Rewriting legislation

Australian Federal Experience

Introduction

1   I have based this paper largely on my personal experience with rewrites of social security, offshore minerals and corporations legislation. The paper is based to a lesser extent on my experience of working within the rules that were developed for income tax legislation as part of another rewrite exercise undertaken in our Office.

2   At the end of this paper, you can find individual reports on several of the rewrites that have been done in our Office. Drafters who worked on the rewrite projects concerned have prepared these reports. The reports may be useful as indicating both the diverse natures of the rewrites and some of the common themes that emerge across the rewrites.

3   The rewrites have been undertaken over a period that stretches back a decade or so. Some of them were undertaken in the early days when plain language practices were just beginning to be developed. Others were undertaken when those practices had become better developed, more fully articulated and more widely accepted.

1. The range of rewrites undertaken

Subject matters dealt with

4   Our Office has been involved in rewrites of legislation in the following areas:

- social security (age and invalidity pensions, unemployment benefits etc.) [1989-1991]

- sales tax [1992]

- offshore mining [1994]

- corporations[1] (incorporation, company meetings, directors' duties, public offerings of securities, takeovers etc.) [1995-2000]

- income tax[2] [1995-2000]

- aged care [1997]

- incentives for export market development [1997]

- public service [1999].

5   You can see that the rewrites have covered highly technical areas with primarily expert audiences as well as areas that might be seen as dealing with easier or softer topics and as having a potentially much wider audience. The simple points I would make here are:

- even legislation that deals with highly technical areas can be put into a much more readable form

- even expert readers can benefit from efforts to improve the readability of the legislation they work with.

Extent to which policy change is allowed in the rewrite

6   A major issue that has emerged early in most of our rewrites is the extent to which policy review will be allowed as part of the rewrite process. The following questions often arise for rewrites that are supposed to be policy neutral:

- what do you do about the policy deficiencies you discover in the rewriting process?

- does clarifying an unclear provision amount to changing policy?

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[1] The Corporations Law Simplification Project (CLSP) which was superseded by the Corporate Law Economic Reform Program (CLERP) and the Financial Sector Reform Project (FSR Project).
[2] The Tax Law Improvement Program (TLIP).

- what do you do about user expectations that something more than a mere recasting of the words will happen?

- is it possible to develop a new conceptual foundation for the provisions and still claim that the policy outcomes are the same?

- what do you do if it becomes apparent that some small policy changes would allow you to express the rules far more simply?

7   A proposal to merely improve the readability of legislation will usually not attract much political attention or support. Rewrites are more likely to be undertaken and completed when they take place together with a policy review that will attract more political attention and support. Of course when the new legislation emerges, much is made of its improved form; but that improved form may well not see the light of day unless something politically meatier is happening at the same time.

8   Users tend to experience a legislative system in an undifferentiated and holistic way. They do not readily distinguish between:

- the policy settings of the system (the determination of what they must do and what they are entitled to expect)

- the legislation that gives legal support and expression to those policy settings

- the administrative arrangements set up for the system

- the brochures and guides that explain the system

- the forms that need to be filled in to access the system

- the notices they receive and to which they may need to respond.

Of course for those of us within government, these distinctions may be clear and important ones if only because different agencies may well be responsible for the different areas.

9   When the prospect of reform of a legislative system is held out to users, they probably expect that whatever it is in the system that irritates them will be removed. The legislation itself may not be something they encounter at all. The irritations the wording of the legislation causes may be minor compared with those caused by other elements in the system. They want unnecessary obligations removed, not simply recast in clearer language. Once reform of the system is on the table, they want all aspects of the system to be open for review. If policy reform is ruled out, user support for the rewrite process can suffer.

Structures and processes set up for the conduct of the rewrite

Composition of the rewrite team

10   The processes adopted for our rewrites have varied enormously. Some of them have been simply a matter of one or 2 drafters working with a few instructors to recast the text of the legislation. Others have involved extensive input from externals, a significant

commitment of drafting and other resources and the co-location of the members of the team working on the project away from their home offices.

11   The main differences between the projects have been in:

- the extent to which interdisciplinary, or cross-agency, perspectives and views are built into the composition of the team working on the rewrite

- the extent to which, and the way in which, consultants are involved

- whether the drafters work from their home office or are out-placed

- the kind of consultation and document testing mechanisms that are used.

12   Sometimes the teams working on the rewrites have been set up in such a way as to bring together:

- people from different disciplines (for example, people with expertise in policy development, legislative drafting, communications and private legal practice)

- people from different agencies or different parts of agencies (agencies responsible for legal matters, higher level economic policy, detailed legislative policy development, administration and information technology systems)[3].

These team structures give a voice to people with a wide range of interests in, and perspectives on, the area dealt with by the legislation. It also opens up the mindsets of those who normally have the responsibility for developing legislation.

13   Bringing "outside" influences into the team itself and its work tends to break the mould of the team members' well-established thinking and writing habits. This frees up their thinking and they can then respond more creatively and more effectively to the challenge of producing a clearer and more useable text.

14   Bringing these influences into the team itself means that it is one of "us" (not one of "them") who is making the new suggestion or offering the new insights. It is harder to run away from, ignore, undervalue or lightly dismiss things coming from a fellow team member.

15   I might mention in passing that the normal arrangements under which federal Canadian legislation is prepared (as I understand them) have a number of features that should make the drafters sensitive to the impact their drafts will have on potential readers:

- the translation of the original draft from one language into another and the input of the jurilinguist

- the input of the legislative editors

- the checking of the Bills by a review committee.

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[3] In the tax area, the earlier rewrite program has lead to the idea of integrated design for our tax system—the coordination of the development of policy, legislation and administration.

Opening your writing up to comment and criticism from a range of people (particularly if they include non-drafters and non-lawyers) can only make you more mindful of your readers.

Use of consultants external to the rewrite team

16   Sometimes consultants have not been members of the team working on the rewrite but have been brought in from time to time during the rewriting process. They have helped shape the approach taken, the methods used and the objectives pursued. As well as bringing their technical expertise, these consultants have often broadened the range of issues to which those involved in the rewrite are attuned and deepened their understanding of some issues they were already aware of.

Co-location and outplacement

17   One way of encouraging people from different organisations to really work together effectively as a team is to co-locate them: take them away from their home offices and have them work side by side at the same premises. Drafters have worked in this way on the corporations and income tax rewrites.

18   Co-location certainly has the effect of exposing drafters to influences they may otherwise be shielded from but it has a number of disadvantages. It cuts them off from developments happening in their home office. It creates a high risk of capture (coming to identify themselves so closely with the proposals they are working on that their ability to offer independent and critical advice is weakened). It can also make it more difficult for drafters working on the rewrite to sell their innovations to drafters working in the home office. Unless handled carefully, this can reduce the long-term impact of the rewrite on the home office's day-to-day drafting activities. For less experienced drafters, there is the additional disadvantage of being cut off from their natural peer support group.

Consultations

19   Consultations with interest groups, and testing with users, are ways of opening up the rewrite process to outside influences and making it more responsive to the needs of users.

20   A number of our rewrites have made effective use of high level consultative groups. These groups include representatives of all the major stakeholders in the rewrite area. They meet regularly but not often (once a month or so). They act as sounding boards for the rewrite team's priorities, approaches and exploratory work. They give early warning of issues that may cause concern in affected interest groups. They help build up and maintain a coalition of support for the rewrite project.

