Clear Legislative Drafting: New Approaches In Australia

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Introduction

The main purpose of this paper is to describe the attitude of the Office of Parliamentary Counsel in the Australian Commonwealth to the problem of complex statute law.

I will touch briefly on the history of the Commonwealth style and the reasons for recent changes. The main part of the paper is about the Commonwealth's new approach to making laws easier to understand.

Because I have been invited to discuss the approach of Australia, I will also briefly mention current attitudes of the other Australian drafting offices. I deal with them only briefly for 2 reasons: first, I cannot speak with authority on the other offices, and secondly, even if I could, time and space would not permit a detailed description of their practices. However, my concentration on the Commonwealth approach should not be taken to imply that there has not been real progress in the other offices.

Before proceeding, I should explain that I use the word "Commonwealth" in the Australian sense, as referring to the Federal Commonwealth of Australia.

Background: The Complexity of Statute Law

The Renton Report gives a number of examples of criticisms of convoluted drafting in British statute law[1]. The problem seems to exist throughout the English-speaking world, and the Commonwealth has been no exception. Like all English-speaking offices, the Commonwealth was influenced by traditional forms of legal expression and the dignified language considered appropriate for Parliament.

During the 1950s, 60s and 70s, Commonwealth Acts became increasingly complex. I do not claim to know all the reasons why, but some reasons are obvious. The increasing diversity and complexity of commercial arrangements and the increasing size of Government departments created a need to regulate these arrangements and to balance competing interests. Also, in the area of income tax, the High Court of Australia gained a reputation for literalism which required drafters to draft with extreme precision.

Whatever the reasons, during the 1960s, 70s and early 80s there was a clear belief among drafters in the Commonwealth that precision was all-important. To some degree brevity was seen as a virtue, but this was an end in itself, not a means to easy communication. To the best of my knowledge, drafters were not encouraged to try to keep their drafts simple.

This approach led to an elaborate style of drafting which in some cases was unnecessarily complex. For example, a provision of the traffic law in the Australian Capital Territory (drafted in the Commonwealth office in 1971) was almost incomprehensible[2].

On the other hand, the Commonwealth style had many excellent features. For decades it had avoided some practices that have been criticised in other jurisdictions. The Commonwealth never referred to Acts by regnal years. It always made amendments by the textual method. For decades it used few latin expressions. For decades it avoided words like "aforesaid", "hereinafter", "hereinbefore", "therein" and "thereafter". For decades it did not use provisos.

In 1973, a number of changes were made to improve readability and shorten the language. Tables of provisions (known in other jurisdictions as "arrangements of sections" or "analyses") were included at the front of Bills that were over 25 clauses long or divided into Parts. The old form of dates "the first day of March One thousand nine hundred and twenty-three" was dropped for the form "1 March 1923". Section numbers were expressed in figures instead of words. The traditional form of cross-references was dropped in favour of the compressed form "paragraph 23(3)(a)"[3]. The phrases "of this Act", "of this section" etc. were dropped from internal references. We do not claim originality for any of these. In these respects the Commonwealth was merely catching up with some of the more progressive jurisdictions.

The Plain English Movement

There have always been critics of complex legislation. The brief history of the English position in the Renton Report[4] goes back to the 16th century. In the United States of America, a positive movement to improve the language of the law appears to have begun in the 1970s, when some insurance companies began to issue their policies expressed in simple language. In 1978, President Carter signed an order that regulations should be as simple and clear as possible. In the United Kingdom, the desire for simpler laws led to the appointment of the Renton Committee, and to its landmark Report in 1975.

In Australia, these developments did not seem to have much effect on legislative drafting. However, in other fields the plain English movement received impetus from the work of Professor Robert Eagleson, Assistant Professor of English at Sydney University. In 1985 he was engaged by the Commonwealth Government to revise the forms for social security claims and income tax returns. He also helped in the production of a "Plain English" policy of one of the country's major motor vehicle insurers. He published a number of articles on plain English[5]. Meanwhile, in May 1985 Mr Jim Kennan, the Attorney-General for the State of Victoria, announced that all Victorian legislation was to be drafted in plain English. He followed this by giving a reference to the Law Reform Commission of Victoria covering legislation and Government communications.

In June 1987 the Commission produced its report "Plain English and the Law"[6], together with a drafting manual and plain English versions of the Companies Takeovers Code, a Magistrate's Court summons and some other legal documents.

It is beyond the scope of this paper to discuss the report in any detail. The report argues that legal documents, and statute law in particular, should be written in a style called "plain English". It argues that this style is compatible with precision[7], can express complex policy[8], and takes less time than the traditional style[9]. As a description of an ideal, this is above reproach, and no drafter would quarrel with it. The real difficulty comes in achieving this ideal in practice, and in this respect there is some disagreement between the Commission and Parliamentary Counsel.

A further development is the forthcoming establishment of a Centre for Plain Legal Language within the University of Sydney. Its Directors will include Professor Eagleson and Mr Dennis Murphy, QC, the head of the Parliamentary Counsel's Office of New South Wales.

Drafting in General Terms

Before proceeding any further, it is necessary to discuss briefly the style of drafting called various names including the "European approach"[10]. By this I mean a style which avoids detail and concentrates on general principles. It is outside the scope of this paper to examine the merits and demerits of such a style. I will merely state the obvious - it may be easier to read than the traditional style, but when the law is applied to particular circumstances, the effect is often unclear. The details have to be worked out by the courts.

