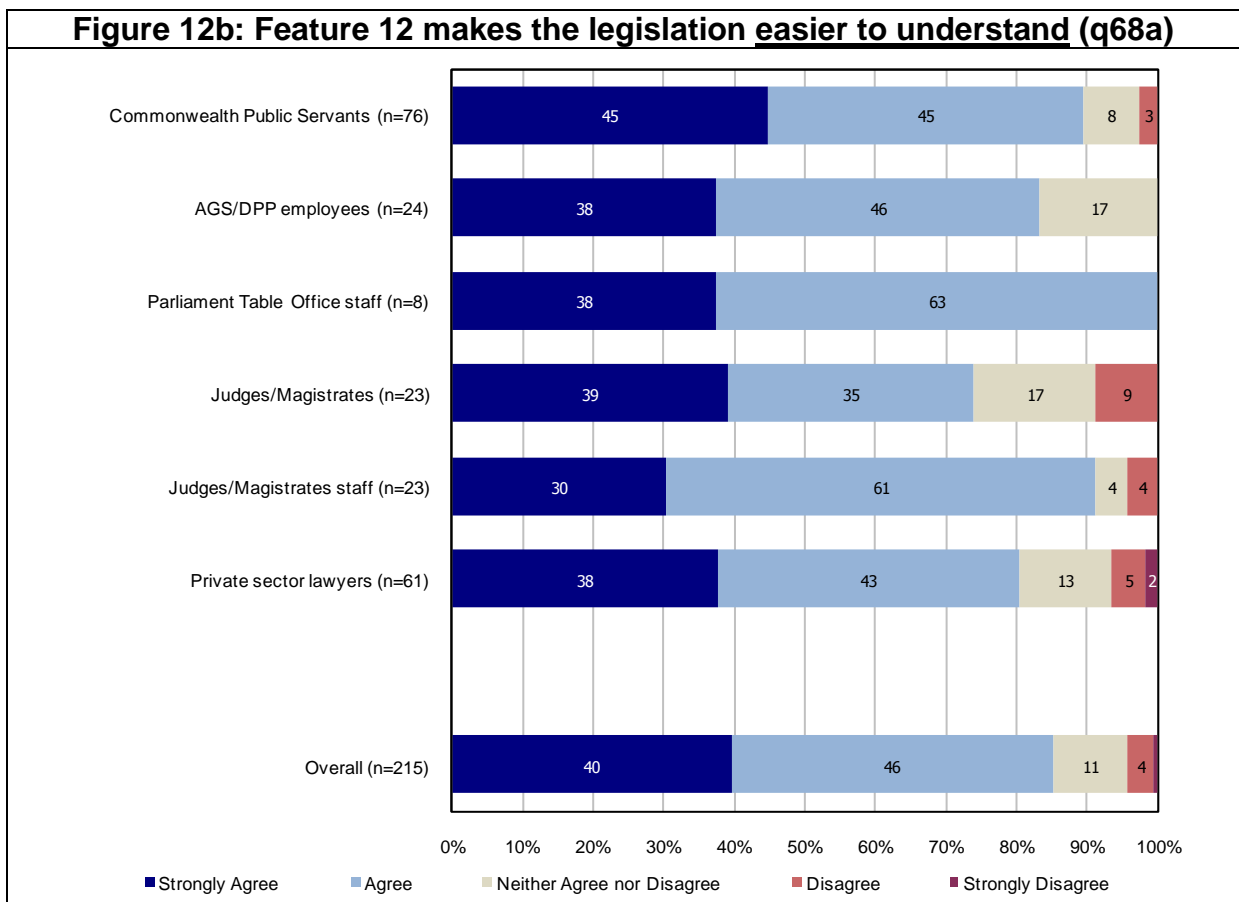


### Feature attributes

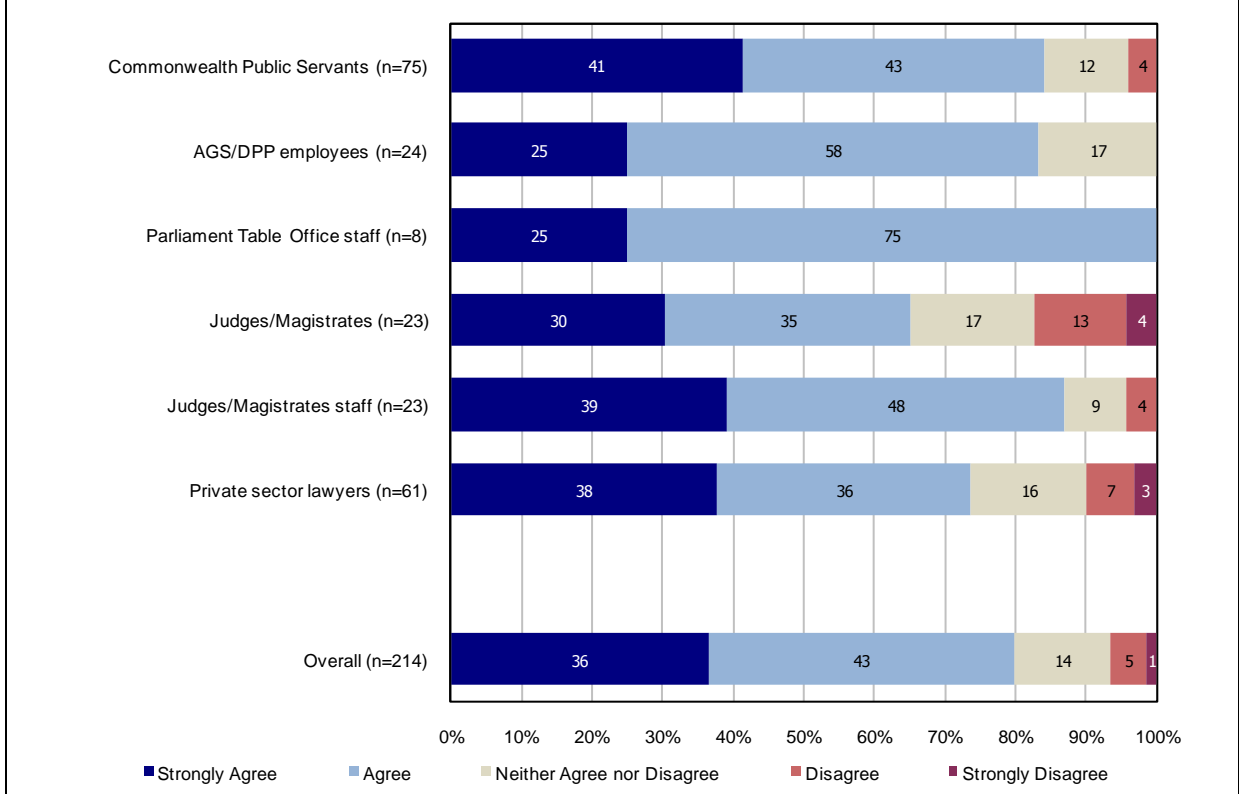
As shown in the following four figures, most respondents agreed that *tables*:

- make the legislation easier to understand (85%);
- make the legislation easier to interpret (80%);
- reduce the ambiguity of legislation (74%); and
- make the legislation easier to read (84%).

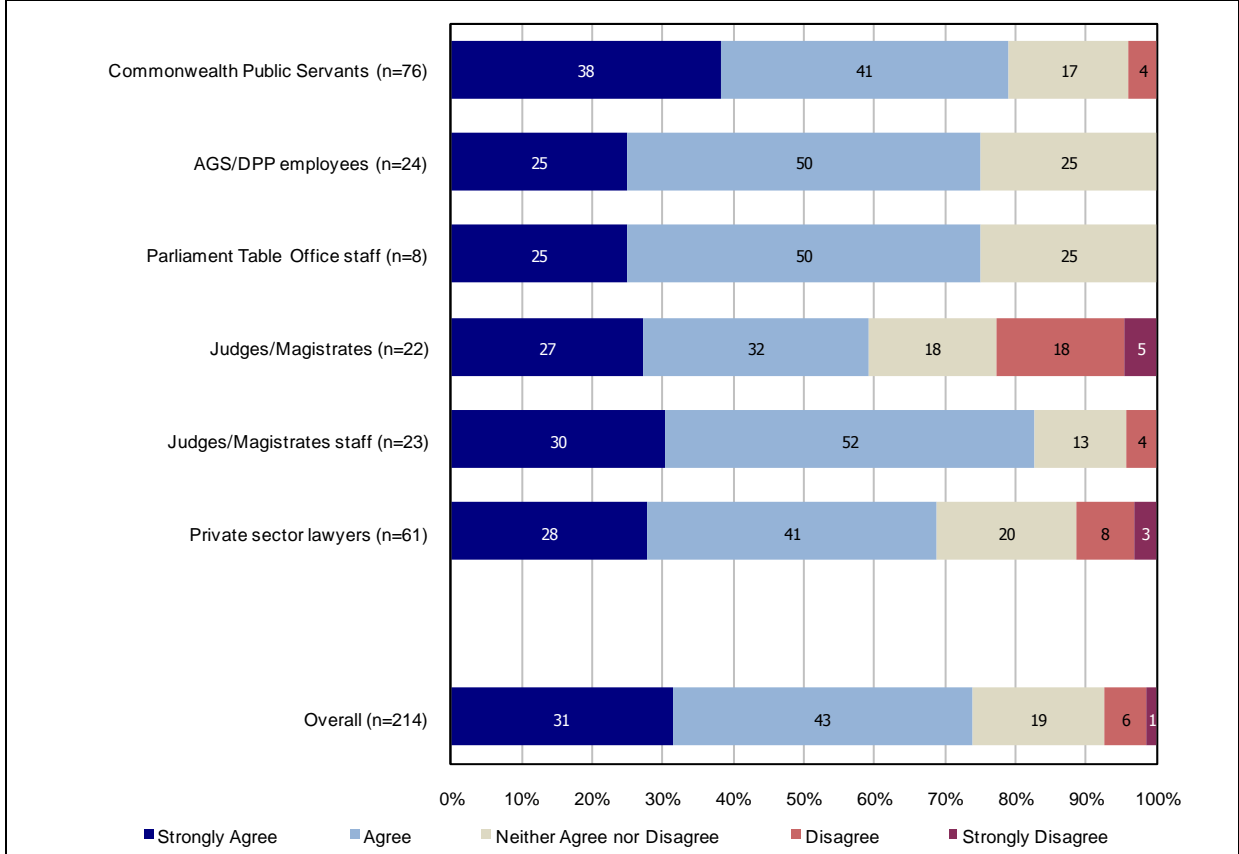
Seventeen per cent of Judges and Magistrates disagreed that tables make legislation easier to interpret (see Figure 12c), and 23% disagreed that it reduces the ambiguity of legislation (see Figure 12d).