Document testing

21   Some rewrites have involved various forms of document testing. The corporations law rewrite I worked on used focus group testing to get feedback on:

- the way we proposed structuring the legislation for each topics we worked on

- the texts we produced (some texts went through 2 rounds of testing)

- proposed changes to our document design for legislation.

22   We used the testing sessions to diagnose problems with structures and texts rather than to measure the effectiveness of the text. The insights that we gained into reader attitudes were very valuable. The main difficulties we encountered were:

- Initially users thought the document testing sessions were policy consultations. With careful management they came to understand the purpose and value of the sessions. Some in fact became quite adept at articulating their likes and dislikes as readers.

- Interpreting the results of a testing session often required careful discussion and consideration (to separate, for example, idiosyncratic responses to the text from generic responses).

23   Some of the testing done in the income tax rewrite was in the form of protocol reading and involved careful observation of how individual readers used the text[4].

24   A very valuable by-product of document testing sessions is that you get to know your audience personally as it were. The abstract reader becomes a real person across the table trying to make sense of your document. In the tea or coffee break, you discuss that person's professional interests, hobbies, grievances and enthusiasms. When you go back to the office to revise the draft you have a much more vivid and particularised image of the reader. This image is an amalgam of the individuals you have met and got to know in the testing sessions.

Resource implications of consultation and document testing processes

25   Consultative processes and document testing both cost money and take up time. My experience suggests that very worthwhile improvements to the text can be obtained for relatively modest monetary costs. The time delay involved in consultation and document testing is a much greater hurdle. This delay is what makes it impracticable to carry out consultation and document testing in the routine preparation of legislation.

Resource implications of other plain language practices

26   There is a clear opportunity cost for the drafter in devoting time to plain language and communication issues. Time spent on those activities is time that is not available for some other activity (such as doing additional legal research or editorial checking).

27   The extent of the opportunity cost has to be kept in perspective, however. Whenever a drafter has a choice to make about how to arrange or express provisions, there is no additional cost in basing the choice on well-informed plain language considerations. It is not a matter of writing the text "normally" and then rewriting it in plain language. If good choices are made in the first instance, rewriting is not necessary.

28   There is a very important efficiency gain from drafters sharing the outcome of their struggles with plain language issues. Once a communication problem has been thoroughly explored and solved by one drafter, we do not want the next drafter who encounters the same

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[4] Recently in income tax work, the concept of prototyping has been gaining ground. As with the design of physical products, useful design development can be done with simplified mock-ups. This is not so much testing carried out after the production of a polished product as using rough models to explore with potential users the desirable features of the product yet to be developed.

or a similar problem to go through the labour all over again. Section 6 of this paper has some things to say about sharing plain language insights, experiences and tools.

29   From a whole of government point of view, you can also argue that against the costs of getting a more readable text must be set off the real gain of achieving higher compliance rates. More readable texts should reduce non-compliance that is due to misunderstanding of the text caused by confusion, failure to notice relevant provisions and inattention due to exhaustion. This kind of gain is amplified if the techniques that are developed in rewrites are adopted in general drafting practice.

2. Objectives and audience identification

Objectives

30   As mentioned above, many of our rewrites had policy objectives as well as communication objectives. The policy objectives sometimes included simplifying the policy and removing unnecessary obligations. This obviously had implications for how simple the rewritten text could be. Simpler policy, simpler procedures and fewer obligations tend to yield a simpler text. This means that sometimes the "before" and "after" comparisons are not simple comparisons of the same policies in old-style and new-style text.

31   In so far as there was a communication objective, it tended not to be elaborated much beyond "making the text more readable and easier to use".

32   You can have negative and positive communication objectives. The negative objectives aim to remove impediments to readability (getting rid of bad features). This is doing the weeding. The positive objectives aim to achieve a certain guaranteed level of useability or understanding. This is growing the flowers. Both kinds of objectives are worthwhile. Generally the negative ones are easier to achieve and the positive ones are more satisfying.

Audience identification

33   Most of our rewrites began with some kind of attempt to identify the intended audience.

34   Our rewrites have been pragmatic rather than ideological. We have aimed, by and large, to make the legislation more readable and easier to use for its actual current users. We have not tried to make the legislation accessible to people who, from a practical point of view, we believed were highly unlikely ever to read the legislation. We have sometimes factored in people who did not currently read the legislation but were likely to do so if it were easier to read.

35   The actual current user group is usually a challenging enough group to cater for. Often it will include not only high-powered legal advisers or accountants but also professionals with lower level skills, the government officials who administer the legislation and community advice bureau staff who give people advice on their rights.

36   To some extent, you can, in aiming for an unrealistic audience, do a disservice to the actual users. For example, if your actual users are professional advisers who already have

some familiarity with the area and you put in a lot of aids for the benefit of uninformed lay users, you may alienate or inconvenience the actual users.

37   We have not aimed to make the legislation readable by the average citizen. It is unusual for the average citizen to encounter a scheme through the legislation itself. The average citizen is more likely to encounter the scheme through brochures, notices, forms or websites.

38   The average citizen who does wish to look up the legislation for himself or herself has a number of difficulties to overcome quite apart from the readability of the text:

- finding out which legislation is relevant and identifying all the legislation that is relevant

- obtaining an up-to-date copy of the legislation (this is becoming less of a problem with electronic access to current legislation)

- knowing about the common law principles that play around legislative texts (for example, the principles of statutory interpretation, of legal personality, of criminal liability, of administrative law and of evidence).

This suggests that, as well as it being unlikely that the average citizen will consult the legislation itself, it may also be inadvisable.

39   That said, the average citizen does get the benefit of the improvements to the legislation that are introduced for the benefit of actual users. The things that make life easier for the actual users, because those things assist the reading process generally, also tend to make life easier for other potential users.

3. Techniques and approaches

Rules, tools, values and practices

40   When we talk about plain language techniques it is useful to bear in mind the differences between:

- a *rule* (sentences should be less than 25 words long)

- a *tool* (a simplified outline can be used to give a reader context)

- a *value* (the reader's convenience matters)

- a *practice* (all texts are given a particular kind of testing).

41   A rewrite can be governed by rules, tools, values or practices or a particular combination of them. For me the most fruitful combination is having a wide set of tools available to be used in the pursuit of strongly held and well-articulated values. Significant value can be added if you can afford the time to do document testing.

42   Values are important. With a wide set of tools available, decisions have to be made about whether any of the tools are useful for a particular provision and which one to use if

several are available (ordinary paragraphing, a table, a diagram, a method statement, a formula). These decisions ought to be informed by the values you are pursuing. Which tool will be most convenient, most natural or easiest for the reader?

43   Changing the values that people genuinely hold is harder than changing the tools they use or the procedures they follow. Section 5 of this paper has some things to say about what is involved in changing people's attitudes.

44   Generous inventories of plain language tools are becoming readily accessible. I won't use this paper to generate yet another one. It is more useful for me to:

- indicate some of the principles underlying the tools

- mention a few tools that our Office is using that may not appear in existing inventories.

45   The main principles I see underlying plain language tools are:

- avoiding reader overload

- avoiding reader uncertainty and confusion and giving the reader a confidence-boosting sense of direction

- making it easier for the reader to move around from provision to provision within the document

- avoiding artificiality and keeping in touch with the reader's reality.