The traditional view of drafters in the English-speaking world has been that their prime responsibility is to draft laws that give precise effect to the intentions of the sponsors of those laws. This is well expressed in the Renton Report:

> "... the draftsman must never be forced to sacrifice certainty for simplicity, since the result may be to frustrate the legislative intention. An unfortunate subject may be driven to litigation because the meaning of an Act was obscure which could, by the use of a few extra words, have been made plain. The courts may hold, or a Government department be driven to conclude, that the Act which was intended to mean one thing does not mean that thing, but something else."[11]

This view received support recently in Australia in the Victorian Supreme Court. The Court was critical of a recent Act of the Victorian Parliament on the grounds that precision had been sacrificed in the interests of simple language. The Court said:

> "No doubt such drafting is often prompted by a desire to simplify legislation. Unfortunately attempts to do so usually leave a number of questions unanswered. They also very often leave the courts without guidance as to how the questions should be answered and when dealing with legislation the court's only task is to interpret and apply the law laid down by the Parliament. The courts cannot be legislators."[12]

So far as I know, apart from what I say below about income tax drafting, there has been no deliberate move in Australia towards a European style of drafting. In discussions with my colleagues in the States and Territories, the view remains that precision must be maintained. Even advocates of the plain English movement, in Australia at least, do not recommend the European style. They claim that the "plain English" style is compatible with precision, indeed that "precision and clarity are not competing goals"[13].

The one exception to this is in the area of income tax. The Commonwealth is experimenting with something like the European style - what we call "non-specific drafting". In discussions with the Australian Taxation Office we have agreed to try to simplify the income tax law by attacking two of the main reasons for its complexity - the need for precision, and the complexity of the policy. It was decided to keep the policy more simple, and to draft in non-

specific terms, i.e. with less emphasis on precision. The Attorney-General gave his authority to our Office to draft in this way, but only in the area of income tax. Some drafting has been done in this style, but it is too early to say how it is being received by users of the income tax law.

Towards a Simpler Commonwealth Style

During over 20 years in the Commonwealth office I developed a great respect for the abilities of Commonwealth drafters, and formed the view that our style compared favourably with that of most other English-speaking drafting offices. However, I also thought that it was possible to simplify our style to some degree without losing precision. When I became head of the office in 1986, my chief ambition was to move to a simpler style. I should add that, once I declared the new policy, the members of the staff adopted it with enthusiasm, dedication and imagination. They quickly showed the error of those critics who allege that lawyers, and particularly legislative drafters, are unwilling or unable to draft simply.

Clarity: The Balance between Simplicity and Precision

At the outset it was necessary to focus on our attitude to the need for precision. We believed, and still believe, that our prime responsibility is to draft legislation that works. It must be sufficiently precise to have its intended effect and to resist attack by those who try to twist its meaning to suit their own ends. On the other hand, we believe that the traditional style often overemphasised precision.

In moving towards a simpler style, it is a matter of delicate judgment to decide how high the standard of precision should be, and how many words can be omitted without losing precision. Making these judgments involves not only questions of style, but also questions of statutory interpretation and the need to avoid ambiguity.

We adopted the principle that, if in a particular case there was a conflict between precision and simplicity, precision should prevail. However, even in those cases we should try to make the law as simple as possible consistently with precision.

We also thought it was necessary to avoid the risk of an expression in the new style being misinterpreted merely because the same idea had been expressed in different words in earlier Acts. We arranged for the Acts Interpretation Act to be amended to the effect that changes in style would not affect the meaning[14]. So far, there has not been any judicial comment on this provision.

The 3 Elements of the Commonwealth Approach

We began by concentrating on the language, and this divided into 2 elements. First, to use the rules of simple writing, and secondly, to identify and avoid traditional forms of expression if they could be expressed more simply. These elements overlap to some extent, but it is useful to focus on them separately. The third element was to use aids to understanding that were not connected with the language. These elements are discussed at length below.

The first Element: Rules of Simple Writing

It is unnecessary to describe these at length in this paper - they have been well known for many years. In this century, people have come to expect brevity and simplicity. Not only literary works, but computer manuals and even packaging labels are often models of good style.

It is unfortunate that the language of the law, at least in the English speaking world, has not moved with the times. No doubt this is because lawyers are trained on precedents, and use precedents in their profession. Legislative drafters learn their craft from studying and amending existing laws. In addition, the judiciary cannot escape their share of the blame. As all lawyers learn from judgments, they become influenced by judicial language. Regrettably, the style of most judgments is not designed for easy reading or comprehension. There also seems to be a general belief that the language of statutes must be appropriate to the dignity of Parliament.

All these forces combine to make a self-perpetuating system for preventing development in style. However, we believe that it is possible to escape it by making a conscious effort. We are concentrating on, for example:

. Using shorter, better constructed sentences.

. Avoiding jargon and unfamiliar words.

. Using shorter words.

. Avoiding double and triple negatives.

. Using the positive rather than the negative.

. Using the active voice instead of the passive voice.

. Keeping related words as close together as possible, e.g. not separating subject from verb, auxiliary verb from main verb, etc.

. Using parallel structures to express similar ideas in a similar form, e.g. not mixing conditions and exceptions, and not mixing "if" and "unless" clauses.

The second Element: Traditional Expressions

Besides concentrating on rules for good writing, I believe an essential step in improving legal language is to identify and avoid traditional forms of expression that are unnecessarily long and obscure.

Some writers on the subject argue that this is not the right approach - that one should merely practice rules of good writing. But in my view it is necessary to attack the traditional expressions, because they are an important cause of the deficiencies of the traditional style.

In the case of Commonwealth drafting, applying this policy has already revealed a large number of examples of bad style. In addition, the exercise of identifying them has a valuable effect in heightening our awareness of the rules of good writing.

Some examples of traditional forms that we are avoiding are set out below.