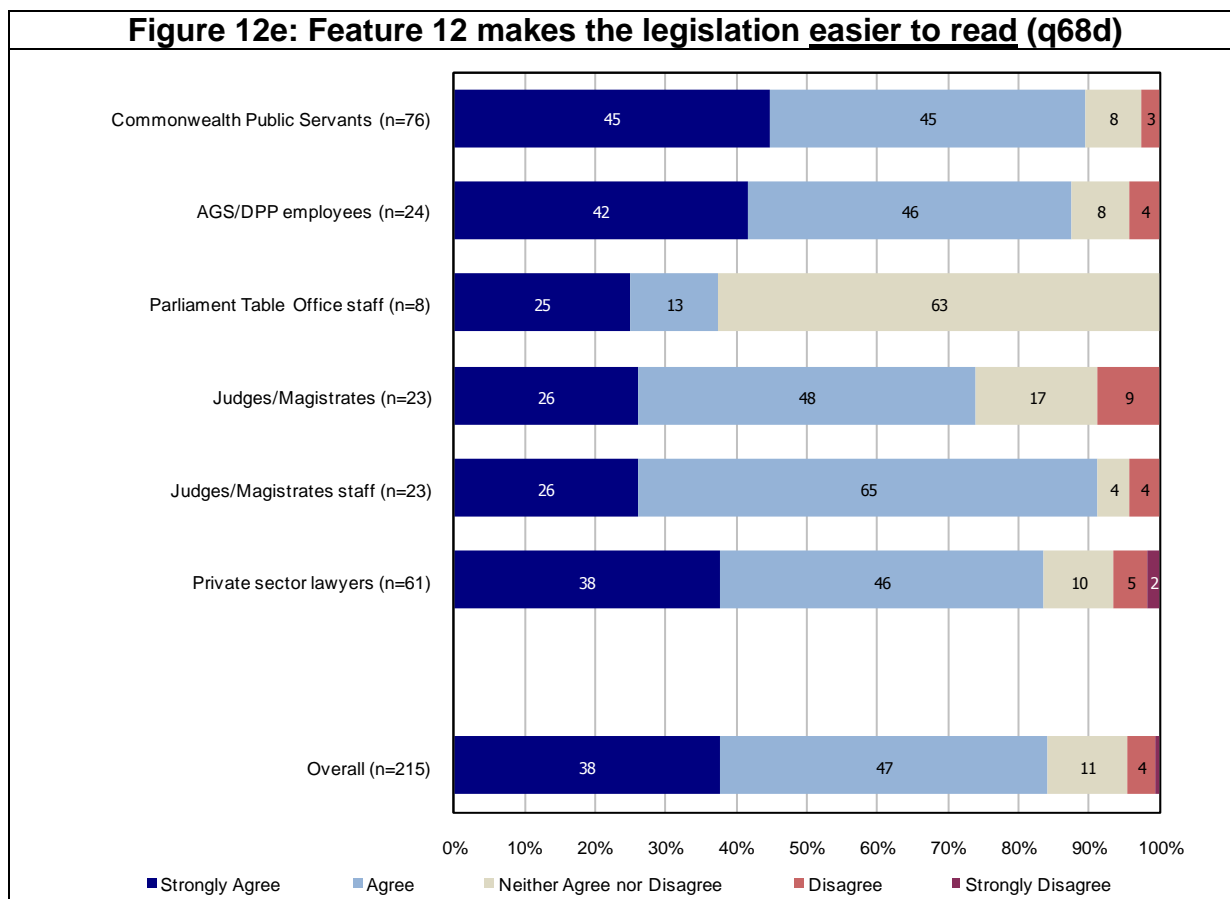


**Figure 12c: Feature 12 makes the legislation easier to interpret (q68b)**



**Figure 12d: Feature 12 reduces the ambiguity of legislation (q68c)**





### Benefits, Strengths and Weaknesses of Feature

Tables were seen as being of most value “when the material is conducive to being set out in tabular form, eg when there are several items, each of which has a particular treatment or consequence”, or when “comparing various scenarios, situations or outcomes”, such as multiple grants or payments. They could also be used to “replace long lists or multiple subsections”, and could provide a “rapid comparison of differences between cases”. They can also be used to provide a “useful summary of circumstances in which certain provisions apply”.

Particular strengths of tables were that they were useful as a “summary device” and could be very effective visually. A good table “facilitates interpretation and usability of the legislation”, “makes information very clear” and can be a “rapid conveyance of information”. Due to its “necessary brevity, it can reduce ambiguity that may be involved in interpreting a longer narrative-style provision”.

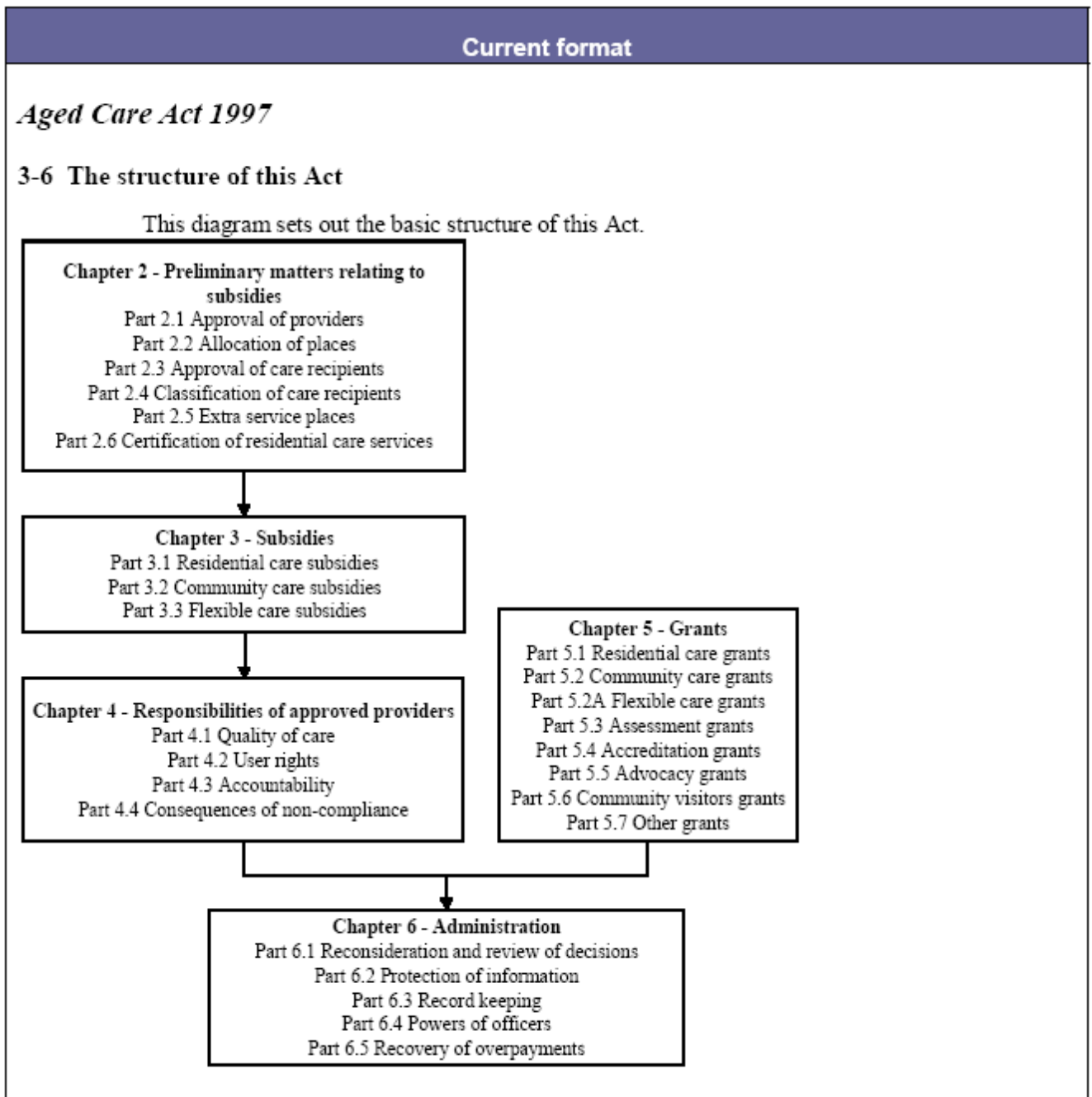
Weaknesses of tables mentioned included that they could become overly complicated, for example “if the table has several interacting columns or the items in the table have several interrelated conditions”, which may “increase complexity and make information more difficult to understand”. There was also concern that they may “encourage focus on too many specific situations and not enough on the principles for dealing with them”, and that the information in the table may be “too brief by its nature and can be ambiguous”. Some respondents found the tables distracting.

## Feature 13. Diagrams

### Description

Diagrams can provide a useful method of communicating complex information. For instance, a flow chart may give a simple overview of lengthy provisions detailing a complex process or the structure of an Act.

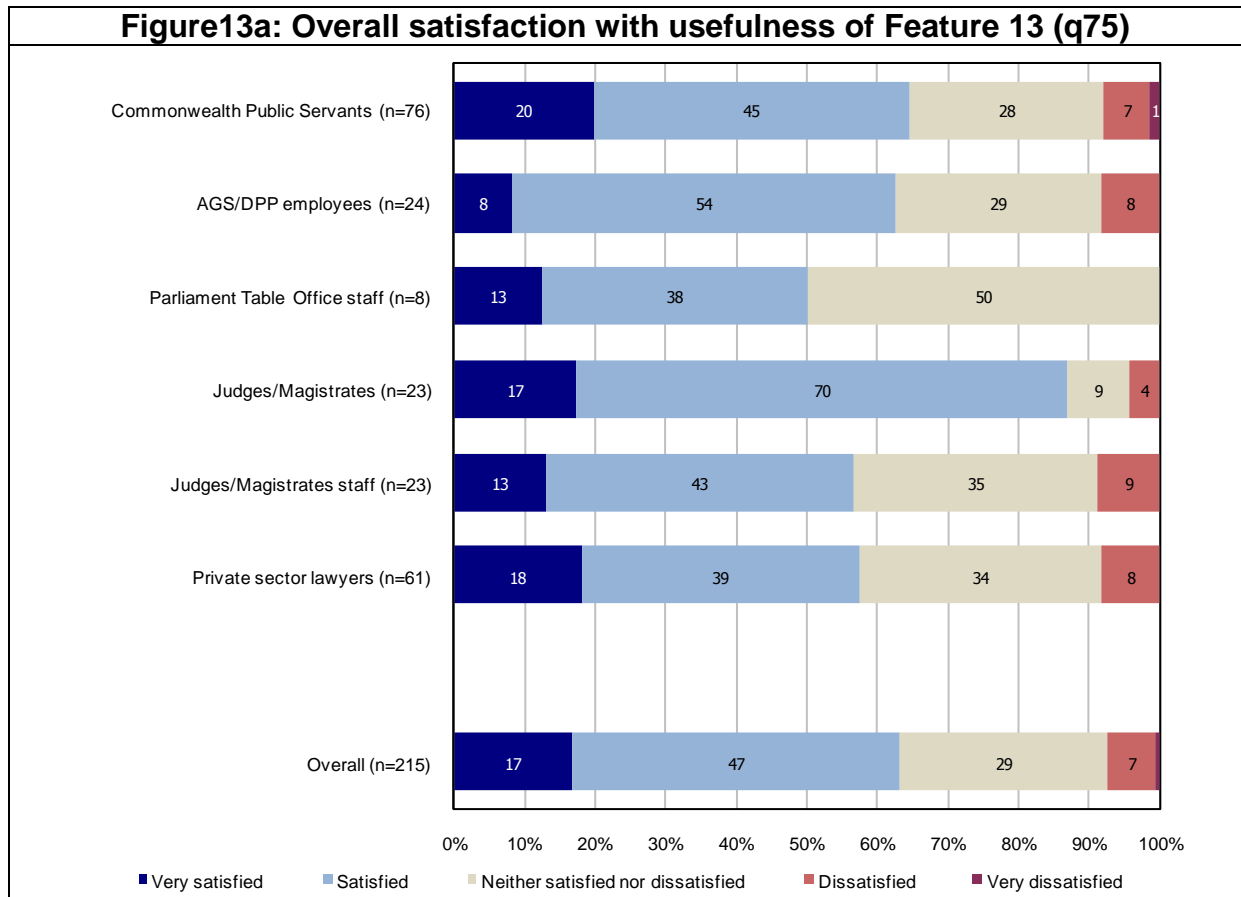
### Example of Feature 13



## Awareness and Satisfaction

Over 60% of respondents are aware of the use of *diagrams* in legislation.