Avoiding reader overload

46   A principle that can be pursued is having respect for the reader[5] and the reader's convenience. This underlies a number of techniques that are designed basically to avoid reader overload. You can overload a reader by:

- requiring too much of the reader's short term memory (the 5 plus/minus 2 rule)

- making heavy demands on the reader's grammatical repertoire

- making the reader search for hidden or remotely located information.

47   The techniques that serve this principles are the use of shorter sentences (and sections), simple grammatical forms and navigation aids. The constant use of short sentences can, however, break information down into very fine bits and leave to the reader the task of reintegrating the bits into larger units of meaning.

48   You can use tables very effectively to structure complex material so that a reader can use row and column directions to home in quickly on the rule for a particular case.

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[5] You can also show disrespect for the reader by talking down to the reader or being patronising. In our document testing sessions it was interesting to note that sometimes readers could handle with ease things you thought they would struggle with.

Avoiding reader uncertainty and confusion

49   A reader who does not know what a document is about and how it is organised will not read to his or her best ability because of anxiety, frustration and self-doubt. Once a reader has his or her bearings, the reader is in a good position to start assimilating information and making sense of the text.

50   The techniques that serve this principle are the use of guides, simplified outlines, theme statements, good structure and signposting.

51   Sometimes using a diagram allows a reader to see at a glance how the system hangs together. Our experience is that although we use diagrams very heavily as thinking tools we find them difficult to deploy effectively in legislation.

Assisting navigation within the document

52   Readers seldom read an Act from beginning to end. They also seldom read an Act to find the answer to an isolated question. They go to the Act to extract the various relevant provisions that have a bearing on their problem.

53   Navigation aids such as effective headings, headers that allow you to locate yourself in the hierarchy of topics, good cross referencing and signposting can all help the reader to move around the document with more ease. Helpful linkages create an impression of the text as being a considerate text.

54   Saving unnecessary movement within the text can be as important as facilitating necessary movement. When we have cross-references to other provisions by section number, we often also include a brief summary of the topic of the section cross-referenced. Without the summary, the reader might go to the trouble of consulting the section that is cross referenced only to find it is irrelevant to the reader's circumstances (it might, for example, deal only with non-residents and the reader may be a resident). The reader then returns to the main text with the feeling of having gone on an unnecessary journey and having wasted precious time. The topic summary can save the reader the trip.

Avoiding artificiality and keeping in touch with the reader's reality

55   A reader more readily takes in messages that seem to talk about things that are common in the reader's everyday world. A familiar word calls up into accessible memory the knowledge field that is associated with the word. The mind is then primed to absorb new information on the topic. You can then build on this expectation. The unfamiliar, abstract word does none of this.

56   Unnecessary abstraction takes the reader away from that world so that it is harder for the reader to make sense of what is being talked about.

57   This principle is the one that dictates that we should not use:

- artificial tags for definitions (a ***prescribed event***)

- misleading definitions (***goods*** includes land)

- excessive deeming of things to be what they are not.

58   In most rewrites, the use and abuse of definitions becomes a major issue for discussion. After working on a rewrite, you become much more careful about when and how you use definitions.

59   An emerging idea for us is the power of well-chosen metaphors in effective communication. The power of the metaphor may lie in its speaking to the reader about something the reader is already familiar with.[6]

Miscellaneous OPC tools

60   Our Office makes use of a number of features that may not find their way into the usual list of plain language tools.

Method statements

61   A method statement is a statement of the steps involved in a process (typically a calculation that might otherwise be presented as a formula). You will find an example of a method statement in Appendix C.

62   Method statements can be particularly useful in cases where the calculation is not a straightforward, single process but has alternative pathways depending on the circumstances.

63   Psychologically, the method statement allows the reader to rest at the end of each step. Using effective labels in a method statement allows the reader to consolidate the result of the calculation at certain significant points.

64   Formulae can be intimidating for people who do not feel comfortable with mathematical notation. Formulae work well while they are relatively simple. A method statement becomes an attractive alternative if a calculation would involve complex mathematical operations if represented in a formula.

Theme statements

65   Theme statements are used in income tax legislation to let readers know what a Division or Subdivision does. You will find an example of a theme statement in Appendix C.

66   A theme statement is both more than a simple list of contents and less than a summary of all the provisions in the Division or Subdivision. Its aim is to let the reader know

- what main or overall work the Division or Subdivision does

- how it fits into, or contributes to, the overall effect of the legislation.

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[6] Take the example of the metaphor of the account as something that tracks numerical dealings over time. With the metaphor you can talk of credits, debits and balances. You can talk of opening balances when the system starts up. You can talk of sub-accounts within the account that can be used to process special transactions. The metaphor works so well because everyone is familiar with accounts of one kind or another and with the various kinds of operation that can be done on an account.

67   A well-crafted theme statement at the beginning of a Division or Subdivision puts the reader in the picture. The reader can then readily see what each of the sections adds.

More than one sentence in a subsection

68   We sometimes use more than one sentence in a subsection. This allows us to take qualifying phrases out of the main sentence without exiling them to another subsection. It also allows us to use constructions such as "this is so even if..." or "all of these conditions..." more naturally. You will find a few examples in Appendix C.

The need for judgment in using the tools

69   The range of plain language principles and techniques that have been identified is extensive. Convenient statements of them can be found in many different publications. Most of the advice found in these publications is good common sense and is sound. The challenge now seems to be not so much that of trying to discover new tools or techniques but more a matter of learning how to deploy those we already have to best effect. Knowing what to use and how to use it requires judgment. In forming those judgments we should:

- always preserve a keen concern for, and place a high value on, the reader's convenience

- value whatever information or insights we can get about how readers actually interact with the texts we produce (or texts generally).

Providing legislative support for the use of tools

70   There are some tools that you might be reluctant to use because there would be some uncertainty as to their effect. Sometimes it is possible to resolve those uncertainties by including a provision in the Act that will use the tool or in the Acts Interpretation Act.

71   For instance, when it was proposed to start using examples in our legislation, the point was raised that confusion would result if there were an inconsistency between a provision and an example that illustrated its intended effect. We put a provision in our Acts Interpretation to give precedence to the provision over the example.

72   You will find some examples of provisions of this kind in Appendix B.

The blueprinting process

73   Many drafters in our Office make use of what we call a "blueprint" for a legislative scheme before starting to prepare the text. The blueprint is a document that captures and records the details of the proposed scheme without drafting the provisions themselves. Often the blueprint will take the form of a table with:

- one column setting out the proposals themselves;

- another column setting out:

        policy issues still to be resolved

the reasons for the policy settings

the assumptions on which the rules are based

significant factual information

references to other legislation that is being relied on to generate the correct outcomes.

The proposals are stated in informal, lay terms rather than in legislative terms. The need for a standard provision (such as one creating a delegation power) will often be indicated only by a brief note.

74   The blueprint format is very flexible. New entries can be added, old ones deleted, entries rearranged and the content of entries refined. The "cost" of changing something in a blueprint is a lot lower than the cost of rewriting provisions that have already been drafted up as legislative text.

75   The blueprint tends to facilitate structuring of the rules and to keep the focus on the main messages that need to be communicated.

76   Our experience is that if blueprinting is undertaken as a preparatory stage, the text that emerges has clearer concepts, a better structure and focus and terminology that is closer to common usage in the field concerned. Somehow blueprinting gives legislation a deep structure clarity that is not something that can be attained simply by using textual features or linguistic practices.

