Plain English
A solution for effective communication

John Pease
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Introduction

In this paper, I discuss:

- The history of legal writing and the emergence of plain English
- Why you should write in plain English
- How to write in plain English.

As lawyers, what we do most is write – Abraham Lincoln said that a lawyer’s time and advice are his stock in trade, but we express the advice in words. And we use our time in drafting, in communicating via the written word. Sometimes, though, we overlook the first object of writing ... to communicate.

Lawyers no longer communicate only to lawyers. Parliamentary counsel no longer write for a small educated elite. The public and the profession are becoming increasingly intolerant of archaic and unnecessarily complex legal language.

But the challenge is not unique to the legal profession. Not only is poor legal language losing lawyers their clients, but businesses that use archaic language in their documents are losing customers to those who do not. The failure to use plain language costs society as a whole an inordinate amount of time and money. Poor legal language brings the profession, and the law itself, into disrepute.

Many in the legal profession and the wider business community have found plain language to be economic and a good marketing tool. The use of plain English saves everyone time and money and makes the law directly relevant to those who are affected by it.

But the legal profession is faced with a challenge. How can the law be expressed so that it is readily understood? How can the message contained in agreements, wills, letters, briefs, opinions, judgments, and legislation be communicated in the clearest possible way?

The premise behind the plain English movement is that legal documents ought to be plainer – and more comprehensible – to the average person. With such a goal, it is hard to imagine how even the movement’s sternest critics could suggest that plain English is anything but an aid to effective communication.

Does plain English provide all the answers? As this paper will discuss, no it doesn’t, but plain English goes a long way to ensuring that our communication is not a one way transfer of information without any understanding by the recipient.

So where did we learn the ‘art’ of legal writing? Grammar has long been abandoned as part of primary and secondary school syllabuses, although, we did benefit from reading good examples of literature during these years. Then it all fell apart at law school where we read turgid judgments from the 1800’s or earlier, law review articles, legislation and contracts written in English that was virtually impenetrable in its own time, let alone several decades later!
We are also facing a communications revolution. While many lawyers are still adapting to the benefits (and burdens) that email provides, now we are faced with the new social media, Facebook, Twitter and the like. The pace of change in communications media is staggering:

- It took 38 years before radio reached an audience of 50 million people
- It took 13 years for TV to cross the 50 million mark
- The internet reached this benchmark in four years
- Facebook reached more than 100 million users in less than nine months

On Twitter, the combined number of people following Ashton Kutcher and Ellen Degeneres is more than the population of several countries, including Ireland and Norway¹. On the subject of Twitter, a regional UK newspaper reported in early 2011 that a lawyer had launched one of the first Twitter law firms in the UK @thelegaloracle to make law more accessible to people. The lawyer anticipated that the service “could open the legal world up to a new generation.” The Twitter feed was to be manned by solicitors who would provide free professional advice in 140 character tweets. It was acknowledged that it may be difficult to solve an entire case without legal representation, but the service will save people time and money in legal consultation fees.

Information is being exchanged just as rapidly

- On average, 1.5 million pieces of content are shared every day on Facebook alone
- On YouTube, 24 hours of video is uploaded to its site every minute.

Social media applications on smartphones mean that users can share experiences and information anywhere, anytime with nearly anyone. Social media is no longer regarded as the tools of kids and bloggers. A recent US survey revealed that:

- Seventy-eight per cent of private practice lawyers and 71% of in-house counsel have joined an online social network
- Twenty-three per cent of private practice lawyers and 20% of in-house counsel use their online social network for professional purposes².

What is plain English?

Plain English refers language that is clear, direct, and straightforward. It is language that avoids obscurity, inflated vocabulary and convoluted sentence construction. It is language that allows readers to concentrate on the message conveyed, not on the difficulty of the language used. Plain English uses the right word for the right occasion and does not use unnecessary words.

The main goal in writing is to put your message across clearly and concisely. Readers want an effortless, readable and clear writing style. Plain English is clear English – it is simple and direct but not simplistic.

¹ Source: www.socialnomics.com.
Professor Eagleson is a leading Australian advocate for the use of plain language. In 1988 he described plain English as:

‘Plain language’ is the opposite of obscure, convoluted, entangled language. It’s the opposite of language that takes a lot of effort and energy to understand and unravel. Plain language should not be equated with ‘simple’ in the sense of simple minded. Nor should it be equated with ‘simple’ in the sense of childish or broken language – a kind of pidgin. Nor should it be equated with ‘simple’ or ‘simplified’ in the sense of a reduced document that only gives part of the message ...