Connecting associated provisions

In a section with several subsections, the traditional practice is to bind the later ones to the earlier ones by expressions like "an application made by a corporation under subsection (1) ...". In such a case we would simply say "an application ...".

Proportions

The traditional form "an amount that bears to ... the same proportion as ... bears to ..." is very cumbersome when the factors are long. We now express all proportions by mathematical formulae.

Classes

Traditional style has been unduly particular about distinguishing between a class and its members, e.g. "a person included in a specified class of persons". Sometimes this form is necessary, but more often it is not. A provision that "the Minister may declare that this section applies to a specified class of persons" would be enough to cover the persons included in that class.

Duplication of nouns

Sometimes in the traditional style, words are repeated unnecessarily, perhaps through a desire to repeat a phrase set out in another section of the same Act. For example, if section 5 states that it applies to a person who satisfies certain conditions, another section with reference to such a person sometimes uses this form "a person who is a person to whom section 5 applies".

Cases

Where a provision is broken into paragraphs that refer back to a series of alternatives, the traditional style would be to say:

(a) in a case to which section 5 applies - ...;
(b) in a case to which section 6 applies - ...;".

In each paragraph, the phrase "in a case to which" is now being replaced by the single word "where" or "if".

The provisions of

The traditional style commonly uses expressions like "subject to the provisions of this Act". We are avoiding the expression "the provisions of" unless it is used as a single phrase to describe a number of particular provisions, so that it can be used again to refer back to those provisions.

Duplicated verbs

Where a sentence has alternative subjects differing in number, the traditional style is to use the verb both in the singular and in the plural. This leads to cumbersome language, e.g. "the corporation has, or corporations have, ...". We are now following Fowler by making the verb agree with the nearer of its subjects, e.g. "the corporation or corporations have".

Contraventions

In the traditional style, "contravene" was treated as not covering omission, so the form "contravene or fail to comply with" was used. This was probably never right, but the position has been put beyond doubt by a recent amendment of our Acts Interpretation Act.

Under, pursuant to, in pursuance of, by virtue of

It has been held judicially[15] that these expressions are synonymous, so we are using "under" as being shorter and more familiar.

Participles and relative clauses

We are now using participles (being, having, issued, etc) wherever possible instead of the longer relative clauses (that is, that has, that was issued, etc). The participial form also avoids difficulties where both the present and past tense are used in the same sentence.

Pronouns (it, them, they, etc.)

In the traditional style these words seem to be avoided. Perhaps to avoid ambiguity, the noun is repeated instead of the pronoun. Where there is no risk of ambiguity, we are trying to use the pronouns more often.

The possessive

In traditional drafting, no doubt to avoid what appears to be an abbreviation, the long form "of the Minister" is used instead of "the Minister's". We are now using the short form. Also, in the traditional style, the word "whose" was not used with inanimate objects, so "of which" was used instead. This often led to what Fowler calls the "delayed relative", which makes a sentence unnecessarily complicated. We are now using "whose" with inanimate objects.

Definitions

We are now using definitions, not only to define the meanings of complicated concepts, but also to help make sentences shorter. If a lengthy expression appears several times in a sentence, it inevitably makes the sentence more difficult to read. In such a case, we define the lengthy expression (preferably using a short term) and use the term so that the structure of the sentence is much clearer.

The third Element: Aids to Understanding

The third element in the Commonwealth's new style is to use aids to understanding that are not merely concerned with language. We believe that these can play a very important part, particularly in cases where, for one reason or another, it has not been possible to make the language as simple as we would like. Some of these aids are set out below.

Topic specification: purpose clauses and headings

Research has shown that if the overall topic of a written text is specified at the beginning, the text will be easier to understand[16]. If one has an overall picture of the whole proposition in mind, it is easier to see the significance of the parts and the way they relate to each other and it is easier to concentrate on the details. On the other hand, without a topic specifier, the reader has to construct a mental picture by absorbing details one at a time and fitting them together. This makes it much harder to understand the significance of the details before the whole picture is in mind.

Purpose clauses can be excellent topic specifiers. Although a clause setting out the objects of a whole Bill is unlikely to have much value in interpreting the borderline meanings of provisions of the Bill, it can give a good overview of the general purpose of the Bill. However, even that function is limited to some degree because the clause has to be expressed in wide enough terms to cover the whole Bill. On the other hand, a purpose clause at the beginning of a Part of a Bill can be much more specific, and therefore of much greater value in helping the reader to get an overview of the provisions of the Part. This applies even more in the case of a purpose clause at the beginning of a long and complicated section. The Commonwealth is therefore using purpose clauses at the beginning of some Parts, and at the beginning of sections that are particularly long or complicated.

Headings are also excellent topic specifiers. They can be multiplied by gathering together provisions with a common subject matter and placing them in a separate Part, Division,

etc. Also, headings to sections can be multiplied by avoiding the traditional practice of having sections with many subsections. The headings to sections in turn make the table of provisions a more effective outline of the contents of a Bill, and this too is a good topic specifier. Traditionally, the Commonwealth has never used headings to subsections. However, as part of our new approach, we have used them in some rare cases, where we have been obliged for one reason or another to draft a section with a large number of subsections.

Road maps

In a long or complicated Bill, it is useful to include one or more clauses telling the reader how the Bill works, or where to find provisions.

Coherence

The words and sentences in a Bill may be clear, but if the provisions are not properly arranged, the Bill will be more difficult to understand. We are trying to arrange Bills so that the relationship between provisions is as clear as possible. If the reader can see a pattern in the provisions, they are easier to understand because the reader has a mental framework into which information can be fitted as it is absorbed.

Ways of improving the coherence of a Bill include:

. Grouping together provisions that have a common subject.