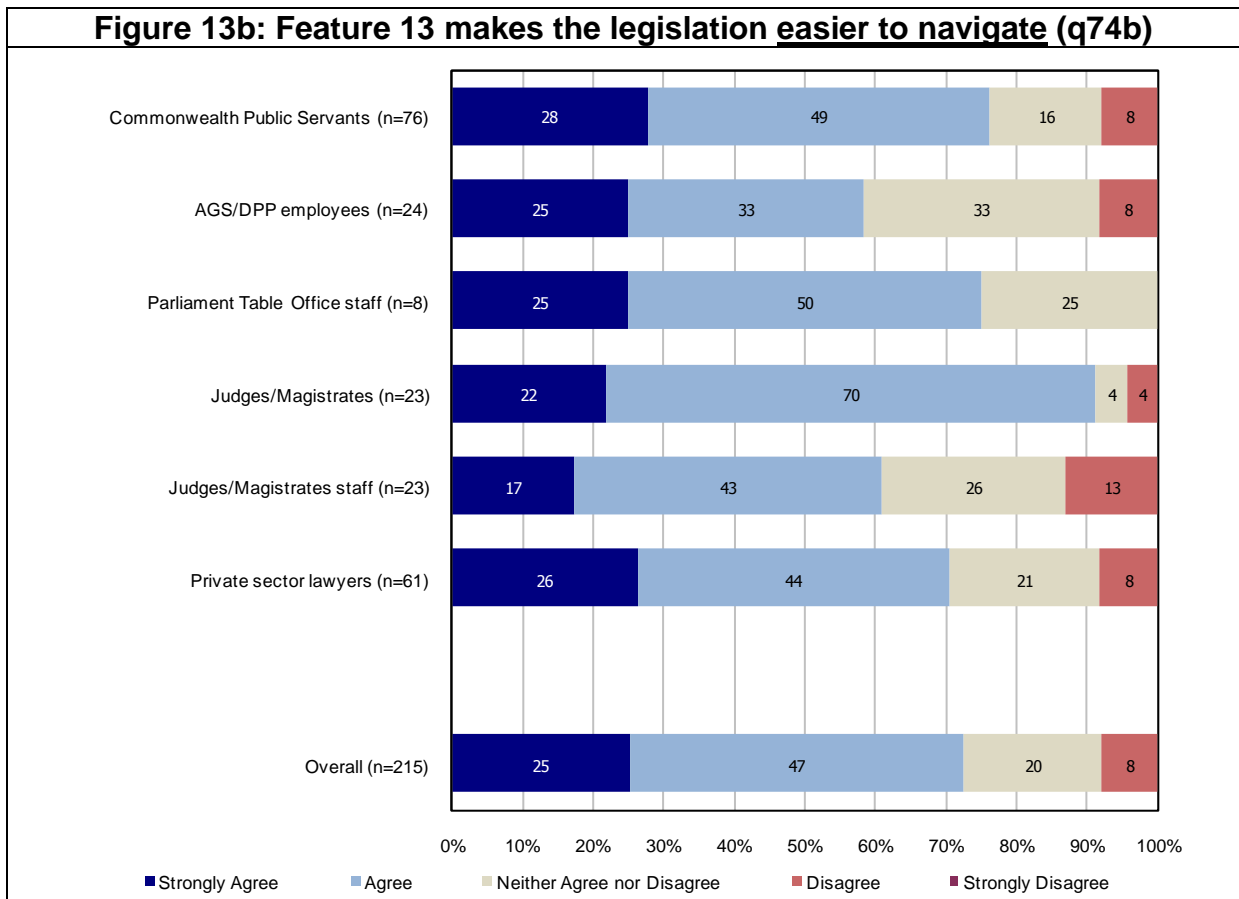
63% of respondents are satisfied with the usefulness of *diagrams* in legislation, with 87% of Judges/Magistrates satisfied with the feature (see Figure 13a).



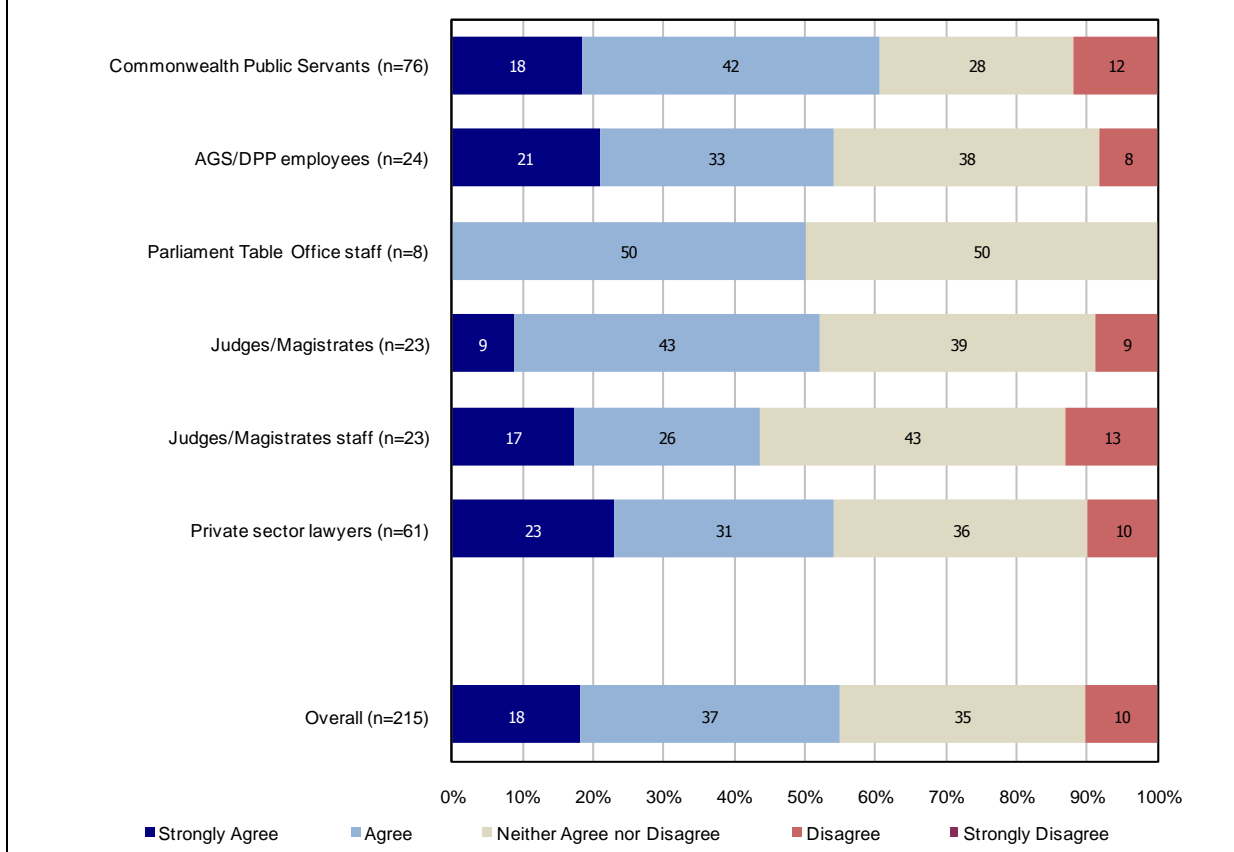
### Feature attributes

73% of respondents agreed that *diagrams* make legislation easier to navigate (see Figure 13b), with 91% of Judges/Magistrates agreeing that this was the case.

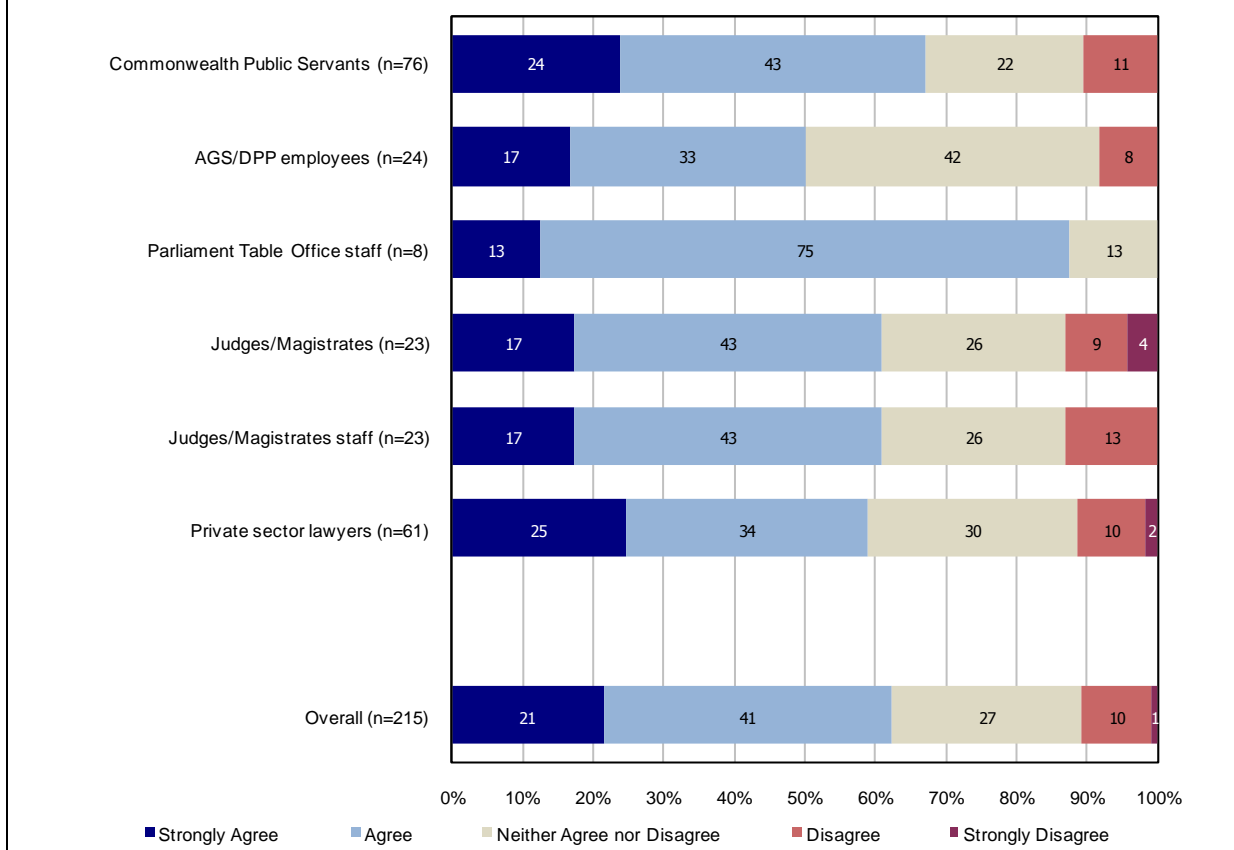
Only 55% of respondents agreed that *diagrams* make legislation easier to read (see Figure 13c), and 62% of respondents agreed that *diagrams* made legislation easier to understand (see Figure 13d).