Plain language, on the contrary, makes use of the full resources of the language. It’s good, normal language that adults use every day of the year. It lets the message come through with the greatest of ease. That’s the best definition and the best way we should look at plain language.³

Communicating in plain language includes careful presentation of text. Good text presentation will incorporate the latest techniques to help understanding and avoid things that hinder comprehension. The result then is a text that is well organized with a typestyle, layout, page colour, line length and indentations all designed to communicate the message of the text in the clearest possible way.

Plain language is not part of the debate over whether legislation should be detailed, attempting to cover every foreseeable situation, or expressed using statements of principle only, leaving it to the court to apply the principles to situations as they arise. Plain language should be used whichever drafting approach is favoured.

Newspapers such as the Financial Times; magazines such as The Economist, Time and Newsweek; and best-selling books use the straightforward, plain English style. Why? Because professional writers and editors know a clear style helps their readers understand and absorb the information presented. Around 90% of the newspaper subeditor’s time spent improving an article for publication is cutting, simplifying and rearranging the words into a clearer style.

In its 1987 report, the Victorian Law Reform Commission noted:

The plain English movement does not require that laws always be drafted in such a way as to make them intelligible to the average citizen. However, it does require that every effort be made to make them intelligible to the widest possible audience. There is no justification for the defects in language and structure which ... sharply reduce the range of people who are capable of comprehending a document. Many legal documents are written in such a way that not only the people to whom they are directed, but also judges and skilled lawyers have extreme difficulty in comprehending them. In such a case, it is not unfamiliarity with the subject matter or a lack of technical knowledge which causes the problem; it is the language and structure of the document itself. These should be improved, not in the hope of making the document intelligible to the average citizen, but in order to make it intelligible - and immediately intelligible - to as many of those as possible who are concerned with the relevant activities⁴.

Conversely, legalese was once defined as "the language of lawyers that they would not otherwise use in ordinary communications but for the fact that they are lawyers"⁵.

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³ The Case for Plain Language - Robert Eagleson’s Address at Osgood Hall 15 July, 1988, published by the Canadian Law Information Centre, Toronto, Ontario, Canada.
⁴ Victorian Law Reform Commission, Plain English and the Law, report No. 9 (June 1987; reprinted 1990), page 45, [71].
Linguists identify legalese as a distinctive dialect. One reason this has come about is that legalese has not evolved in step with modern English. Language is constantly evolving with daily usage. But legal language has been conservative and somewhat static. In particular, legalese:

- Uses out-dated grammar and sentence structures. It also tends to use improper or non-standard punctuation, passive voice and awkward pronoun references
- Is wordy, turgid, and impersonal
- Suffers from the use of archaic vocabulary and an excessive use of jargon and technical terms without providing the definitions that the layperson requires
- Has some genuine legal terms of art, although fewer than you might think. Professor Robert Benson defines them in a question: "Does the term have an uncontroversial core meaning that could not be conveyed succinctly in any other way?" Benson suggests that there are less than 100 genuine legal terms of art. Once again, terms of art should be explained for the layperson.
- Uses everyday words while giving them extraordinary connotations and meanings without defining those special meanings
- Clings to foreign words, especially French and Latin.

The point is that legalese is an outmoded legal institution that law schools teach us to use. Legalese is a block to communication with clients and has made lawyers the butt of jokes for centuries. So why does it still persist?

It’s been a long journey ...

The plain English (or plain language) movement is generally considered to have emerged in the mid-1970’s. It is said to have developed in response to consumers’ demands for documents they could understand, and the recognition by governments and commercial institutions that plain language brings efficiency and economic benefits.

However, the movement’s pedigree dates back for centuries. People have objected to (and mocked) the obscurity and impenetrability of legal language for many centuries (Chaucer and Shakespeare being notable examples).

But it wasn’t just poets and playwrights who made light of legal language. For example, Jeremy Bentham, the famous jurist and philosopher was highly critical of the language of lawyers as "excrementitious matter" and "literary garbage." Bentham also argued that plain legal language is essential to proper governance: "Until, therefore, the nomenclature and language of law shall be improved, the great end of good government cannot be fully attained."