Robustness

77   Given that legislation is often amended, it is desirable to have rewritten provisions that will be robust in the face of future amendments. By this I mean that we should aim not for provisions that are perfectly adapted to carrying the current message but are so finely attuned to that message that they will not readily accommodate a change in the message. One way of pursing robustness is to think about provisions in a modular way. For example there will be a module for eligibility for a benefit and there will be a module for the rate of the benefit. You then ask whether the provision is a good eligibility or rate module rather than whether it is the perfect way of expressing the current rules. The current rules may well change.

4. Attitude of the Courts

78   How well plain language techniques work in a particular jurisdiction can be significantly affected by the attitude that the judiciary in that jurisdiction take to statutory interpretation generally and to plain language practices in particular. A technique that works well in one jurisdiction may not work in another jurisdiction because the courts in that other jurisdiction will not accept the technique as legally effective.

79   For example, using a narrative style will work in jurisdictions where the courts will accept that the simple use of the definite article is sufficient to maintain the link between a later provision and an earlier one. If, for some reason, the courts in the jurisdiction were

unwilling to make that interpretative leap, they may strike down provisions drafted in the narrative style as legally ineffective because of the uncertainty of their operation.

80   Judicial attitudes can change over time. Judges may even warm to plain language after giving it an initial frosty reception.

81   If the attitude of a jurisdiction's courts is likely to prevent the adoption of plain language techniques, those promoting the plain language cause should consider whether anything can be done to change judicial attitudes

82   Appendix D sets out a random selection of pronouncements on plain language (not necessarily plain language as used in legislation) by judges of our Federal Court. It is interesting to note the various ways the judges let you know what they think of plain language. You know where the judge is coming from when quotation marks appear around "plain language" or the qualifier "so-called" appear immediately before it. Similarly, the irony used in describing a log of claims as "drafted in language reminiscent of a style of legal drafting untainted by notions of plain English" lets you know that the judge pretty clearly thinks plain language is a good thing.

5. Changing attitudes

Initial reaction to plain language push

83   Whenever the plain language issue is first raised, some people will feel threatened by it because they are unwilling to entertain the idea that they have not been writing clearly or have been behaving discourteously to their readers. They have perhaps prided themselves on the accuracy and lucidity of their texts. They regard themselves as having maintained high standards of civility and respect in their written dealings with other people. The case for plain language may look to them like an outrageous slur on their competence and their integrity.

84   The reaction may occur not only in the people we are asking to change their writing habits (such as drafters) but also in people who see themselves as somehow sharing the same legal culture (such as lawyers, judges and academics).

85   One defensive response is to find a text that purports to be in plain language but is unclear, defective or unhelpful. The pursuit of plain language principles is then blamed for the defects in the text. The unstated assumption is that if only the text had been written in the good, old-fashioned, careful way, the defects would not have occurred.

86   The truth is that old-fashioned texts can be just as defective as plain language texts. The defects come from inattention, carelessness and incompetence not from the desire to make the text easier for the reader to use. My personal experience is that with plain texts the defects are easier to see (and therefore are more often discovered and remedied) because everything in the plain text is easier to see. With non-plain texts, it is often difficult to know whether what the text is doing is right or wrong because it is harder to see what the text is doing at all.

The psychology of attitudinal change

87   No matter how well you prepare for it in advance and no matter how persuasive your case is, you should expect the following sequence to be followed if you are promoting attitudinal change:

- rejection of the change outright and the expression of emotions of apprehension, resentment and anger

- a less impassioned fault finding with the details of the change and the beginning of dialogue about its merits

- an acknowledgment that the change has a good motivation or some merits and a willingness to suggest improvements that might make the change workable or acceptable

- endorsement of the change with the necessary adjustments.

88   After some time, the opponents can reach the point of believing that the change has always really been a part of their own values and that they were glad to help it come to fruition.

89   Significant and worthwhile changes to our attitudes do not just happen because we are intellectually convinced. We need to adjust our view of ourselves as much as our view of the external world and that is painful. We need to take the emotional journey as well as the intellectual one.

90   With the 4 stage process outlined above, people who are not allowed to get their emotions out in stage 1 often do not get past stage 1 and they become permanent opponents. So if you want to get the change in attitude, do not tell stage 1 people that they are wrong to be angry and negative. Anyone who is asked to change is entitled to have their concerns and their apprehensions heard.

6. Bringing home the benefits of experience gained in the rewrites

91   Our Office has exploited rewrites as opportunities:

- to experiment with plain language techniques

- to develop and test new tools

- to gain insights into wider communication issues.

This has been the case particularly with those rewrites in which the drafters have worked away from the Office with a multi-disciplinary team.

92   Drafters working on rewrites have given regular seminars in the Office on their work. They have done this while the work was still being done rather than waiting until the project was finished. They have brought back to the Office for discussion not only well developed ideas but also ideas that were still at the tentative or prototype stage.

93   The seminars have given opportunities not only for the out-placed drafters to bring new ideas into the Office but also for those drafters to get the benefit of other drafters' critical appraisal of the innovations. The innovations brought back to the Office have often been improved and refined in the crucible of vigorous criticism and have then been accepted as fit to be adopted in the regular, non-rewrite work done in the Office.

94   Each new rewrite has set new benchmarks (particularly benchmarks of clarity, simplicity and lightness of touch) against which normal drafting work in the Office is consciously or subconsciously compared.

7. Opportunities to learn from one another's experience

95   There are increasing opportunities for jurisdictions to learn from one another's experiences in rewriting legislation (and in writing new legislation in plain language). The Internet make it very easy to communicate with one another and exchange documents by e-mail and to access each other's legislation in electronic form. Drafting offices' Web pages may also come to include plain language materials.

96   In this kind of environment, it should be possible for good ideas to spread rapidly.

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Appendix A: Individual rewrite project reports

Rewrite project report

Project: AGED CARE REWRITE

Questions	Answers
General questions for speakers' presentations	
1 What was the scope of your project what subjects did you tackle?	The federal regulatory regime for aged care
2 Why was your project undertaken?	To remedy the state of disrepair in aged care legislation
	To implement some major policy changes in aged care
3 What were the objectives of your project	To make aged care legislation easier to understand
	To implement major policy changes
4 Who was your target audience (what readers were you drafting for)?	Assumed to be departmental officers, service providers and their advisers
5 What resources were allocated to your project?	The normal resources available to a drafting team of 3 drafters (although another team of 2 drafters drafted the chapter on administration)
6 What were the main techniques you are used to improve readability?	Better, more logical structure
	Standard OPC readability measures
	Outline provisions/theme statements
	Asterisking of defined terms
	Division headings in question format
	Some use of diagrams and tables
7 What were your major difficulties	Deadlines created by the policy change timetable were applied to the entire rewrite project
	Political sensitivity of the policy changes
8 What did you accomplish?	Project completed on time without leaving any areas to be done later
9 How was your work received by	Well received by all government officials I have spoken to, except for some minor matters of detail. I have no feedback from other groups
ministers and elected officials	
government officials	
the legal community	
others who read the legislation	
the general public	
Specific issues for Panel Discussion	
1 Who benefits from re-drafting projects?	Anyone who works with legislation benefits from the better quality product
	Drafters and instructors increase their legislative skills
Does the general public benefit?	There are indirect benefits for the general public from increased speed and accuracy in dealing with questions involving legislation