. Arranging provisions in a temporal sequence, e.g. dealing with the issue of a licence first, then the conditions imposed by the licence, then renewals and finally revocation.

. Expressing similar ideas in provisions of parallel structure.

. Putting general or important propositions first, followed by subsidiary or particular propositions, followed again by exceptions.

Calculations in steps

The traditional way of expressing a calculation is to describe it as a single proposition, e.g. "the sum of ... and ... less the amount by which ... exceeds ...", or in more recent legislation, to use an algebraic formula. However, a complicated calculation can sometimes be expressed more clearly by directing the reader to take a series of steps. The result is a longer text, but it is usually easier to follow than the traditional method.

Definitions

We have made a number of changes in our approach to definitions:

- Apart from definitions for the purpose of single clauses only, definitions are grouped together at the beginning of a Bill. The traditional practice of having some definitions at the beginning of Parts is avoided if at all possible.

- If definitions appear in separate subclauses of a long interpretation clause, or in separate clauses, "sign-posts" referring to them are inserted in the main definition provision, e.g. "`royalty' has the meaning given by section 15".

- In the past, many definitions were drafted in the "referential" form so as to catch grammatical variations. The Acts Interpretation Act now makes this unnecessary in most cases, so wherever possible the "quotes" form is being used in preference to the referential form, as it makes definitions easier to find.

- The traditional style often used colourless terms like "the prescribed amount" or "the relevant amount". We are trying to avoid these terms, and use terms that have some clue to their meaning.

- Defined expressions in "quote" definitions are printed in bold type, as this draws attention to the fact that they exist and makes them easier to find. However, we do not follow the recommendations of some writers on plain English who suggest that wherever a defined term appears in the text it should be identified in a way that indicates that it is defined. So far, we have not found a way of doing this that does not distract the eye and interrupt the text, although in some cases we use notes for this purpose.

The location of definitions gave us a good deal of thought. Traditionally, throughout Australia, definitions have always appeared at the beginning of a Bill. On the other hand, writers on plain English have argued that definitions at the beginning of a Bill create a hurdle for the reader before the reader gets to the substantive parts of the Bill, so they should be placed at the end.

We do not find this argument convincing. There is no advantage in being able to start reading the substantive parts of the Bill on the first page if one has to refer immediately to definitions at the end of the Bill in order to understand the provisions. Moreover, definitions at the end of the Bill are harder to find. We experimented in one case by putting definitions at the end of a Bill, and, because they were very long, the result was that the alphabetical list of definitions began in the middle of the Bill. In our view, placing definitions at the beginning of the Bill has two distinct advantages. First, attention is drawn to them, and secondly, they are very easy to find.

Acronyms and abbreviations

To the traditional style, abbreviations and therefore acronyms were anathema. We are now using acronyms (with appropriate definitions) to avoid frequent repetition of lengthy expressions, e.g. "CFCs" for "chlorofluorocarbons". It is so much the better if the acronyms are used in common speech.

User-friendly algebraic formulae

The traditional approach to formulae is to use the symbols "a, b, c," etc. We have been experimenting with making the symbols more meaningful so that the significance of a formula can be grasped more immediately. Where possible, we are expressing the components in words in bold type (capitalising the first letter of the first word) rather than symbols, e.g.:

... worked out using the formula:

$$\text{Received amount} \times \frac{\text{Commonwealth element}}{\text{Total charge}}$$

where:

"Received amount" means ...
"Commonwealth element" means ...
"Total charge" means ... .

Where length or complexity makes it preferable not to express one or more components in words, we are using letters or combinations of letters as symbols for the components, choosing the initial letters of some of the words in the components. When we do this, we make their significance more clear by including in the definition of each component, immediately after the letters concerned, the relevant words in square brackets, as in the following example:

... worked out using the formula:

$$VP \times \frac{VC}{VP}$$

where:

"VP" [Value of Property] means ...
"VC" [Value of Consideration] means ... .

Graphics

We have adopted the principle that, where appropriate, graphic material will be inserted in Bills. An obvious case is the use of maps to reduce the need for lengthy "metes and bounds" descriptions. Another recent case was a flow-chart to illustrate the procedural steps in obtaining patents.

Examples

In appropriate cases we are including examples of the operation of a provision. These are put in a Schedule to avoid interrupting the continuity of the text. We have amended the Acts Interpretation Act to provide that:

- examples are not intended to be exhaustive; and

- if there is a conflict in meaning between an example and the text, the text prevails.

This was criticised recently by one writer on the ground that an example is worthless if it does not have the same effect as the text. On the contrary, we believe this is missing the point. Our purpose in including examples is not to add precision, it is to help to grasp the meaning and purpose of the text.

Notes

We are putting explanatory notes here and there to draw attention to important definitions or other matter. We do this sparingly, to avoid interrupting the text.

Further Developments

We are continuing to examine ideas, and to generate our own. We are developing a Clear Drafting Manual for the Office, written with the special needs and problems of legislative drafters in mind. We have also arranged for Professor Eagleson, the Plain English expert, to give us a number of seminars.

Examples

Examples of some of these developments are set out in the Attachment to this paper.

Other Australian jurisdictions

So far, I have said nothing about the other drafting offices in Australia, namely the 8 offices of Parliamentary Counsel in the States and Territories, and the Commonwealth Office of Legislative Drafting (which drafts subordinate legislation of the Commonwealth).

Since mid-1986, the Parliamentary Counsel Committee, consisting of the heads of the Commonwealth, State and Territory offices of Parliamentary Counsel, have held regular discussions to exchange views on simpler drafting. From these discussions, the following points have emerged:

. They are fully committed to simple drafting.