The early English experience

The quest for plain English in legal writing has been around since at least the fourteenth century. Actually, the first battle was just to get lawyers to write in English, period.
With the Norman conquest of England in 1066 came Norman French and the desire of the conquerors that their subjects learn a new language. French became the language of the elite, including the bench and bar. It was tough going for the locals. Although Norman French and Latin became the language of the law and government, it seems that the Norman nobles had a preference for English wives. And those wives continued to teach their children English. By 1360, pretty much everyone in Britain had switched back to English – except judges and lawyers, who kept conversing in French and reading in Latin.

The result, over time, is that English and Norman French were used together with many Norman words being adopted as part of the English language.

While all this was going on the scribes of the day had a problem. They wanted to be sure that transactions were effective – but how could they achieve that with a language in transition and a population that clung to English? The answer was simple ... use two or three words instead of one. Use the Norman word, the English word, and if necessary the Latin as well.

And so were born the couplets and triplets we know so well:

<table>
<thead>
<tr>
<th>The old English</th>
<th>... and ...</th>
<th>French</th>
<th>... and ...</th>
<th>Latin</th>
</tr>
</thead>
<tbody>
<tr>
<td>acknowledge</td>
<td>and confess</td>
<td>act</td>
<td>and deed</td>
<td>peace</td>
</tr>
<tr>
<td>breaking</td>
<td>and entering</td>
<td>final</td>
<td>and conclusive</td>
<td>and quiet</td>
</tr>
<tr>
<td>free</td>
<td>and clear</td>
<td>goods</td>
<td>and chattels</td>
<td>save</td>
</tr>
<tr>
<td>The French</td>
<td>... and ...</td>
<td>The English</td>
<td>... and ...</td>
<td>... and ...</td>
</tr>
<tr>
<td>peace</td>
<td>and quiet</td>
<td>will</td>
<td>and testament</td>
<td></td>
</tr>
<tr>
<td>save</td>
<td>and except</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Obscurity, longwindedness and convoluted language were also helped along by legal scriveners who were paid by the word. It was they who padded their pay by using *said*, *aforesaid*, *herein*, *hereof*, *hereinafter*, *hereunder*, *hereinbefore*, *wherein*, *whereon*, *whereas*, *therein*, *thereon*, *therefore* and the like, *ad nauseam*. Even now there seems to be a concern that if a document, a contract or a decision is not long enough, clients or the parties will feel they didn’t get their money’s worth.

Parliament tried to set things right by enacting the Statute of Pleading in 1362\(^6\). The statute recited that French was much unknown in the realm and therefore required that all pleas be "pleaded, shewed, defended, answered, debated, and judged in the English Tongue". Funnily enough, the statute was written in French.

This was the first of three attempts to change the language of the law by statute.

The second attempt was a statute promoted by Cromwell's parliament in 1650, "... for turning the Books of the law,... into English". It was principally aimed at court proceedings, but included a requirement that "statutes... shall be in the English tongue". It was not happily received by the legal profession and was repealed in 1660 following the Restoration.

The third attempt to change the language of the law to English was legislation passed in 1731 requiring that all court proceedings and statutes:

... shall be in the English tongue and language only, and not in Latin or French... and (court proceedings) shall be written in such a common and legible hand and character, as the acts of parliament are usually engrossed in...  

Two years later, that law was partially repealed, due to all the French phrases that just would not go away and endured for decades to come, for example voir dire, estoppel and demurrer.

In the sixteenth century, Sir Edward Coke actually defended the continued use of French on the ground that the laws must be kept out of the reach of the general public “... lest the unlearned by bare reading . . . might suck out errors, and trusting in their conceit, might endamage themselves ...”. Five hundred years later, one could argue that the public might be willing to risk a little endamage for the sake of comprehensible legal writing!

That’s the thing about legalese: it has been remarkably resistant to change. One would think that in the sixteenth century when King Edward VI asked that “the superfluous and tedious statutes [be] made more plain and short so that men might better understand them”, lawmakers would have paid attention. Instead, statutes got longer and more complicated, while generations of legal reformers throughout the English-speaking world slowly chipped away at the wordy edifice of the law. Indeed, it took 700 years of passing legislation before the United Kingdom parliament broke up its legislation into sections and put in some headings. Before that it was margin to margin solid blocks of text.

**The United States**

Progress was no better across the Atlantic! John Adams criticised legal language and the "useless words" in the colonial charters. He hoped that "common sense in common language" would become fashionable.

Thomas Jefferson, the American architect and lawyer, best remembered for his contribution to the United States Declaration of Independence complained in a letter written in 1817 about lawyers who had a habit of:

... making every other word a 'said' or 'aforesaid' and saying everything two or three times, so that nobody but we of the craft can untwist the diction and find out what it means.  