**Figure 13c: Feature 13 makes the legislation easier to read (q74c)**



**Figure 13d: Feature 13 makes the legislation easier to understand (q74a)**



## Benefits, Strengths and Weaknesses of Feature

*Diagrams* were found to be of most value in describing processes that have a series of complex steps or options, and in providing an overview of lengthy legislation. They could be of assistance when they are “pitched at a higher lever and relate to a complex area of law where there are multiple paths that apply to particular circumstances and arrangements”. They also made “complex information more accessible for stakeholders”. Flow charts were seen as useful when they described processes “involving a series of steps to be carried out in a particular order”.

Particular strengths of *diagrams* were that they could “help organise poorly drafted or complicated legislation”, and “provide additional discipline to those designing and drafting legislation”. They can be useful in making “extremely complex legislation clear” and assisted in “the visualisations of linkages in the law”. Some felt they were best used when “describing a process to be followed under the Act”, rather than “describing the structure of an Act”.

Weaknesses noted by respondents included that diagrams could become too cluttered and confusing: “they work best if the contents of each box is kept to an absolute minimum” and “diagrams with lots of words tend to be very messy and hard to understand”. Flowcharts were only seen as useful “when they genuinely represent a staged process”, rather than presenting the same information as would be in a table of contents or guide. There was also concern that diagrams can be “tricky to change when amendments to them are made”, and that it is “sometimes difficult to depict complex legislation in a flowchart without compromising the legislation”.

## Feature 14. Method statements

### Description

Method statements can be used if a number of steps are needed to determine an entitlement or calculate an amount (which might otherwise be presented as a formula). Method statements can be particularly useful in cases where the calculation is not a straightforward, single process but has alternative outcomes depending on the circumstances.

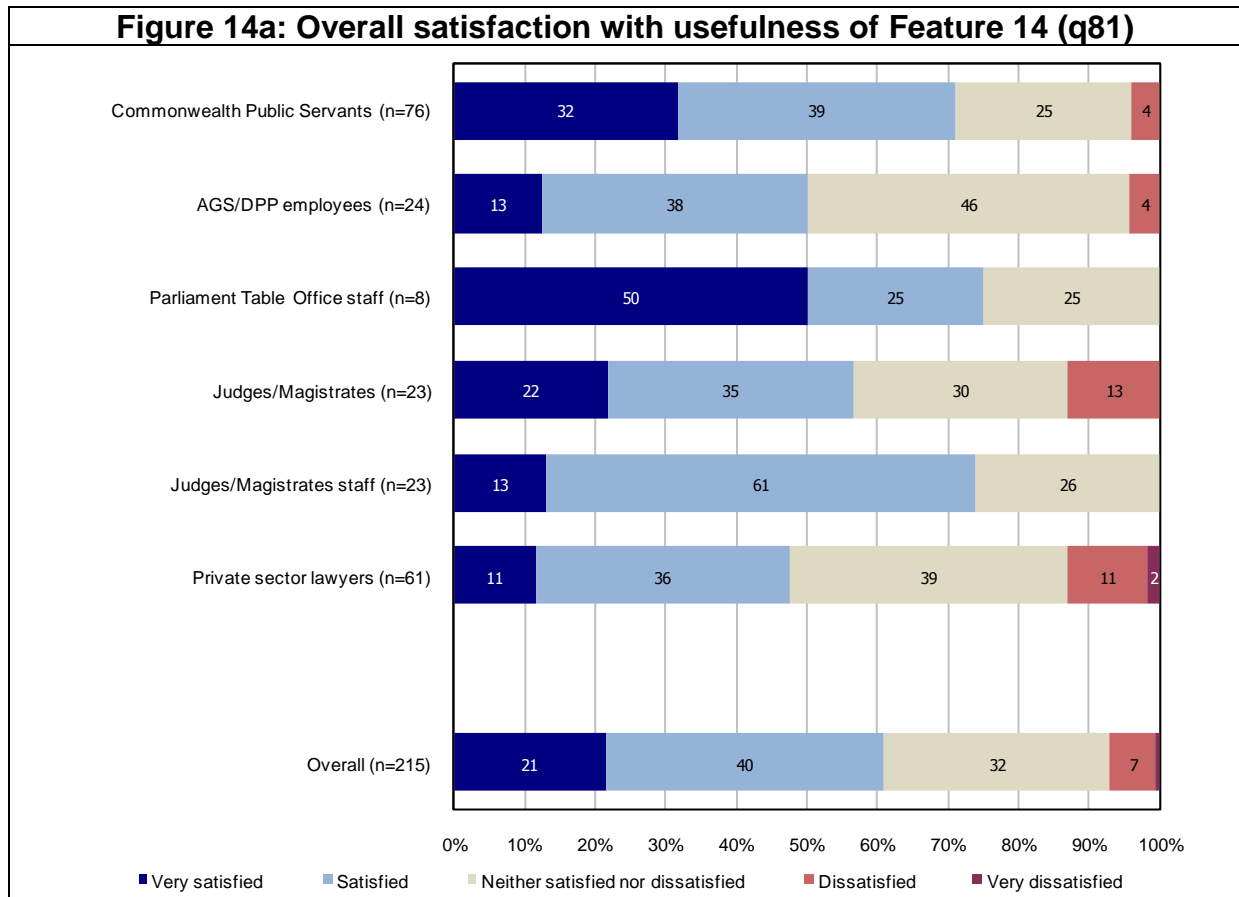
### Example of Feature 14

Method statement	Alternative format
<p><b>58-2 Maximum daily amount of resident fees</b></p> <p>The maximum daily amount of resident fees payable by the care recipient is the amount worked out as follows:</p> <hr/> <p><b>Resident fee calculator</b></p> <p>Step 1. Work out the standard resident contribution for the care recipient using section 58-3, 58-3B, 58-3C or 58-4 (whichever is applicable).</p> <p>Step 2. Add the compensation payment reduction (if any) applicable to the care recipient on the day in question (see section 44-20).</p> <p>Step 3. Add the daily income tested reduction (if any) applicable to the care recipient on that day (see sections 44-21 to 44-23).</p> <p>Step 4. Subtract the amount of any hardship supplement (expressed as a daily amount) applicable to the care recipient on the day in question under section 44-30.</p> <p>Step 5. Add any other amounts agreed between the care recipient and the approved provider in accordance with the User Rights Principles.</p> <p>Step 6. If, on the day in question, the place in respect of which residential care is provided to the care recipient has extra service status, add the extra service amount in respect of the place worked out under section 58-5.</p> <p>The result is the <i>maximum daily amount of resident fees</i> for the care recipient.</p>	<p><b>44-2 Amount of residential care subsidy</b></p> <p>The maximum daily amount of resident fees payable by the care recipient is the amount worked out using the formula:</p> $\begin{matrix} \text{standard} & \text{compensation} & \text{daily income} & \text{agreed} & \text{extra} & \text{hardship} \\ \text{resident} & + \text{payment} & + \text{tested} & + \text{amount} & + \text{service} & - \text{supplement} \\ \text{contribution} & \text{reduction} & \text{reduction} & & \text{amount} & \end{matrix}$ <p>where:</p> <p><i>compensation payment reduction</i> means the compensation payment reduction (if any) for the care recipient in respect of the day in question, as worked out in accordance with section 44-20.</p> <p><i>agreed amount</i> means an amount agreed between the care recipient and the approved provider in accordance with the User Rights Principles.</p> <p><i>extra service amount</i> means the amount in respect of a place worked out under section 58-5 if, on the day in question, the place in respect of which residential care is provided to the care recipient has extra service status.</p> <p><i>hardship supplement</i> means the amount of any hardship supplement (expressed as a daily amount) applicable to the care recipient on the day in question under section 44-30.</p>

## Awareness and Satisfaction

Less than half of respondents are aware of the *method statements* feature in legislation, with only around a third of private sector lawyers and the staff of Judges and Magistrates being aware of this drafting feature.

Just over 60% of respondents are satisfied with the usefulness of *method statements* in legislation, with only around half of all AGS and DPP employees and private sector lawyers being satisfied (see Figure 14a).