Rewrite project report

Project: AGED CARE REWRITE

	Questions	Answers
2	Is there a difference between improving the readability of laws and improving their intelligibility?	Yes. Readability is only part of the broader issue of intelligibility
3	What challenges do you see for applying new techniques (relating both to presentation and to drafting) to legislation generally in your jurisdiction?	The new techniques should be largely transferable. There is no clear conceptual boundary between rewrites and "business as usual" drafting (and there is no compelling reason for trying to draw such a boundary)
4	If your techniques are applied to the preparation of new legislation, will they require more time and resources than is required for preparing legislation using pre-existing techniques?	Broadly speaking they should not, although document testing and similar measures will add to the time and resources needed, if they are applied to "business as usual" drafting
5	What challenges have you encountered in the parliamentary process?	
	How have you dealt with them	
6	Do you foresee problems in having legislation prepared using pre-existing techniques operating side-by side with legislation prepared using your new techniques?	
7	Have you thought about how your new formatting techniques will be applied to electronically published versions of existing legislation?	
8	Have you considered what to do with regulations made under Acts that are being revised?	One of the more important advances in the aged care rewrite was to provide for the organisation of subordinate instruments into a single set of "Principles", each identified by name in the new Act. Under the previous legislation, the subordinate instruments were a confusing mess. They were inconsistently identified, often in conflict with each other, almost impossible to comprehend and even (in some cases) lost altogether

Rewrite project report

Project: CORPORATIONS LAW REWRITE

	Questions	Answers
	General questions for speakers' presentations	
1	What was the scope of your project what subjects did you tackle?	Corporations Law (including company law, fundraising through share issues and takeovers)
2	Why was your project undertaken?	To meet criticism of complexity of the law
		To reduce business costs
3	What were the objectives of your project	To make the legislation easier to read
		To remove unnecessary regulation
		To better focus obligations
4	Who was your target audience (what readers were you drafting for)?	Corporate legal advisers
		Accountants
		Officers working for the regulator
5	What resources were allocated to your project?	A 4 person task force (policy officer, legal practitioner, plain language expert and drafter)
		Support staff of legal researchers (6-10) and administrative staff (4-6)
		A 10-12 person Consultative Group to meet on a monthly basis (representing big business, small business, legal practitioners, accountants and shareholders)
		Informal and ad hoc support from the regulator's staff
		Costs of printing consultative documents and exposure Bills
		Costs of document testing sessions and consultations with professional bodies and interest groups
		Costs of public seminars
6	What were the main techniques you are used to improve readability?	Plain language expert and legal practitioner's input as members of the task force
		Shorter sentences
		Better structures
		Elimination of unnecessary material
		Careful use of definitions
		Extensive use of tables/some use of diagrams
		Document testing of proposed structures and preliminary texts
7	What were your major difficulties	The work pressures created by adding a large amount of consultation and testing
		Managing texts that were constantly being revised to take account of comments and testing session outcomes
		Interpreting the outcomes of testing sessions

Rewrite project report

Project: CORPORATIONS LAW REWRITE

	Questions	Answers
8	What did you accomplish?	All of the provisions on core company law, fundraising and takeovers were rewritten and enacted
		Some areas were not reached (charges and external administration) and may never get done
		Before the Program was completed it was overtaken by a reform program focussed more on aligning commercial law with economic efficiency and less on rewriting the text (Corporate Law Economic Reform Program). The drafting coming out of this new program is supposed to be continuing the style of the rewrite program but the same testing and consultative processes are not being run any more
9	How was your work received by	There was generally good press for the project. After a while business, lawyers and accountants showed signs of becoming exhausted with the amount of reform and the rate at which changes kept emerging
		Some aspects of the policy changes were criticised by affected interest groups
	ministers and elected officials	
	government officials	
	the legal community	
	others who read the legislation	
	the general public	
	Specific issues for Panel Discussion	
1	Who benefits from re-drafting projects?	Those who have to work with the legislation (such as professional advisers, administrators or later amending drafters)
	Does the general public benefit?	Not directly
		Indirectly through cheaper and more accurate legal advice and regulatory decisions
2	Is there a difference between improving the readability of laws and improving their intelligibility?	Yes.
		Readable texts can still be unintelligible
		Texts that are not readable are not likely to be understood in practice even if they are intelligible if enough effort is put into reading them
		If you communicate to be understood, you should do everything you can to maximise your chances of being understood and having a readable text helps
3	What challenges do you see for applying new techniques (relating both to presentation and to drafting) to legislation generally in your jurisdiction?	Following general rules or guidelines for good writing practices can readily be applied to any drafting exercise
		Models developed in rewrite exercises are useful as sources of ideas and as benchmarks for normal drafting
		Processes such as document testing, and getting input from consultants, improve readability considerably but are too expensive and slow for normal drafting exercises

Project: CORPORATIONS LAW REWRITE

	Questions	Answers
4	If your techniques are applied to the preparation of new legislation, will they require more time and resources than is required for preparing legislation using pre-existing techniques?	See answer to 3 for document testing etc
		Applying guidelines for good writing involves some additional time and resources but not a great deal. Moreover, with practice the guidelines become internalised and require no further effort
		There is a hidden cost in having a statute book that continues to be not very readable: the cost of the additional time drafters must spend to come to an understanding of the provisions before they amend them or use them as a precedent
5	What challenges have you encountered in the parliamentary process?	None
	How have you dealt with them	Not applicable
6	Do you foresee problems in having legislation prepared using pre-existing techniques operating side-by side with legislation prepared using your new techniques?	Not as between different Acts
		Also not as between those provisions of a single Act that have been rewritten and those that have not. We have a provision in our Acts Interpretation Act that is of some assistance (section 15AC)
7	Have you thought about how your new formatting techniques will be applied to electronically published versions of existing legislation?	Yes
		There are some problems with tables and diagrams
8	Have you considered what to do with regulations made under Acts that are being revised?	Another agency is responsible for the drafting of regulations

Rewrite project report

Project: EXPORT MARKET DEVELOPMENT GRANTS REWRITE

	Questions	Answers
	General questions for speakers' presentations	
1	What was the scope of your project what subjects did you tackle?	The scheme of providing grants of financial assistance by Austrade (a Commonwealth statutory authority) to small and medium Australian enterprises to provide incentives for them to develop export markets
2	Why was your project undertaken?	To meet criticism of the complexity of the old Act (due mainly to the number of times it had been amended)
		There were some policy changes as well
3	What were the objectives of your project	To make the law easier to read
		To make policy changes
4	Who was your target audience (what readers were you drafting for)?	Potential grant recipients and their advisers
		The administrators of the scheme
5	What resources were allocated to your project?	2 drafters in OPC
		A consultant to Austrade who prepared the instructions and attended meetings, commented on drafts etc (ie she was the instructor)
		A mid to upper level executive in Austrade who was not always able to attend meetings
6	What were the main techniques you are used to improve readability?	Better structure and clarity between concepts
		Plain English
		Diagrams/tables
		An exposure draft to test reaction
7	What were your major difficulties	There was initial reluctance to depart from the structure proposed in the instructions.
		Austrade is based in Sydney so it was not easy to arrange meetings at short notice
		Last minute Government decisions (eg preparing several versions of back pocket parliamentary amendments for policy changes)
8	What did you accomplish?	The Act was rewritten and passed
9	How was your work received by	We received a thank you letter from the Minister (who was also Deputy Prime Minister)! He had also asked to meet us before we began the job. Unheard of!
		Our instructors were very appreciative
		I don't know how it was received otherwise however the Act does not seem to have been substantially amended since first passed
	ministers and elected officials	
	government officials	
	the legal community	
	others who read the legislation	