Jefferson was equally critical of statutes which from ...

... their verbosity, their endless tautologies, their involutions of case within case, and parenthesis within parenthesis, and their multiplied efforts at certainty by saids and aforesaid, by ors and by

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7 Mellinkoff: footnote no. 6, at 126-127.
ands, to make them more plain, do really render them more perplexed and incoherent, not only to common readers, but to lawyers themselves.

In 1936 Professor Fred Rodell of the Yale Law School launched a one-man crusade against legalese with the observation that there “are two things wrong with almost all legal writing. One is style. The other is content. That, I think, about covers the ground.”\footnote{F Rodell: \textit{Goodbye to Law Reviews}, (1936) 23 Virginia. L. Rev. 38, reprinted (1999) 73 ALJ 593.} Three years later Rodell published a book advocating that every law (including all of the common law) be “written so that its meaning is plain for all to read”\footnote{F Rodell: \textit{Woe Unto You, Lawyers!} (2nd ed. 1957), available at \url{http://www.constitution.org/lrev/rodell/woe unto you_lawyers.htm}.} Rodell’s proposal did not persuade many lawyers, although that may have something to do with the fact that he also suggested abolishing the legal profession.

The first plain English documents started appearing in the United States in 1975 and reform began in earnest in 1978 when President Carter signed executive order 12044, which required plain language in federal regulations. Popular resentment against legalese was at high tide, partly due to Ralph Nader’s 1977 article, “Gobbledygook.” Under the new executive order, bureaucrats were admonished to make all new regulations “as simple and clear as possible.” Somehow, Carter’s order was given the same priority as King Edward VI’s directive – nothing much happened for the next 20 years!

In 1998, then-Vice President Gore announced a new requirement (part of the ‘reinventing government’ campaign) that federal agencies write in plain English. The government even established a ‘\textit{No Gobbledygook Award}’ to honour agencies that actually complied with the initiative.

More recently, the US Securities and Exchange Commission reported considerable success in getting insurance and securities lawyers to discard the old style of prospectus, which often included sentences of 60 to 100 words (by contrast, scientific prose has an average sentence length of 27.6 words). Hard to believe, but suddenly companies are issuing prospectuses that might actually be read by investors.

In addition, a growing number of US states now require consumer contracts to be written in plain language – often by imposing very specific guidelines in terms of sentence and paragraph length. Many of these guidelines are based on readability tests, such as the Flesch Reading Ease test. Florida requires that insurance policies receive a minimum score of 45 on the Flesch test (100 being very clear and 0 being very unclear). To put that in perspective, the US \textit{Social Security Act} received a negative 130 on the Flesch test, while the \textit{Ethics in Government Act} weighed in at negative 219. So, a score of 45 is a pretty ambitious goal for insurance companies.

A number of recent studies that have underscored the benefits of plain English communications.

\begin{itemize}
  \item A 2005 study which compared plain English court forms to traditional court forms and concluded that the plain English forms were much easier for readers to understand\footnote{J Kimble, \textit{Writing for Dollars, Writing to Please: The Case for Plain Language in Business, Government, and Law}, (2012: Carolina Academic Press, Durham, North Carolina), pages 148-149.}.
\end{itemize}
A 2006 study of a project by the Arizona Department of Revenue to rewrite its standard form letters in plain English found that this resulted in fewer queries, decreased processing times and improved response rates\(^{13}\).

A 2007 study of Security and Exchange Commission filings concluded that the filings have become “increasingly more readable” since plain English guidelines were introduced in 1998 and that, as a result, investors who did not have a formal market education were more likely invest\(^{14}\).

A survey conducted in 2009 by Siegel+Gale found that “65% of customers find investment prospectuses ... extremely difficult to understand” and that “84% [of customers] are more likely to trust a company that uses jargon free language in its communications”\(^{15}\).

A 2011 study asked law firm clients (and their friends and other contacts) to read content written in plain English and legalese. Around 80% of the respondents preferred the plain English versions\(^{16}\).

More recently, Congress has passed the *Plain Writing Act* of 2010. It requires federal government agencies to write certain types of documents (for example documents providing information about government services) in clear, concise and well organised writing\(^{17}\).

Further, the *Plain Regulations Act* of 2012 is currently before Congress (but it is yet to be passed). That Bill requires federal government agencies to write any new or substantially revised government regulations in clear, concise and well organised writing\(^{18}\).