. They accept that traditional methods of drafting can lead to unnecessary complexity.

. They are exploring methods of improving drafting style and giving careful consideration to ideas for improvement. They are surveying the scene generally within Australia and overseas and are generating many ideas of their own.

. They have agreed that any proposed innovations in style should be circulated among members for comment before adoption. This is seen to achieve the following purposes:

- better exposure to new ideas;
- better anticipation of difficulties not foreseen by a sponsor of a proposal; and
- greater uniformity in style, but not so as to sacrifice flexibility.

As general principles, they accept the need to organise sentences in the simplest and most logical way, and to practise the main rules of simple writing. They are also discarding conventional forms of legal expression if they can be expressed more simply in a colloquial style.

In addition to the general principles mentioned above, they have also explored other means of making laws easy to understand. Many of the Commonwealth practices listed in this paper are also adopted to varying degree by the different drafting offices. Some are also using methods which the Commonwealth has not yet adopted, namely:

. Use of new technology for better reprinting of laws (the Commonwealth Parliamentary Counsel Office does not reprint laws).

. Use of word-processing packages with in-built programs that criticise complex language.

. Using running headings.

. Experimenting with different styles of numbering, format and indents.

. Experimenting with amending provisions by repealing and re-enacting them as a whole instead of omitting and substituting words and phrases.

The Commonwealth Office of Legislative Drafting also has a positive policy of simple drafting. Although not a member of the Parliamentary Counsel Committee, they have kept in close touch with developments, particularly those of the Commonwealth Parliamentary Counsel. They are presently engaged in re-writing a large set of regulations, from which they hope to gain useful experience in drafting new regulations in a simpler style. They are also making innovative changes in the form of amending provisions.

Conclusion

The drafting offices in Australia are committed to a policy of simplifying their laws. They are also mindful that the laws must have the intended legal effect. This means that drafters must judge from case to case how to reconcile simplicity with precision, so some laws

will still be regarded in some quarters as being too complex. However, there is a definite move towards simplicity, and it is gathering momentum.

References

1. *The Preparation of Legislation*, 1975, Cmnd 6053, Chapter VI, Appendix B.

2. *Motor Traffic Ordinance 1936*, s.112B(1) (on approaching a traffic light with a red arrow pointing at an angle between the vertical and horizontal):

   The driver shall not proceed beyond the road marking applicable in relation to the light in the direction that makes with the direction directly ahead an angle that has approximately the same number of degrees as has the smaller of the angles that the direction in which the arrow is pointing makes with the vertical.

3. This was described as a "barbarism" by Sir Garfield Barwick, then Chief Justice of the High Court. He (together with most legislative drafters) preferred the form "section 23(3)(a)". We preferred the Canadian form.

4. *The Preparation of Legislation, supra* paras 2.8-2.13.

5. See e.g. `The Commonsense of Plain English', *Current Affairs Bulletin*, January 1985; `Plain English in the Statutes', *Law Institute Journal*, July 1985; `What Plain English means for lawyers', *Law Institute Journal*, September 1986.

6. Report No. 9 (June 1987).

7. *ibid*, paras 61-66.

8. *ibid*, paras 67-72.

9. *ibid*, paras 73-79.

10. *The Preparation of Legislation, supra*, para 9.1 ff.

11. *ibid*, para 11.5.

12. *R v O'Connor* [1987] V.R. 496.

13. *Plain English and the Law, supra*, para 65.

14. Section 15AC reads:

   "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.".

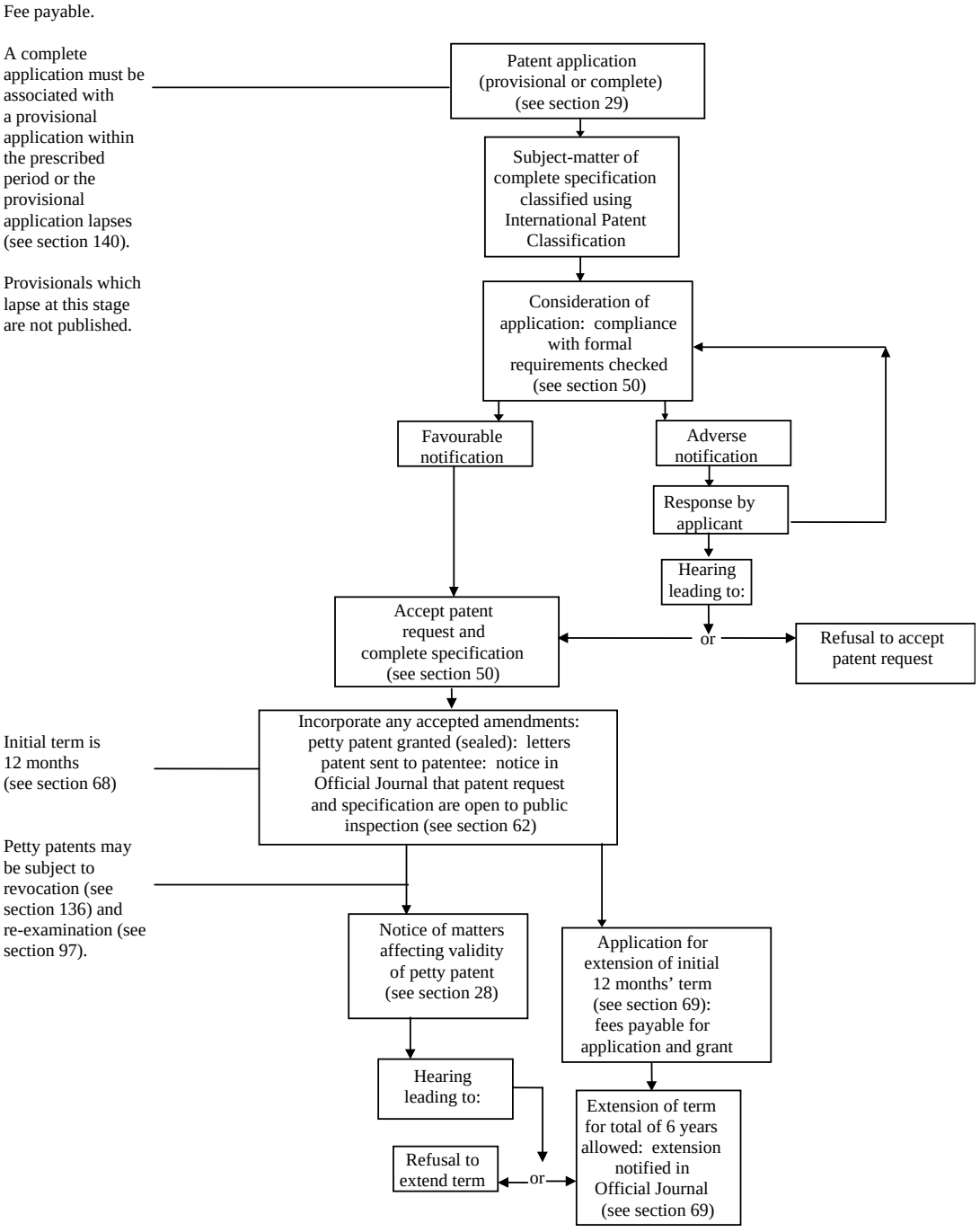
15. *Collector of Customs v Brian Lawlor* (1979) 24 A.L.R. 307.