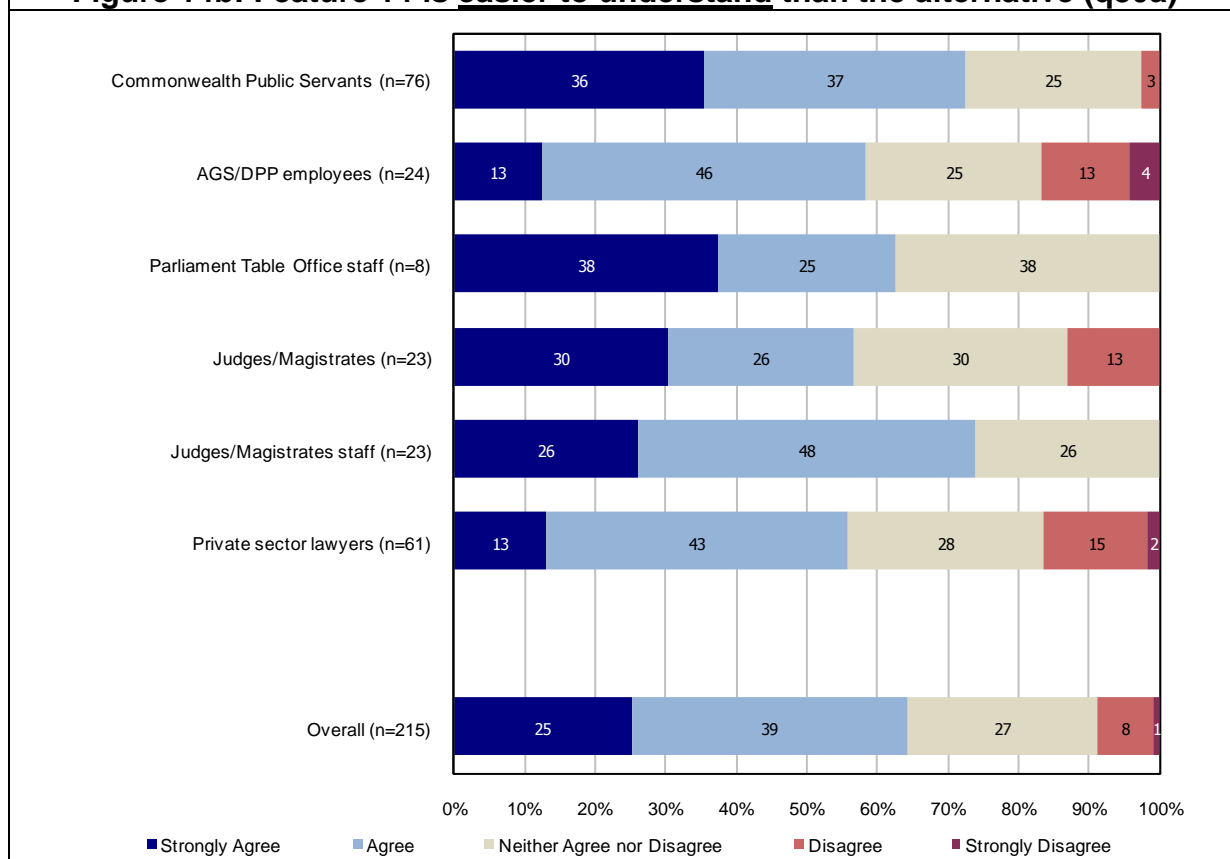


### Feature attributes

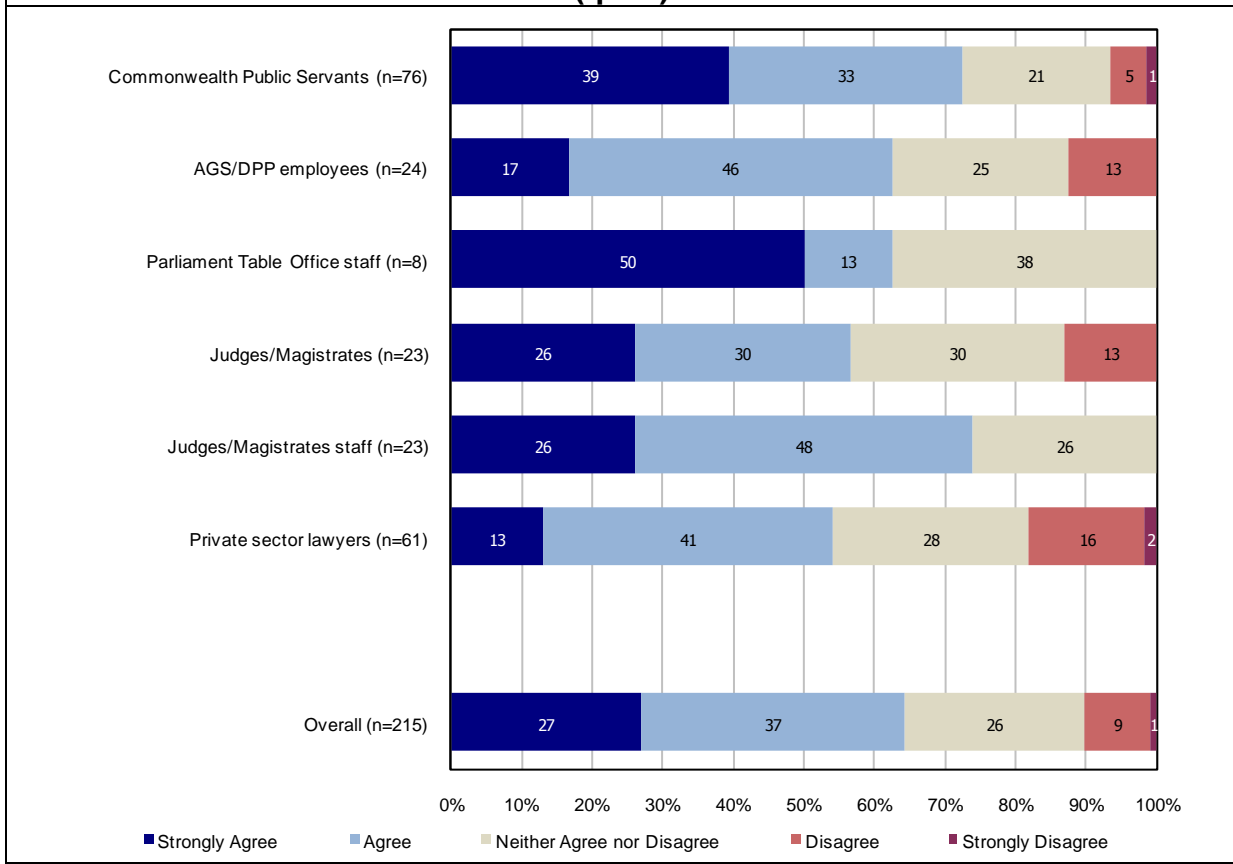
As shown in the following three figures, the majority of respondents agreed that *method statements*:

- are easier to understand than the alternative (64%);
- make complex calculations easier than the alternative (64%); and
- make the legislation easier to read (59%), with only around 40% of private sector lawyers agreeing with this.

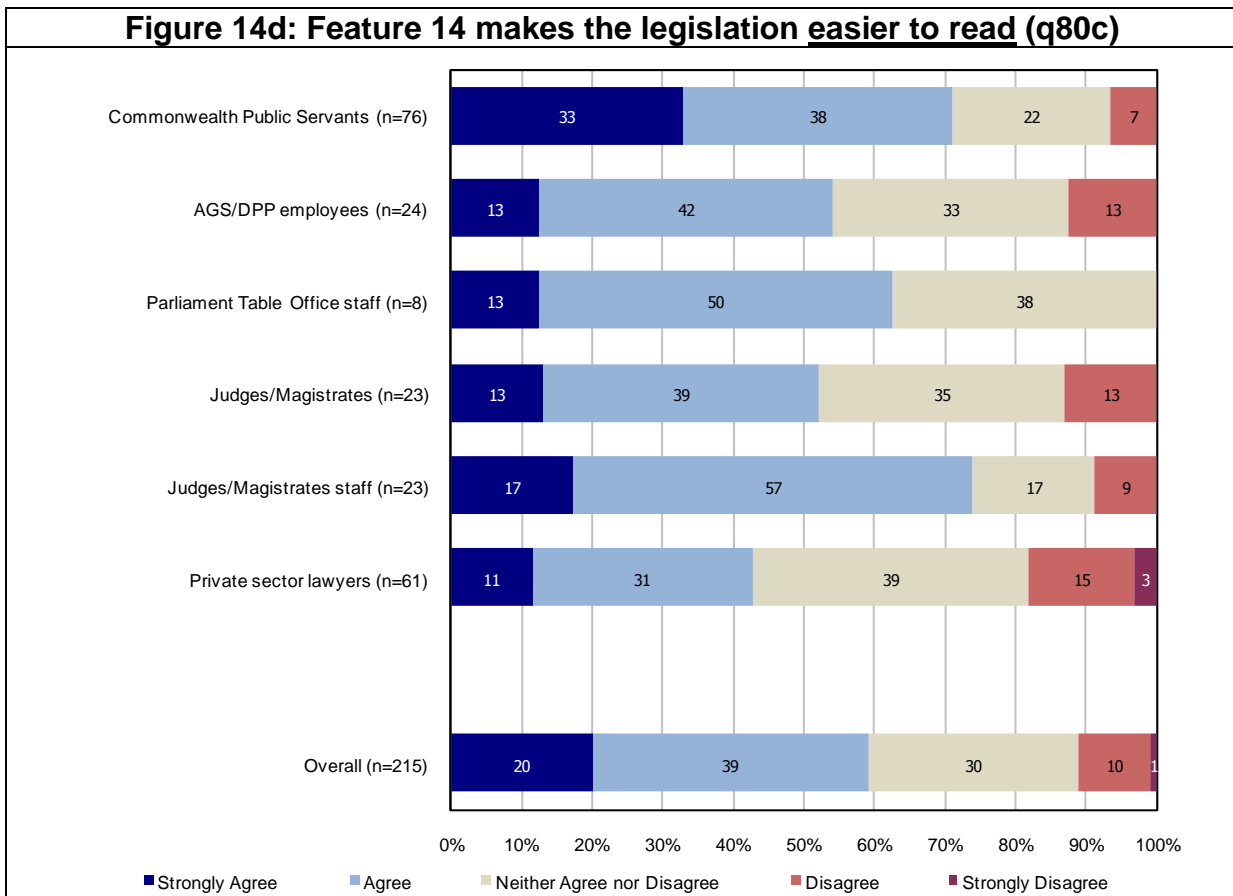
**Figure 14b: Feature 14 is easier to understand than the alternative (q80a)**



**Figure 14c: Feature 14 makes complex calculations easier than the alternative (q80b)**



**Figure 14d: Feature 14 makes the legislation easier to read (q80c)**



## Benefits, Strengths and Weaknesses of Feature

Circumstances where *method statements* were of most value were when they could “help break down complex calculations in a timely manner”. By “being stepped through the process to make a calculation”, they helped the reader get “clarity on the methodology”. They were particularly useful when the “order of the steps is critical”. They also helped make legislation more accessible, by presenting information “in a format that is more easily understood by stakeholders”.

Particular strengths of this feature included being able to set calculations out in a “step by step” or “systematic way”, allowing an “almost mathematical level of clarity”, reducing “the risk of errors in applying provisions” and improving consistency. *Method statements* could also provide “more narrative [than formulas] as to the calculation to be undertaken at each step”, as well as guidance on “where to find the detail of each step for ease of navigation”,

Weaknesses of *method statements* identified by respondents included that they may sometimes be “hard to follow”, as they “do not allow a ‘top-down’ approach or a general overview of the process but demand a slow step by step approach”. They could become too complex to follow easily, and definitions within them may be unclear. Some noted that they preferred the formula approach as it was “visually clearer and easier... to comprehend”, and that “anyone who actually wants to perform the calculation needs to sit down and write out the formula that is already set out in the alternative format”.

## Feature 15. Use of the second person

### Description

*In some legislation, the provisions are drafted in the second person, that is by referring directly to “you” as the person upon whom an obligation is imposed or an entitlement is conferred or in relation to whom rights are determined.*

### Example of Feature 15

#### Current format

## Part 2—Entitlement to product stewardship (oil) benefits

### 8 Registration must precede a claim for product stewardship (oil) benefit

- (1) Despite the other provisions of this Part, you are not entitled to a product stewardship (oil) benefit unless you were registered for entitlement to product stewardship (oil) benefits when you made a claim for payment of the product stewardship (oil) benefit.

Note: You register for product stewardship (oil) benefits under the *Product Grants and Benefits Administration Act 2000*.