Project: EXPORT MARKET DEVELOPMENT GRANTS REWRITE

Questions	Answers
the general public	
Specific issues for Panel Discussion	

Rewrite project report

Project: OFFSHORE MINERALS REWRITE

	Questions	Answers
	General questions for speakers' presentations	
1	What was the scope of your project what subjects did you tackle?	Mining activities offshore (excluding mining for petroleum)
2	Why was your project undertaken?	The federal government wanted to produce a good looking Act for regulating mining that could be put to the State (Provincial) governments as a model they could adopt for uniform land based mining laws
3	What were the objectives of your project	Improve the structure and readability of the legislation
4	Who was your target audience (what readers were you drafting for)?	Federal and state mining officials
		Legal advisers to mining companies
		Groups with environmental concerns (?)
5	What resources were allocated to your project?	The normal drafting team of 2 drafters and a policy instructor
		Some use was made of an existing committee of federal/State mining officials as a consultative group
6	What were the main techniques you are used to improve readability?	Careful planning of the structure for the legislation
		Plain language techniques such as using shorter sentences
		Some use of map-like diagrams to show the areas of the seabed that were under federal control
7	What were your major difficulties	The multiplicity of licences, permits and authorities that were to be available
8	What did you accomplish?	The legislation was rewritten and passed
9	How was your work received by	No information on this
	ministers and elected officials	
	government officials	
	the legal community	
	others who read the legislation	
	the general public	
	Specific issues for Panel Discussion	See comments on Corporations Law rewrite

Rewrite project report

Project: PUBLIC SERVICE ACT REWRITE

	Questions	Answers
	General questions for speakers' presentations	
1	What was the scope of your project what subjects did you tackle?	Complete replacement of legislation dealing with Commonwealth public servants
2	Why was your project undertaken?	To implement substantial policy reforms
3	What were the objectives of your project	To implement substantial policy reforms
		To have shorter, simpler legislation
4	Who was your target audience (what readers were you drafting for)?	Government administrators (especially Chief Executives of Agencies)
5	What resources were allocated to your project?	1 drafter (+ 1 additional drafter for consequential amendments Bill)
		5-6 instructors from the Public Service Commission
		Other subject matter experts (on "as required" basis)
6	What were the main techniques you are used to improve readability?	Simplify ideas before drafting
		Careful choice of terminology
		Clear, logical structures
		Clear sentences
7	What were your major difficulties	Incorporating parliamentary amendments that did not fit the structure and concepts of the Bill that was originally introduced into Parliament
8	What did you accomplish?	Enactment of entirely new Act dealing with employment of federal public servants
9	How was your work received by	Various comments praised the clarity and simplicity of the new law (compared to the old). The substantial policy changes helped produce a simpler Act
	ministers and elected officials	
	government officials	
	the legal community	
	others who read the legislation	
	the general public	
	Specific issues for Panel Discussion	See comments on Sales Tax rewrite

Rewrite project report

Project: SALES TAX REWRITE

	Questions	Answers
	General questions for speakers' presentations	
1	What was the scope of your project what subjects did you tackle?	The whole of the sales tax law
2	Why was your project undertaken?	
3	What were the objectives of your project	To reduce the number of Acts in the sales tax law
		To make the law easier to understand
4	Who was your target audience (what readers were you drafting for)?	Government officials administering the law
		Professionals advising clients about the law
5	What resources were allocated to your project?	1 drafter
		6-8 instructors (average)
6	What were the main techniques you are used to improve readability?	Simplify ideas before drafting
		Careful choice of terminology
		Clear, logical structures
		Clear sentences
7	What were your major difficulties	Attempting to reproduce the same legal effect as the old law, but with a very different (simpler) conceptual base
8	What did you accomplish?	Entire sales tax law rewritten and enacted
9	How was your work received by	
	ministers and elected officials	
	government officials	
	the legal community	
	others who read the legislation	
	the general public	
	Specific issues for Panel Discussion	
1	Who benefits from re-drafting projects?	If the re-drafting changes the substance of the law, the beneficiaries will depend on the changes of substance
		If the legislation is easier to understand, the beneficiaries will be the people who read/use the legislation eg administrators; drafters; members of the public (rarely?)
		There might also be "incidental" beneficiaries eg commercial publishers of legislation and commentaries (who will have a new product to sell)
	Does the general public benefit?	
2	Is there a difference between improving the readability of laws and improving their intelligibility?	Yes (if "readability" means nothing more than how easy it is to find something; how easy it is to get to the end of a sentence etc.)
		Intelligibility can depend on factors beyond organisation and writing style. Most importantly, the simplicity, clarity and consistency of the concepts on which the law is based

Project: SALES TAX REWRITE

	Questions	Answers
3	What challenges do you see for applying new techniques (relating both to presentation and to drafting) to legislation generally in your jurisdiction?	
4	If your techniques are applied to the preparation of new legislation, will they require more time and resources than is required for preparing legislation using pre-existing techniques?	Clarifying ideas before drafting is invariably rewarded by reduction of drafting time (eg less revisions needed). Sometimes, the extra time taken in the clarifying stage will require more time and resources than drafting with less clear ideas. However, this extra time will normally be repaid by later time savings (eg subsequent amendments to the legislation will need less time)
5	What challenges have you encountered in the parliamentary process?	
	How have you dealt with them	
6	Do you foresee problems in having legislation prepared using pre-existing techniques operating side-by side with legislation prepared using your new techniques?	Amending existing legislation can sometimes be tricky if the existing concepts are unclear or inconsistent. In such cases, it is difficult for the amendments to be based on clear and consistent concepts
7	Have you thought about how your new formatting techniques will be applied to electronically published versions of existing legislation?	Yes. Tables and diagrams can cause problems, but these problems are being overcome by advances in publishing technology (eg more flexible versions of HTML structure for the Internet)
8	Have you considered what to do with regulations made under Acts that are being revised?	

Rewrite project report

Project: SOCIAL SECURITY REWRITE

	Questions	Answers
	General questions for speakers' presentations	
1	What was the scope of your project what subjects did you tackle?	Social security (old age pensions, invalid pensions, unemployment and sickness benefits, family assistance)
2	Why was your project undertaken?	The old legislation had become large, untidy and difficult to work with because of its frequent amendment over a long period of time
		A thoroughgoing review of the social security policies was under way and having the current legislation in better shape was seen as making it easier to carry out the reforms when they were settled
3	What were the objectives of your project	Improving the structure of the legislation
		Simplifying the language used in the legislation
		Clarifying some of the basic concepts
		Getting more consistency and uniformity into the legislation
4	Who was your target audience (what readers were you drafting for)?	Social security department staff
		Community advice bureau staff
5	What resources were allocated to your project?	For a while there was only one part-time drafter working on the project but when the legislation acquired some political urgency the drafting team was increased to 3
		The instructing team was large (perhaps 5-6 officers at most times) but there were 2-3 principal instructors
		An advisory committee was set up as a consultative group (it consisted of academics, legal advice bureau staff and Ministerial policy advisers)
6	What were the main techniques you are used to improve readability?	Better structure and signposting
		Shorter sentences
		Explanatory notes
		Method statements for calculations
		Extensive use of tables
		Document design innovations (headers and footers with running Part, Division and section references)
		Separate Rate Calculators (with Modules) to deal completely with the rate calculation for each type of benefit
7	What were your major difficulties	No information on what readers would prefer or find easier
		Foreseeing the full impact of adopting a particular practice across a very large Act