16. Bransford J.D. & Johnson M.K. (1972) Contextual prerequisites for understanding: some investigations of comprehension and recall, *Journal of Verbal Learning and Verbal Behaviour*, 11, 717-726.

ATTACHMENTS

EXAMPLES OF NEW APPROACH—GRAPHICS

TABLE 2—GETTING AND MAINTAINING A PETTY PATENT



(Patents Bill 1989)

EXAMPLE OF DISTRIBUTION OF SEATS AMONG PARTIES AND INDEPENDENT CANDIDATES

(17 seats to be distributed)

	Party A		**Party B**		**Party C**		**Independent X**		**Independent Y**	
Base number of votes cast	12,000		8,000		5,000		2,800		2,200	
1st rank: base nos. divided by 1	12,000	1st seat	8,000	2nd seat	5,000	4th seat	2,800	8th seat	2,200	12th seat
2nd rank: base nos. divided by 2	6,000	3rd seat	4,000	5th seat	2,500	10th seat	1,400	(see note below)	1,100	
3rd rank: base nos. divided by 3	4,000	6th seat	2,666	9th seat	1,666	16th seat	933	(see note below)	733	
4th rank: base nos. divided by 4	3,000	7th seat	2,000	13th seat	1,250		700		550	
5th rank: base nos. divided by 5	2,400	11th seat	1,600	17th seat	1,000		560		444	
6th rank: base nos. divided by 6	2,000	14th seat	1,333		833		466		366	
7th rank: base nos. divided by 7	1,714	15th seat	1,142		714		400		314	
	7 seats		5 seats		3 seats		1 seat		1 seat	

Note—Independent X can only receive 1 seat, so the quotients on the 2nd and 3rd rank are disregarded.

(Australian Capital Territory (Electoral) Act 1988)

SIMPLE WRITING

Exclusive rights given by patent
13.(1) Subject to this Act, a patent gives the patentee the exclusive rights, during the term of the patent, to exploit the invention and to authorise another person to exploit the invention.

(Patents Bill 1989. For comparison, the old provision is set out below)

Effect of patent
60. Subject to this Act, the effect of a patent is to grant to the patentee the exclusive right, by himself, his agents and licensees, during the term of the patent, to make use, exercise and vend the invention in such a manner as he thinks fit, so that he shall have and enjoy the whole profit and advantage accruing by reason of the invention during the term of the patent.

NOTES, AND BOLDED DEFINITIONS

"**approved activity therapy**" has the same meaning as in the Handicapped Persons Assistance Act 1974 immediately before 5 June 1987;

Note: on 5 June 1987 the Disability services (Transitional Provisions and Consequential Amendments) Act 1986 repealed the definition in the Handicapped Persons Assistance Act 1974.

"**approved training**" has the same meaning as in the Handicapped Persons Assistance Act 1974 immediately before 5 June 1987;

Note: on 5 June 1987 the Disability services (Transitional Provisions and Consequential Amendments) Act 1986 repealed the definition in the Handicapped Persons Assistance Act 1974.

"**independent living training**" means training to assist persons with disabilities to develop or maintain the personal skills and self-

(Social Security Bill 1990)

NON-SPECIFIC TAX DRAFTING

Tax-related expenses
"69 (1) Subject to this section, expenditure (other than expenditure of a capital nature) incurred by the taxpayer on or after 1 July 1989, to the extent to which the expenditure is in respect of a tax-related matter, is an allowable deduction for the year of income in which the expenditure is incurred.

(Taxation Laws amendment Act (No. 5) 1990. The underlined words were a general statement of a set of very long, detailed policy instructions.)

Entitlement to rebate

"159SA. If the assessable income of the taxpayer of the current year includes eligible assessable income, the taxpayer is entitled to a rebate of tax in the taxpayer's assessment for the current year of such amount (if any) as is necessary to ensure that the rate of tax on a rebatable amount specified in Table 1 or 2 does not exceed the applicable rate of tax specified in the table concerned.