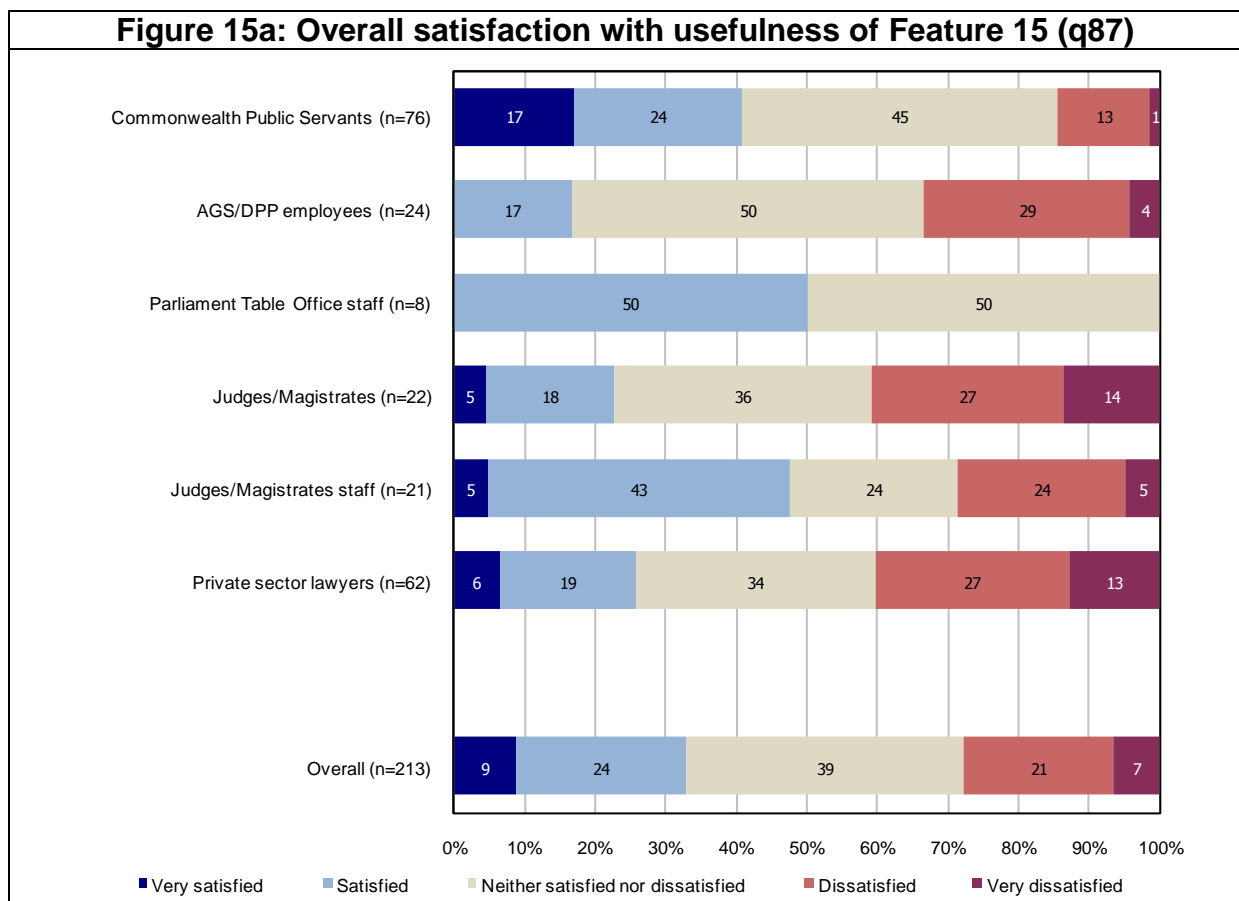
- (2) For the purposes of subsection (1), if you make a claim in respect of an entitlement that is referred to in subsection 9(1):
- (a) after, or at the same time as, you apply for registration; but
  - (b) before you are registered;
- the claim is taken to have been made immediately after you are registered.
- (3) For the purposes of subsection (1), if you make a claim in respect of an entitlement referred to in subsection 9(3):
- (a) after the introduction into the Parliament of the Bill for the *Product Stewardship (Oil) Legislation Amendment Act (No. 1) 2003*; but
  - (b) before you are registered;
- the claim is taken to have been made immediately after you are registered.

## Awareness and Satisfaction

Less than half of respondents are aware of use of the *second person* in legislation.

The use of the second person in legislation received the lowest satisfaction rating across the 16 features covered in the report (see Figure A on page 4), and was the only feature to receive net negative ratings from a number of respondent groups. As shown in Figure 15a, only one-third of respondents are satisfied with the usefulness of this feature, with 28% dissatisfied.

The use of the second person received a negative net balance from AGS and DPP employees (with 33% dissatisfied or very dissatisfied), Judges and Magistrates (with 27% dissatisfied and a further 14% very dissatisfied), and private sector lawyers (with 27% dissatisfied and a further 13% very dissatisfied). A proportion of respondents in nearly all groups were very dissatisfied with the usefulness of the feature.



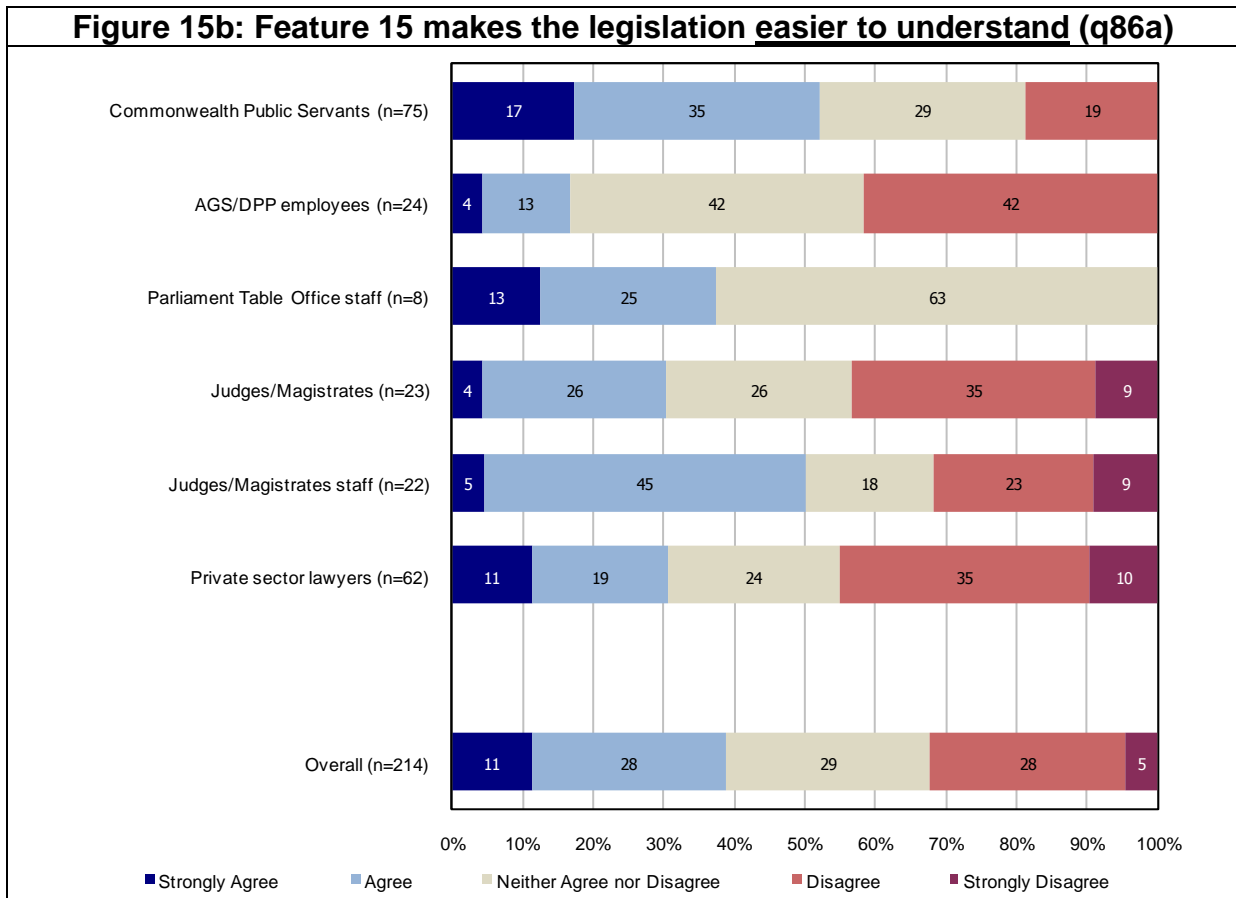
### Feature attributes

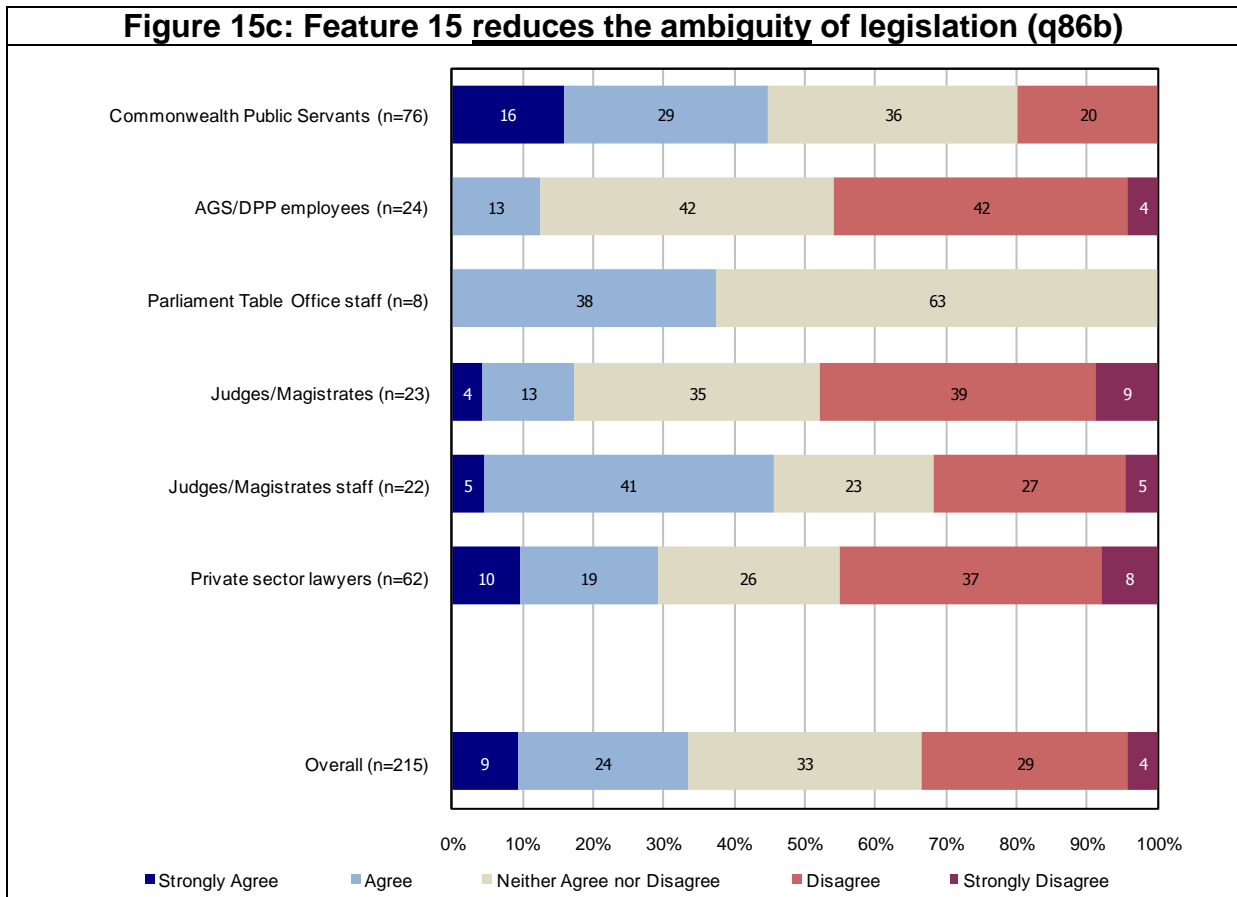
As shown in the next two figures, only around one-third of respondents agreed that the use of the *second person*:

- makes legislation easier to understand (39%); and
- reduces the ambiguity of the legislation (33%).

Around 10% of Judges and Magistrates, the staff of Judges and Magistrates, and private sector lawyers strongly disagreed that the feature made legislation easier to understand (see Figure 15b), and a similar proportion strongly disagreed that it reduced the ambiguity of the legislation (see Figure 15c).

**Figure 15b: Feature 15 makes the legislation easier to understand (q86a)**





### Benefits, Strengths and Weaknesses and Feature

Respondents suggested that areas where the use of the *second person* had most value was in tax or entitlements legislation (or other areas where a “particular obligation/task falls on the individual using the legislation”). In these cases the use of the second person could make the legislation easier to read than having to continually refer to “the taxpayer” or “the person” etc. It was also noted that it had value when “reading aloud to give oral legal advice”. One respondent noted that “meaning becomes more direct in this form of speech”.