Rewrite project report

Project: SOCIAL SECURITY REWRITE

	Questions	Answers
8	What did you accomplish?	The legislation was rewritten and passed
		A large number of the features used in this Act in an exploratory way have been taken up in our normal drafting work (for example, explanatory notes and method statements)
		The legislation set some new benchmarks for the simplicity and clarity that could be achieved for individual provisions
9	How was your work received by	The legislation was not well received among users. The overall size of the document and the amount of repetition were the main complaints. The general quality of the text might have been good but its cumulative impact was daunting.
	ministers and elected officials	
	government officials	After working with the legislation for some time, some officials have become very hostile to features that have a high maintenance cost (such as explanatory notes that need updating when the legislation is amended)
	the legal community	There was at least one court decision that criticised the rewriting for having introduced uncertainty and lack of clarity into the legislation
	others who read the legislation	
	the general public	
	Specific issues for Panel Discussion	see comments on Corporations Law rewrite

Rewrite project report

Project: TAX LAW IMPROVEMENT PROGRAM (TLIP)

	Questions	Answers
	General questions for speakers' presentations	
1	What was the scope of your project what subjects did you tackle?	TLIP's focus was on income tax.
		Over the years the momentum behind TLIP expanded the coverage to include other taxes (eg GST). This momentum has continued even though TLIP has been disbanded.
2	Why was your project undertaken?	Because the great majority of people could not understand the old Tax Act—they were forced to read the Master Tax Guide (a commercial publication that was not the law) to discover what the law was.
3	What were the objectives of your project	To rewrite the law so that more people could readily understand it.
4	Who was your target audience (what readers were you drafting for)?	It took some time to work out who the target audience was. Eventually it was decided that the rewrite be drafted in a way that the suburban tax agent could understand it. It was seen that the suburban tax agent was the lowest common denominator of the total target audience.
5	What resources were allocated to your project?	One senior drafter, 2 to 3 assistant drafters and a support officer from OPC.
		3 senior policy officers, 10 other experienced policy officers and about 5 support officers from the ATO.
		3 external tax consultants from the private sector who worked on a continuous basis.
		One external consultant on document design who worked on an ad hoc basis.
		A consultative committee of about 12 tax experts.
6	What were the main techniques you are used to improve readability?	Layering at all levels—presenting the common case first.
		Signposting—guiding the reader through the rules.
		Guide material—to indicate to the reader whether he or she needs to read the provisions that follow.
		identifying defined terms—asterisking (marking defined terms so that the reader knows the term is defined).
		definitions to have one meaning throughout the Bill.
7	What were your major difficulties	In some areas major simplification could have been achieved if we had been able to make policy changes. (We were only allowed to make small policy changes.)
		Resistance from those who were across and understood the old Act—they would no longer be the only ones who had the specialised knowledge and they would have to learn the ins and outs of the new tax Act.
8	What did you accomplish?	Rewrites of many areas of the old tax Act and a structure in which to put the new tax laws.
9	How was your work received by	

Project: TAX LAW IMPROVEMENT PROGRAM (TLIP)

	Questions	Answers
	ministers and elected officials	Well
	government officials	Well
	the legal community	Mixed reaction from tax lawyers and accountants. As referred to in item 7, some were threatened by the fact that more people would understand the law so their specialised skills would not be so special. Generally, academics received it well.
	others who read the legislation	Generally well, though mixed reaction from drafters. Also, there has been one comment from a person who advises on the legislation that it takes more time to read the legislation because of the extra material (in guides and notes etc.) and that is not good for a person who is very competent in dealing with legislation.
	the general public	I don't think the general public was aware of the rewrite— it wasn't high profile in that regard.
Specific issues for Panel Discussion		
1	Who benefits from re-drafting projects?	Those who administer the legislation and those who advise on it.
	Does the general public benefit?	Yes. It enhances the relationship between government and citizens because citizens are able to better understand the laws they are required to abide by. Also, the tone of legislation affects that relationship.
2	Is there a difference between improving the readability of laws and improving their intelligibility?	Yes. I think readability is about how the laws are drafted whereas intelligibility is about why the laws are necessary in the first place.
3	What challenges do you see for applying new techniques (relating both to presentation and to drafting) to legislation generally in your jurisdiction?	Consistency is important within an Act and across the statute book. The use of new techniques by their very nature means there will be inconsistency across the statute book. Resistance to change, both from drafters and administrators. Not always knowing the effects of new techniques until some time after they have been used.
4	If your techniques are applied to the preparation of new legislation, will they require more time and resources than is required for preparing legislation using pre-existing techniques?	Some techniques will require more time and resources than the pre-existing techniques. However, I think they produce a better quality product and in the long term may reduce the time and energy drafters need to spend when amending the legislation. For example, signposting and notes take extra time initially. However, for drafters who come to amend the legislation at a later time, those signposts and notes can reduce their time in getting across the legislation and avoid their not picking up connections between provisions.
5	What challenges have you encountered in the parliamentary process?	None
	How have you dealt with them	

Project: TAX LAW IMPROVEMENT PROGRAM (TLIP)

	Questions	Answers
6	Do you foresee problems in having legislation prepared using pre-existing techniques operating side-by side with legislation prepared using your new techniques?	There could be a problem of consistency (and therefore interpretation) in having new and old techniques being used in the one Act. However, I don't think that is such a problem across the statute book.
7	Have you thought about how your new formatting techniques will be applied to electronically published versions of existing legislation?	Yes. There were a couple of times that the commercial publishers did not correctly replicate diagrams and tables. Discussions followed with the publishers to remedy that situation.
8	Have you considered what to do with regulations made under Acts that are being revised?	Making new regulations was presumably part of the process.

Appendix B: Provisions supporting plain language tools

15AC Changes to style not to affect meaning

Where:

(a) an Act has expressed an idea in a particular form of words; and

(b) a later Act appears to have expressed the same idea in a different form of words for the purpose of using a clearer style;

the ideas shall not be taken to be different merely because different forms of words were used.

15AD Examples

Where an Act includes an example of the operation of a provision:

(a) the example shall not be taken to be exhaustive; and

(b) if the example is inconsistent with the provision, the provision prevails.

Acts Interpretation Act 1901

2-10 When defined terms are identified

(1) Many of the terms used in the income tax law are defined.

(2) Most defined terms in this Act are identified by an asterisk appearing at the start of the term: as in "*business". The footnote that goes with the asterisk contains a signpost to the Dictionary definitions starting at section 995-1.

2-15 When terms are not identified

(1) Once a defined term has been identified by an asterisk, later occurrences of the term in the same subsection are not usually asterisked.

(2) Terms are not asterisked in the non-operative material contained in this Act.

Note: The non-operative material is described in Subdivision 2-E.

(3) The following basic terms used throughout the Act are not identified with an asterisk. They fall into 2 groups:

Key participants in the income tax system		
Item	This term	is defined in:
1	Australian resident	section 995-1
2	Commissioner	section 995-1
3	company	section 995-1
4	entity	section 960-100
4A	foreign resident	section 995-1

Key participants in the income tax system		
Item	This term	is defined in:
5	individual	section 995-1
6	partnership	section 995-1
7	person	section 995-1
8	trustee	section 995-1
9	you	section 4-5

Core concepts		
Item	**This term**	**is defined in:**
1	amount	section 995-1
2	assessable income	Division 6
3	assessment	section 995-1
4	deduct, deduction	Division 8
5	income tax	section 995-1
6	income year	section 995-1
7	taxable income	section 4-15
8	this Act	section 995-1

Income Tax Assessment Act 1997

2-35 Non-operative material

In addition to the operative provisions themselves, this Act contains other material to help you identify accurately and quickly the provisions that are relevant to you and to help you understand them.