(Taxation Laws Amendment (Superannuation) Act 1989. The underlined words expresses a concept that, in the traditional style, needed 4 pages of print, of which 3.5 pages consisted of definitions.)

PURPOSE CLAUSES

General application of Part in relation to corporate trust estates

"160ARDA(1) The object of this Division is to provide for the application of this Part in relation to corporate trust estates and current corporate trusts.

(Taxation Laws Amendment Act (No. 2) 1987)

Car substantiation rules

65D The object of this Division is to set out the substantiation rules that apply for the purposes of section 19,24,44 and 52 in relation to cars held by recipients of fringe benefits.

(Taxation Laws Amendment (Fringe Benefits and Substantiation) Act 1987)

Objects of the Part

202 The objects of this Part are, by means of the establishment of a system of tax file numbers:

(a) to increase the effectiveness and efficiency of the matching of information contained in reports given to the Commissioner under this Act or the regulations with information disclosed in income tax returns by taxpayers;
(b) to prevent evasion of liability to taxation under the laws of the Commonwealth relating to income tax; and
(c) to facilitate the administration of any legislation enacted by the Parliament under which benefits are provided by the Commonwealth to students in relations to contributions payable by students to institutions of higher education towards the cost of providing courses of study at those institutions.

(Taxation Laws Amendment (Tax File Numbers) Act 1988)

Objects of Part

70 The objects of the Part are:

(a) by providing for a system of class licences for value added services and private network services:
(i) to regulate the supply of value added services in such a way that they do not infringe the carriers' exclusive rights to supply reserved facilities and services;
(ii) to permit and safeguard a fair and efficient market in the supply of value added services and to ensure that the supply of value added services is open to full competition; and
(iii) to regulate the supply of private network services in such a way that they are used only in the supply of telecommunications services on a private basis;

(b) to ensure the proper use of telecommunications networks in the supply of value added services and private network services; and
(c) to provide safeguards against the carriers using their exclusive rights to supply reserved facilities and services in a way that gives them an unfair competitive advantage in the supply of value added services.

(Telecommunications Act 1989)

Objects of Part

10.01. (1) The principle objects of this Part are:
(a) to ensure that Australian exporters have continued access to outwards liner cargo shipping services of adequate frequency and reliability at freight rates that are internationally competitive;
(b) to promote conditions in the international liner cargo shipping industry that encourage stable access to export markets for exporters in all Sates and Territories; and
(c) to ensure that efficient Australian flag shipping is not unreasonably hindered from normal commercial participation in any outwards liner cargo shipping trade.

(Trade Practices (International Liner Cargo shipping) Amendment Act 1989)

Objects of Part

105. The objects of this Part are:
(a) to provide for AUSTEL to determine technical standards for customer equipment, and for customer cabling, being standards relating to:
(i) protecting the integrity of telecommunications networks and the safety of persons working on, or using services supplied by means of, telecommunications networks;
(ii) ensuring the interoperability of customer equipment, or customer cabling, with a telecommunications network to which it is connected; and
(iii) ensuring compliance with recognised international standards concerning the interfacing of customer equipment or customer cabling to telecommunications networks;
(b) to provide for directions to be given by the Minister to AUSTEL about the issuing of permits or cabling licences;
(c) by providing for a system of permits for connection of customer equipment to telecommunications networks, to ensure that all customer equipment so connected complies with:
(i) technical standards determined by AUSTEL under this Part; and
(ii) directions given by the Minister under this Part; and
(d) by providing for the licensing of persons engaged in the supply, installation and maintenance of customer cabling connected to telecommunications networks, to ensure that all customer cabling so connected complies with:
(i) technical standards determined by AUSTEL under this Part; and
(ii) directions given by the Minister under this Part.

(Telecommunications Act 1989)

DIRECTIONS ON HOW THE ACT WORKS, ETC.

Order of provisions/structure of Parts

2.1A.1. (1) In each Part dealing with a pension, benefit or allowance, this is the order in which the provisions are presented:

(a) qualification provisions (who is entitled to the payment);
(b) claim provisions (how a claim is made);
(c) rates provisions (how much the payment will be);
(d) payment provisions (how the payment be made and when will it commence);
(e) recipient obligations provisions (what does the recipient need to do);
(f) variation and termination provisions (when can payment and rate be reviewed or changed);
(g) bereavement payments (payments available t people receiving that pensions, benefit or allowance).
(h) fringe benefits (concessions available to people receiving that pension, benefit or allowance).

(2) Other relevant provisions are referred to in notes at the bottom of key provisions in the Part.

(Social Security Bill 1990)

Location of definitions

3. (1) Section 4 contains definitions of expressions used throughout this Act (including Part X).

(2) Section 56 contains definitions of expressions used only in Part X.

(3) Some sections also contain, at the end, special definitions for the purposes of those sections.

(Australian Capital Territory (Planning and Land Management) Act 1988)

What are the barrier controls for goods?

6E. In brief outline, the barrier controls for goods are as follows:

(a) section 15 renders goods arriving from overseas subject to quarantine control;
(b) incoming goods are subject to inspection under section 31 before they leave the ship or aircraft on which they arrived;
(c) all movement of goods that are subject to quarantine control is under the control of quarantine officers (section 33);
(d) section 37B provides for the release from quarantine control of goods that are found not to be quarantinable;
(e) if goods are found to pose a significant quarantine risk, they may be ordered into quarantine (section 38);
(f) section 41 describes the ways in which goods may be quarantined;
(g) in cases where the treatment is not effective or is not possible, goods may be destroyed (section 41D);
(h) quarantined goods are released from quarantine control when a quarantine officer is satisfied that they do not pose a significant quarantine risk (section 41D);
(j) as with ships and aircraft, goods may be released under quarantine surveillance if, though the goods may quarantinable, their release is not likely to result in the spread of a disease or pest (section 43);
(k) when goods are released under quarantine surveillance, the owner is required to obey any directions by a quarantine officer regarding the handling of the goods (subsection 43(5)).