Particular strengths of the use of the *second person* included that it allowed the law “to be drafted in simpler terms using plainer English”, and that it made legislation easier to understand for the lay person. A respondent noted that it “seems to speak to the reader with a directness that is a welcome alternative to the ‘voice of god’ tone of much legislation”. It was helpful in “clarifying the responsible person to the required action” and was “much less passive”.

Reflecting the high dissatisfaction and disagreement levels shown in the figures above, a large number of respondents highlighted weakness of the feature. These included that it can cause difficulty if “the legislation is referring to more than one party”, and that the use of ‘you’ could raise legal questions of distinguishing between “natural persons and other legal entities”.

It was felt that the use of 'you' could be "strangely confronting", "patronising", "lacking authoritiveness" or "dumbed down" to regular users of legislation. It was seen as "not neutral... it doesn't allow the legislation to be easily interpreted by people on both sides of the fence". It was also noted that it can on occasion read "somewhat strangely, for example in the tax legislation relating to deceased estates".

Reflecting the benefits it could have in some types of legislation, it was noted that "drafting in the second person should be used judiciously and with an appreciation of the principal audience for the legislation".

## **Feature 16. New format including indenting conventions**

### **Description**

*The current format for Bills was adopted in 1996. It was developed in response to the realisation that the layout of the print on the page can be a significant factor influencing how effectively the legislative message is communicated. The current format has the following features (when compared with the previous formatting):*

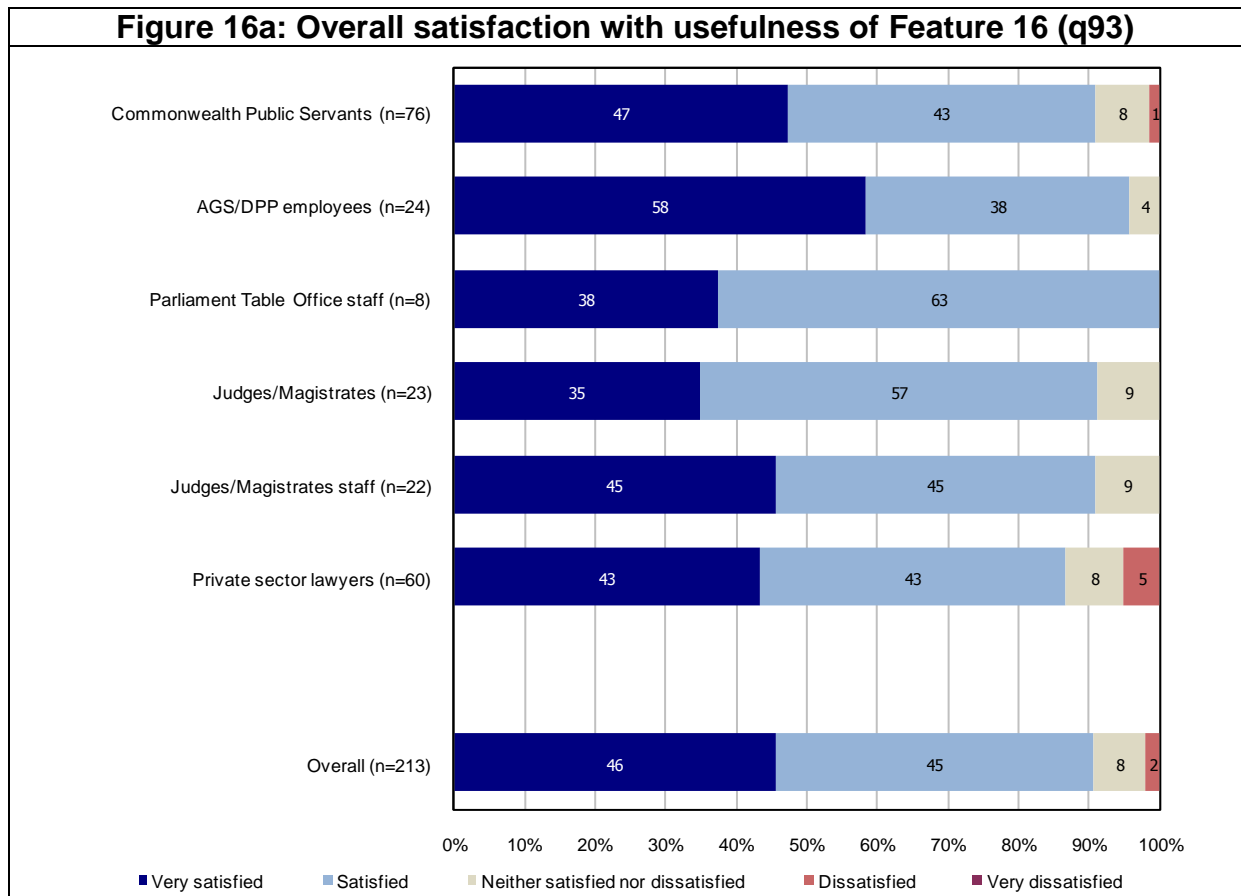
- *wider left and right margins;*
- *greater line spacing between units;*
- *section numbers appearing before section headings;*
- *greater prominence given to section headings;*
- *standardised tables of contents for every Act;*
- *definitions appearing in bold, italicised font; and*
- *simplified enacting words in more prominent text.*

**See the attachments at the end of the survey questionnaire (Attachment A) for examples of the old and new formats.**

## Awareness and Satisfaction

Over two-thirds of respondents are aware of the *new format*. All Parliament Table Office staff are aware of this drafting feature.

Almost all (91%) respondents are satisfied with the usefulness of the *new format* (see Figure 16a).

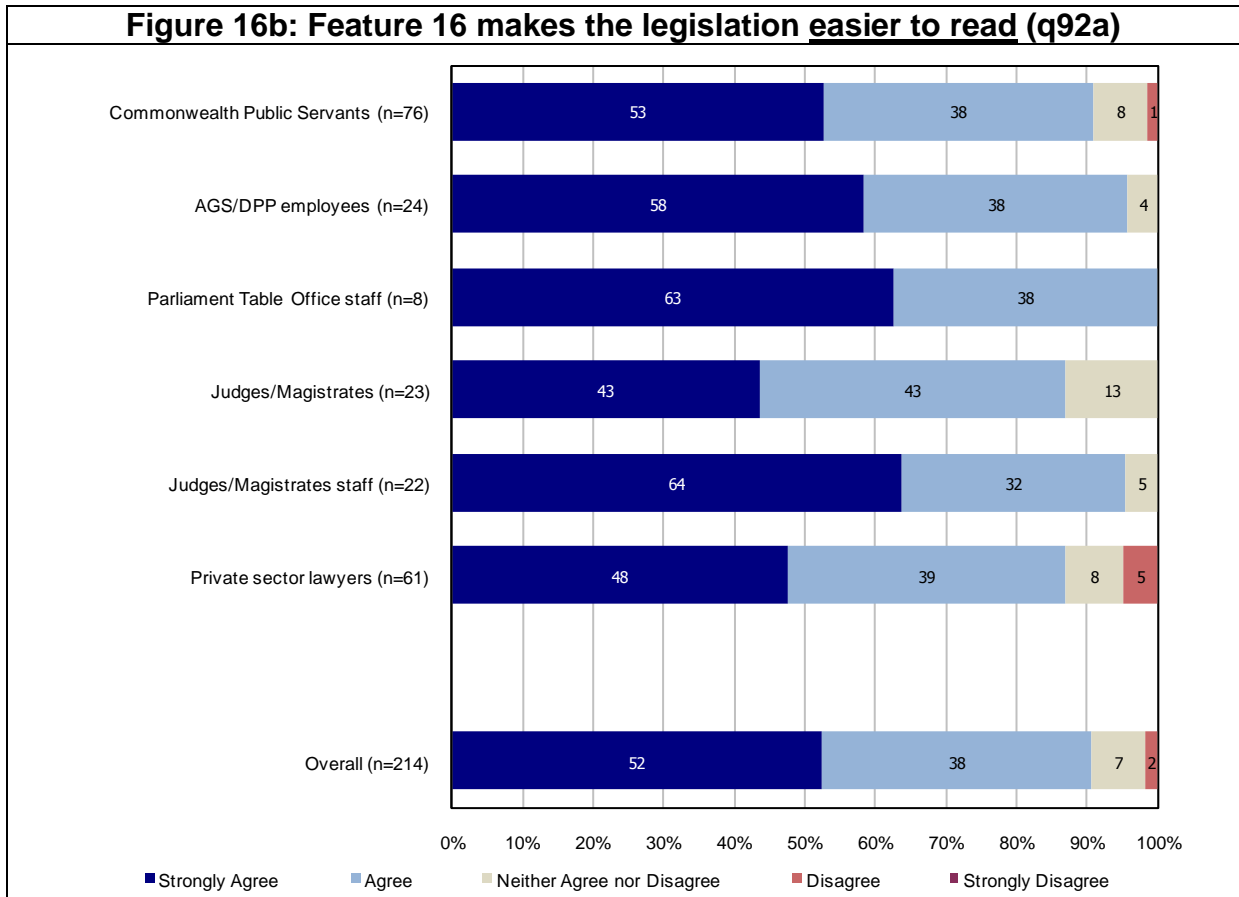


### Feature attributes

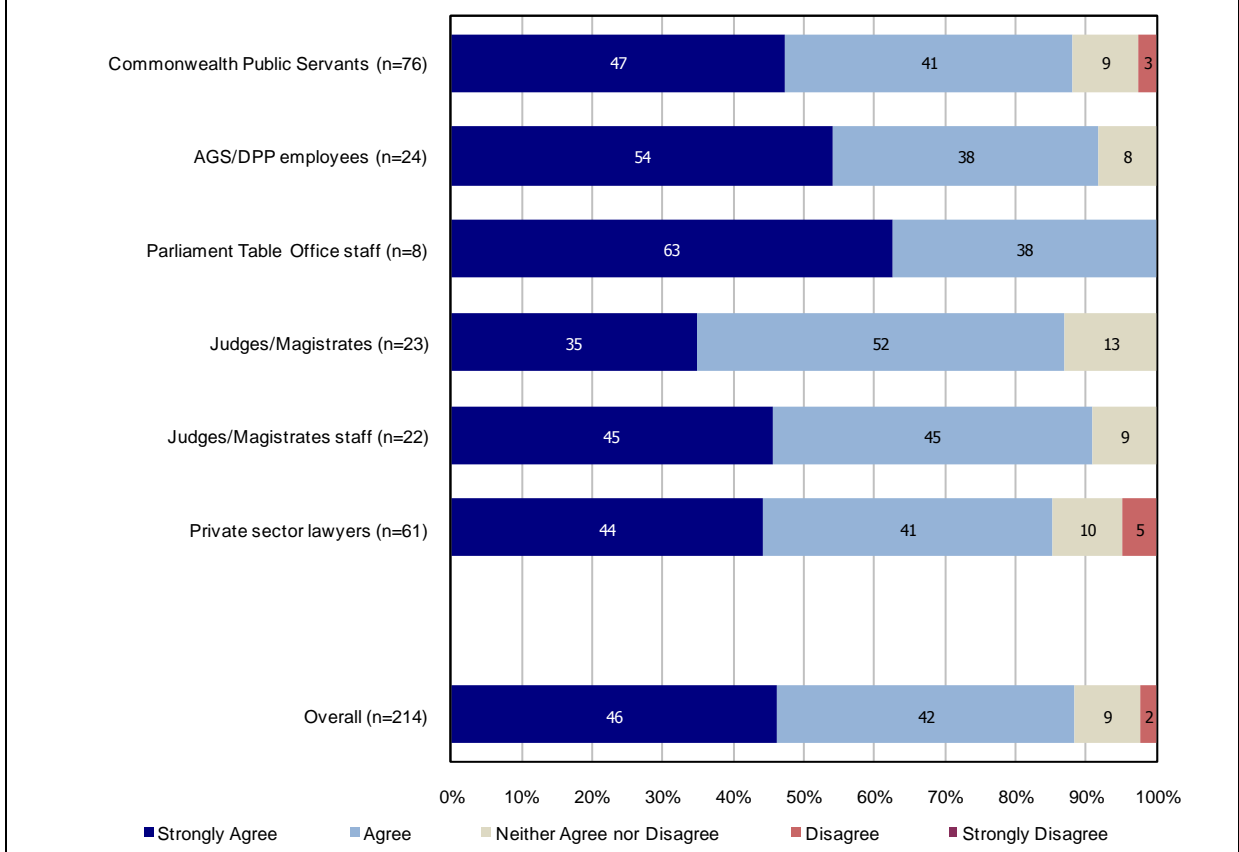
As shown in the next three figures, almost all respondents agreed that the *new format* of legislation:

- makes legislation easier to read (91%);
- makes legislation easier to navigate (88%); and
- makes legislation easier to understand (72%).