**United Kingdom**

Back 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 relation to legislative drafting.

And then in 1979 the *Plain English Campaign* was established when a Liverpool woman (founder Chrissie Maher OBE), who was fed up with unintelligible government forms, publicly shredded hundreds of official documents in Parliament Square, London. Her Majesty’s government seems to have been sufficiently embarrassed; it soon began systematic revision of its forms. By late 2009 the campaign had over 12,000 members in 80 countries and its Crystal Mark appeared on more than 18,300 documents (signifying that a document is written in plain English).

The English courts were not to be left behind. In 1999 new rules of civil procedure were implemented that received a fair amount of press attention because they had abolished some time-honoured legal terms for modern equivalents. A subpoena is now a witness summons, an ‘in camera’ hearing is now a private hearing, and a writ is now a claim form. Even the venerable term plaintiff has been replaced by claimant.

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\(^{13}\) Footnote no. 12, pages 116-117.  
\(^{14}\) Footnote no. 12, pages 163 -166.  
\(^{15}\) Footnote no. 12, pages 24-25.  
\(^{16}\) Footnote no. 12, page 143.  
\(^{17}\) [http://centerforplainlanguage.org/resources/plain-writing-laws/](http://centerforplainlanguage.org/resources/plain-writing-laws/)  
Australia

Whilst these early movements did not have much impact on Australian legislative drafting, the plain English movement received impetus in other fields from the work of Professor Robert Eagleson, former Professor of English at the University of Sydney. In 1985 the Commonwealth government engaged him to revise the forms for social security claims and income tax returns. He also helped the NRMA to produce a plain English insurance policy, the first of its kind in Australia. Professor Eagleson also published a number of articles on plain English19.

Never wanting to be outdone by its northern neighbour, in May 1985 the Victorian Attorney-General 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’, together with a drafting manual and plain English versions of the Companies Takeovers Code, a Magistrate’s Court summons and a number of other legal documents20. The report argued that legal documents, and statute law in particular, should be written in a style called "plain English". It further argued that this style is compatible with precision21, can express complex policy22, and takes less time than the traditional style23.

The Australian government gave its full support to the growing plain English movement in 1983, when it introduced the ‘Plain English and Simpler Forms Program’ and in 1990, International Literacy Year, the government launched several initiatives to promote the use of plain English in all sectors.

The Centre for Plain Legal Language was established at the University of Sydney in 199124 and was one of the few organisations in the world devoted to researching the use of plain English. It also promoted the use of plain language in all legal and administrative documents. The centre has since been wound up.

In 1993 the federal Attorney-General’s Department began the Corporations Law Simplification Program. The program (now run by the Department of the Treasury) aims to improve the language, layout and structure of the Corporations Law which has been widely criticised for being excessively long, complex and inconsistent. Many in the field suggested that, rather than simplifying the statute, the program has made it even more lengthy and complex! As we all know, the program was disbanded in 1997.

20 See footnote no. 4.
21 Footnote no. 20, at [61-66].
22 Footnote no. 20, at [67-72].
23 Footnote no. 20, at [73-79].
24 Further details of the centre’s work is available at www.plainlanguage.org.
In 1996 the National Board of Employment, Education and Training published ‘Putting it Plainly’
25. Produced by the Australian Language and Literacy Council, the report covers plain
English policy and practice in the public and private sectors.

In 1996, Mills and Duckworth26 published a study based mainly on their research into the
introduction of a new, plain English divorce application form in the Family Court of
Australia. The study concluded that using plain English forms can lead to:

- Less effort and trouble in understanding the form
- Time saved in completing the form
- Once the completed form is submitted, a reduced need to amend, clarify or extend the
information tendered in the application27.

They also found that the benefits are much greater for first time users of the forms. People
who were familiar with the old forms took longer to adapt to the new forms28.

This paper is available online at http://www.clarity-international.net/reading.html.

Viewed in this historical context, campaigns for plain English begin to look like the triumph
of hope over experience.

But if you think plain English is an uphill struggle, compare it with the campaign for plain
Japanese. In Japan, there are three writing systems, namely:

- Kanji – characters which are an ancient Chinese writing style but which have been
adopted in Japan over time
- Katakana – introduced by the Americans after World War II to describe foreign
concepts, for which there were no ancient Chinese characters such as television, hot
dogs and Australia
- Hiragana – used for grammatical purposes, such as to conjugate verbs and to reduce the
number of kanji in regular use.