Effect of barrier control on humans

6F (1) Human quarantine is dealt with by the Human Quarantine Act 1990. However, humans are also affected by the agricultural quarantine system.

(2) The principal effects of the barrier controls arise from sections 30A and 30B.

(3) Under section 30A, a person arriving in Australia can be required to complete and sign a quarantine card.

(4) Section 30B authorises a quarantine officer to require an arriving person to hand over items of clothing, ornament or footwear for inspection. If necessary, the items may be treated to eliminate any risk of the presence of a quarantinable disease or pest. The section also applies to anything carried by the person (including baggage).

(Agricultural Quarantine Bill 1990)

"Division 3A—Permitted Buy-backs of Shares
"Subdivision A—How this Division Works

Outline of Structure

"133AA(1) Subdivision C creates exceptions to the section 129 prohibition on a company acquiring its own shares or interests in its own shares.

"(2) These permitted acquisitions of ordinary shares are called "buy-backs' a term defined in subdivision B along with most of the Division's other terminology.

"(3) Buy-backs are permitted subject to:

(a) a condition prescribed by subdivision D, which applies to all buy-backs of shares; and

(b) conditions prescribed by subdivisions E, G, H, J. L, M AND N, each condition applying to a specified kind of buy-back.

"(4) Subdivision F prescribes no conditions, but sets out what a buy-back scheme is and contains rules about such schemes. Buy-back schemes are central to many provisions of the Division.

"(5) Each of the subdivisions prescribing conditions contains:

(a) at least one condition, usually only at the beginning of the subdivision, but in the case of subdivision L also at the end; and

(b) ancillary provisions about the subject matter of the condition or conditions.

(Co-operative Scheme Legislation Amendment Act 1989)

Steps in acquisition by compulsory process

20. (1) The principle steps in an acquisition by compulsory process are:

(a) the making of a pre-acquisition declaration under Part V;

(b) any reconsideration or review of the pre-acquisition declaration under Part V; and

(c) the making of an acquisition declaration under Part VI.

(Lands Acquisition Act 1989)

READER'S GUIDE

This Guide is intended to help you work out where you need to look in the Act to find the information you need. The Guide explains how the Act is arranged and how things like the Table of Part, the definitions and the notes can help you in reading the Act.

1. Use of Tables of Parts and Provisions to find your area of interest.

The Table of Parts (which is to be found straight after this Guide) is a general list of the contents of the Act. The Table of Provisions (which comes after the Table of Parts) is more detailed—it lists every section in the Act.

2. The Act is divided into 7 Chapters.

Chapter 1 is introductory and contains definitions.

Chapter 2 deals with each type of pension, benefit or allowance under the Act.

(Social Security Bill 1990. Note: The Guide is 3 pages long. It was thought necessary in addition to the usual Table of Provisions because the Bill is over 800 pages long.)

CALCULATING BY STEPS

LUMP SUM CALCULATOR

This is how to work out the amount of the lump sum:

Step 1.	Work out the person's family allowance rate on the pension payday immediately before the first available payday: the result is called the continued rate. Note: section 2.15.91 applies in working out the amount of this instalment because the payday on which it is payable is within the bereavement rate continuation period.
Step 2.	Work out the rate that would have been the person's family allowance rate on the payday immediately before the first available payday if the person's family allowance rate were not calculated under section 2.15.91: the result is called the **new rate**.
Step 3.	Take the new rate away from the continued rate: the result is called the **deceased child component**.
Step 4.	Work out the number of pension paydays in the lump sum period.
Step 5.	Multiply the deceased child component by the number of pension paydays in the lump sum period: the result is the amount of the lump sum payable to the person under this section.

(Social Security Bill 1990)

SHORT SECTIONS, MORE HEADINGS, USE OF DEFINITIONS TO SHORTEN SECTIONS, USE OF POSSESSIVE CASE

Profit and loss account

292. A company's directors shall, before the deadline after a financial year, cause to be made out a profit and loss account for that financial year that gives a true and fair view of the company's profit or loss for that financial year.

Balance-sheet

293. A company's directors shall, before the deadline after a financial year, cause to be made out a balance-sheet for that financial year that gives a true and fair view of the company's state of affairs as at the end of that financial year.

(Corporations Act 1989)

For comparison, corresponding provisions of the *Companies Act 1981* are set out below.

Notes:

- The new provisions are a Division with 9 short sections, each with its heading. The old ones were a single section that consisted of 10 subsection and had one heading.

- The word “deadline” (defined in section 3) in the new provisions replaced the long phrase used 8 times in the old provisions.

- Using the possessive case shortens the language.

Profit and loss account, balance-sheet and group accounts

269 (1) The directors of a company shall, not less than 14 days before an annual general meeting of the company, or if no annual general meeting of the company is held within the period within which it is required by section 240 to be held, not less than 14 days before the end of that period, cause to be made out a profit and loss account for the last financial year of the company, being a profit and loss account that gives a true and fair view of the profit or loss of the company for that financial year.

(2) The directors of a company shall, not less than 14 days before an annual general meeting of the company, or if no annual general meeting of the company is held within the period within which it is required by section 240 to be held, not less than 14 days before the end of that period, cause to be made out a balance-sheet for the last financial year of the company, being a balance-sheet that gives a true and fair view of the state of affairs of the company as at the end of that financial year.