This other material falls into 2 main categories.

2-40 Guides

The first is the "Guides". A *Guide* consists of sections under a heading indicating that what follows is a Guide to a particular Subdivision, Division etc.

Guides form part of this Act but are kept separate from the operative provisions. In interpreting an operative provision, a Guide may only be considered for limited purposes. These are set out in section 950-150.

2-45 Other material

The other category consists of material such as notes and examples. These also form part of the Act. They are distinguished by type size from the operative provisions, but are not kept separate from them.

Income Tax Assessment Act 1997

4-5 Meaning of *you*

If a provision of this Act uses the expression ***you***, it applies to entities generally, unless its application is expressly limited.

Note 1:   The expression ***you*** is not used in provisions that apply only to entities that are not individuals.

Note 2:   For circumstances in which the identity of an entity that is a managed investment scheme for the purposes of the Corporations Law is not affected by changes to the scheme, see Subdivision 960-E of the *Income Tax (Transitional Provisions) Act 1997*.

Income Tax Assessment Act 1997

Appendix C: Examples of special features used in OPC

1. Method statement

3 Method of calculating Part A rate

Subject to the operation of clause 5, if the individual's Part A rate is to be calculated using this Part, it is calculated as follows:

Method statement

Step 1.   Add the following amounts:

    (a)   the individual's standard rate under Division 2 of this Part (clauses 7 to 11);

    (b)   the individual's large family supplement (if any) under Division 1 of Part 5 (clauses 34 and 35);

    (c)   the individual's multiple birth allowance (if any) under Division 2 of Part 5 (clauses 36 to 38);

    (d)   the individual's rent assistance (if any) under Division 3 of this Part (clauses 12 to 16).

The result is the individual's ***maximum rate***.

Step 2.   Apply the income test in Division 4 of this Part (clauses 17 to 19) to work out any reduction for adjusted taxable income. Take any reduction away from the individual's maximum rate: the result is the individual's ***income tested rate***.

Step 3.   Apply the maintenance income test in Division 5 of this Part (clauses 20 to 24) to work out any reduction for maintenance income. Take any reduction away from the individual's income tested rate: the result is the individual's ***income and maintenance tested rate***.

Step 4.   The individual's ***Part A rate*** is:

    (a)   the individual's income and maintenance tested rate if it is equal to or greater than the individual's base rate (see clause 4); or

    (b)   the individual's base rate (see clause 4) if it is more than the individual's income and maintenance tested rate.

A New Tax System (Family Assistance) Act 1999

2. Theme statement

42-1 What this Division is about

> This Division sets out the basis on which you can deduct amounts for depreciation of property that is a unit of plant. It also provides for balancing adjustments on disposal of plant, even if you have not deducted an amount for depreciation.
>
> To work out how this Division applies to existing plant (and some plant where roll-overs are involved), you need to refer to the transitional provisions in Division 42 of the *Income Tax (Transitional Provisions) Act 1997*.

Income Tax Assessment Act 1997

3. More than one sentence in a subsection

125 Constitution may limit powers and set out objects

(1) If a company has a constitution, it may contain an express restriction on, or a prohibition of, the company's exercise of any of its powers. The exercise of a power by the company is not invalid merely because it is contrary to an express restriction or prohibition in the company's constitution.

(2) If a company has a constitution, it may set out the company's objects. An act of the company is not invalid merely because it is contrary to or beyond any objects in the company's constitution.

Corporations Law

169 Register of members

......

Former members

(7) A register of members must also show:
   (a) the name and details of each person who stopped being a member of the company or scheme within the last 7 years; and
   (b) the date on which the person stopped being a member.

The company or scheme may keep these entries separately from the rest of the register.

Joint holders

(8) For the purposes of this section:
   (a) 2 or more persons who jointly hold shares in the company or interests in the scheme are taken to be a single member of the company or scheme in relation to those shares or interests; and
   (b) 2 or more persons who have given a guarantee jointly are taken to be a single member of the company.

They may also be members of the company or scheme because of shares or interests that they hold, or a guarantee that they have given, in their own right or jointly with others.

Corporations Law

Appendix D: Some judicial words about plain language

The nature of the applicant's claim is summarised in commendably plain English in the application which reads.....

Delco Australia Pty. Ltd v Equipment Enterprises Inc (2000)

If that is the correct interpretation the Regional Council could have used plain English to say so.

Oak Valley v ATSIC (1999)

The log of claims is drafted in language reminiscent of a style of legal drafting untainted by notions of plain English. It includes the device of "deeming" which has been described by Megarry J in Murphy v Ingram [1973] Ch 434 at 436:

> "To deem, if I may say so, is usually perilous in that it is always difficult to foresee all the possible consequences of the artificial state of affairs that the deeming bring into being....."

A-G (Queensland) v Hancock (1998)

Any notice that is to be issued to members of the public in connection with a representative proceeding must be readily comprehensible by non-lawyers. It should be written in plain English.

McMullin v ICI Australia (1998)

The definition adopted is, in my view, an inherently flawed one. Far from being a common-sense, plain English one it would require significant qualifications to be grafted on to it before it could be rendered serviceable.

Kelson v Forward (1995)

And it is not asking too much of the legislature to expect it to use plain English according to its plain meaning.

Smoker v PRA (1994)

The first thing to be noticed about the deed is that it contains no traditional recitals. It has become popular to rewrite legal documents in so-called plain English. The trouble is it requires more understanding, not less, of traditional forms, to transform them into a new setting, than it does to utilise them unchanged. In this case, those who did the drafting seem to have forgotten the function of appropriate recitals, and there are none, or at least the clauses which might be treated as standing in the place of recitals are inadequate to fulfil the appropriate purposes. The deed commences by saying, "The parties agree as follows...", thus expressing everything thereafter as a matter, or as matters, of mutual agreement. Under the heading "Contra Proferentum", which of course is neither plain English nor correct Latin, there is a provision.....

Simon Grad School v National Parks Minister (1994)
The correct Latin is, as I'm sure we're all aware, contra proferentem (accusative).

Clear statement proceeds from clear thinking. If the substance of the intended rule is analysed by a lawyer, trained to understand the implications of various kinds of rules, the appropriate expression is a consequence of the analysis. "Plain English" alternatives may really be less precise, and a self-conscious search for them will certainly be a distraction. In the present case, undistracted attention to the substance of the nature of the obligations involved, and the circumstances in which the rule might be expected to have to be applied, would have obviated much perplexity. It is not as if the problem were new - it has been known to workers' compensation lawyers for years.

Blunn v Cleaver (1993)

In earlier times, before so-called "plain English" became the mode of legislative expression, s 1208(1) of the Act may well have provided to the effect that to the extent that there is any inconsistency between the provisions of the Act and a scheduled agreement, the provisions of the scheduled agreement shall apply notwithstanding anything to the contrary contained in the Act. And that, in my opinion is what s 1208(1) means. In case there be any doubt that this be so, subs (3) puts it beyond question that the terms of a scheduled agreement will prevail against any provision of the Act only in so far as a provision of the agreement affects the operation of the Act.

Secretary DSS v Pellone (1993)