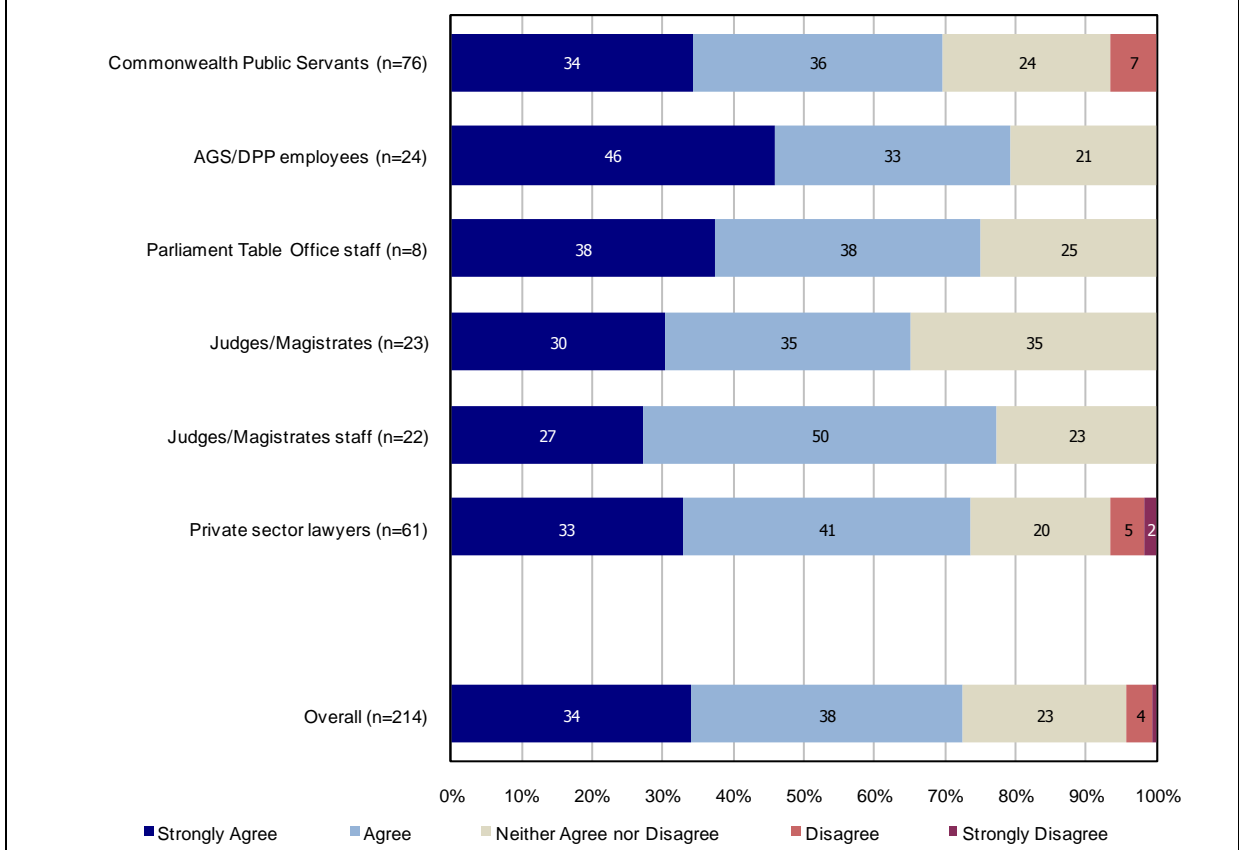
**Figure 16b: Feature 16 makes the legislation easier to read (q92a)**



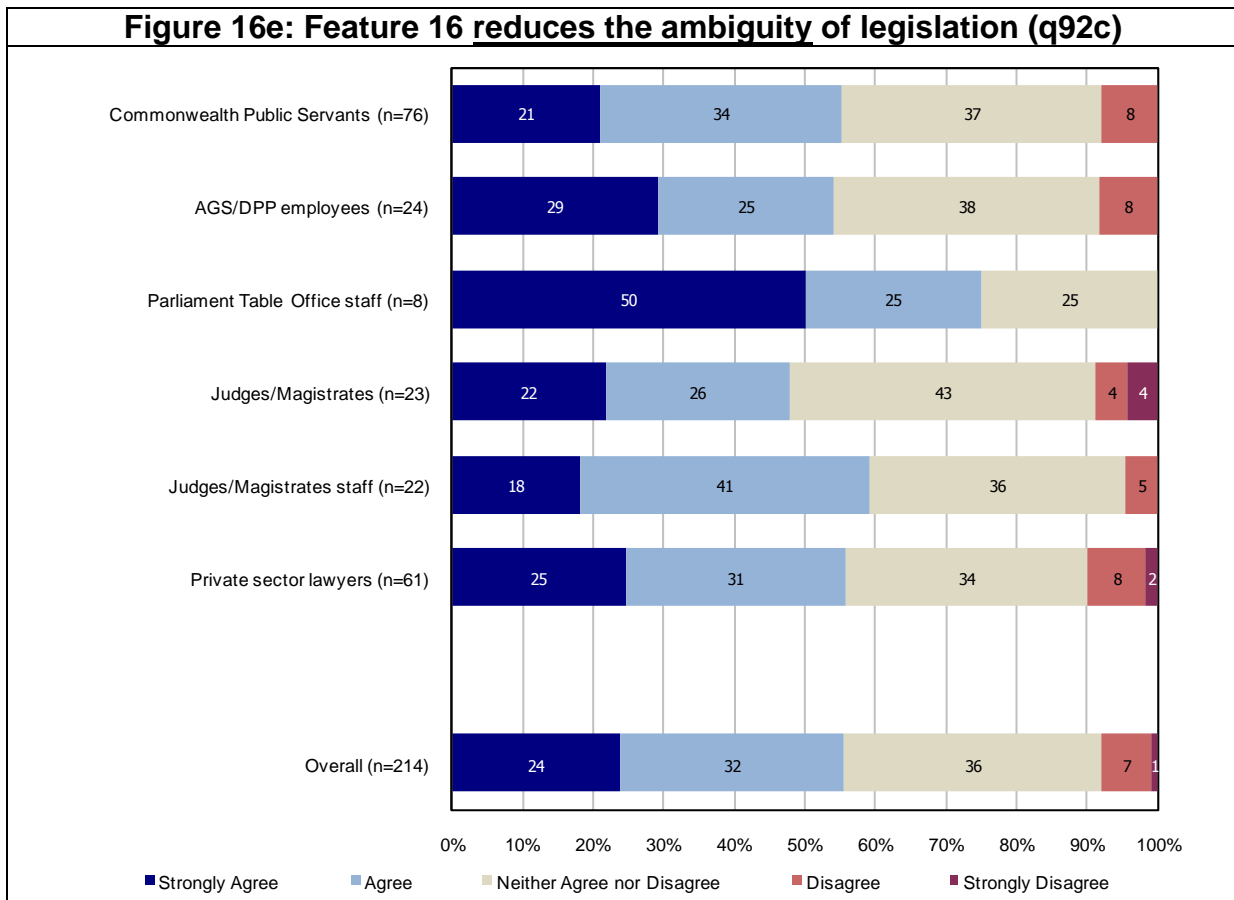
**Figure 16c: Feature 16 makes the legislation easier to navigate (q92d)**



**Figure 16d: Feature 16 makes the legislation easier to understand (q92b)**



Only around half of respondents agreed that the *new format* of legislation reduces the ambiguity of legislation (see Figure 16e).



### Benefits, Strengths and Weaknesses of Feature

Respondents indicated that the *new format* of legislation would be of value in almost all types of legislation, and of particular value for making longer and more complex legislation “easier to navigate” and “visually easier to follow”.

Particular strengths highlighted by respondents were that it improved the readability of legislation, helped to “discern one provision from another”, and made legislation look “less dense and less forbidding”. One respondent noted that “it is much more readable and user-friendly and should be standardised across all legislation, including reprints”.

While a number of respondents felt that the white space made the legislation “easier to view and consequently easier to understand”, some did feel that this was a weakness (e.g. wasting a lot of paper when printing), and there were comments that moving from B4 to A4 paper may provide more scope for formatting improvements.

## Future Innovations and General Comments

Legislation users were asked whether they have any suggestions for additional innovations to the drafting of legislation that OPC could implement. Common suggestions provided related to:

- the need for consistency in style and formatting and additional features specifically for online legislation:
  - consistency in the style and formatting of legislation, particularly between Federal and State legislation;
  - consistency and less complex section/subsection numbering and ordering, particularly for heavily amended legislation;
  - an online layout that is compatible with Word; and
  - the use of hyperlinks for online versions of legislation, particularly links from the table of contents to relevant sections and sub-sections;
- the layout of definitions:
  - having a central index of all defined terms within an Act, particularly for complex legislation, which may either provide full definitions and/or a reference to the section where the term is defined; and
- the tracking of amendments:
  - providing more information in the table of amendments, such as detail on the subsection amendments; and
  - providing some easy way of indicating whether a part of the legislation has been amended or repealed, such as providing some sort of reference in the margins in the body of the legislation.

When asked to comment on Commonwealth legislation, legislation users were generally pleased with the improvements made to the drafting of legislation over time, in that most features make the legislation easier to read and understand. They were also generally encouraging of OPC continuing its progress in making legislation less complex.

Some private sector legislation users mentioned that what they needed was clear and plain legislation that they can use, not necessarily with all of the features covered in the survey – Commonwealth legislation had become overly complex, and more focus may need to be applied to drafting techniques. On the other hand, Commonwealth Government employees acknowledged the trade-off between maintaining quality in drafting provisions that are clear and easy to understand, with the requirement for preparing quick and timely drafting. A few respondents commented that the drafting of Commonwealth legislation was often better than that of other jurisdictions.

Legislation users suggested a number of potential topics to be covered in future surveys. These included:

- legislation issues (such as the use of principle-based legislation, how content is prepared, the linkages between legislation and regulations);
- the use and usefulness of legislative sites;
- clause numbering;
- the quality of drafting and drafting techniques; and
- further possible formatting changes that could be considered for adoption.