Historically, most statutes were written in kanji meaning that many Japanese laws remained
written in Chinese characters which were no longer in regular use in Japan. It was only in
recent decades that the Tokyo authorities even began translating some of the more important
codes into modern Japanese which can be read and understood.

To paraphrase Potter Stewart, a former Associate Justice of the US Supreme Court, plain
English is similar to pornography … you know it when you see it, but it is difficult to define.

25 The DEST website provides a useful resources of plain English tips and guides: – see
Foundation of NSW. This paper is available online at http://www.clarity-international.net/reading.html.
27 See footnote no. 26, page 68.
28 See footnote no. 26, page v.
Why plain English makes sense

So what's the point in getting rid of a few shalls, a couple of provided thats, an and/or or two, and breaking up some sentences?

Respect for the law

In 1983 Lord Diplock said:

... absence of clarity (in legislation) is destructive of the rule of law; it is unfair to those who wish to preserve the rule of law; it encourages those who wish to undermine it.29

There need be no greater motivation for the use of plain language than to strive for clarity in the law for the benefit of society as a whole. But there are more direct – and tangible - benefits.

It is required by law

- Prospectuses are required to be presented in a “clear, concise and effective manner”30. ASIC felt this was not sufficient regulation and so in November 2011 released regulatory guide 228, which includes recommendations to “avoid overusing definitions” and “use short sentences”. The release of the regulatory guide including these instructions would seem to imply that prospectuses are not often written in an adequate manner31.

- The Legal Profession Acts require written costs disclosures to “be expressed in clear plain language”32.

- The National Credit Code requires credit contracts, mortgages and guarantees to be “easily legible” and “clearly expressed”33.

- Under the Australian Consumer Law, an unfair term in a standard form consumer contract is void. In determining whether a term is unfair, the court must take into account “the extent to which the term is transparent”. A term is transparent if it is, among other things, “expressed in reasonably plain language”34.

For more examples and discussion see Asprey35 pages and Butt and Castle36.

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29 Merkur Island Shipping v Laughton [1983] 2 AC 570.
30 See section 715A of the Corporations Act.
31 Corporations Act, section 1013C(3)
32 For example, the Legal Profession Act 2004 (NSW), section 315(1)(a).
33 National Consumer Credit Protection Act 2009 (Cth), schedule 1, section 184(1)(a) and (c).
34 Competition and Consumer Act 2010 (Cth), schedule 2, section 24.
Plain English saves time

Writing plainly saves time for both writer and reader. Obviously, if the central message of a text comes through quickly and clearly the reader will grasp what is being said at the first reading instead of the third.

Rewriting legal documents in plain language virtually guarantees the document will become shorter. Think of the efficiency in not having to read extra words – not just once but every time anyone reads the document. Plain language documents do not necessarily mean shorter documents – sometimes a longer explanation is needed to explain a complex subject. However, most legal documents have so many wasted words, most would be significantly reduced by a plain language rewriting, usually by more than 20%.

Saving time for a reader happens not just once, but each time the text is read by each person reading it. Cumulatively, the saving of time is staggering. And of course time saved can be put to other productive use. Plain language creates a more efficient, effective and productive working environment.

For a writer, applying the principles of plain English will often mean breaking long held habits and adopting new ones. This can take time – and lots of it. But in the long term, plain English writers benefit personally and professionally from a cleaner, clearer style. In addition, time is saved in having to explain advice to clients who are unable to comprehend the original message!

Plain English saves money

It has been repeatedly and conclusively demonstrated that using plain language saves money37. I will discuss the economics of plain English in greater detail later in this paper.

As a compliance tool

People are more likely to read a document written in plain English, understand it, comply with it, and respect the result.

Avoiding disputes & litigation

A draft document that is in plain English is more likely to be reviewed properly (and understood) by all concerned and drafting errors and omissions are more likely to be identified. Clear, plain writing lays bare the uncertainties and inconsistencies that traditional style tends to hide.

The rewriting improvements pay for themselves if they prevent just one lawsuit, or one claim of negligent or unprofessional drafting.

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37 The United Kingdom, Canada and Australia have all shown that using plain language cuts costs. Some examples are given in the paragraphs [100-107] of the 1987 Victorian Law Reform Commission of Victoria report – see footnote no. 20.
The reputation of the legal profession

Instead of reading like a law journal, or worse, your legal documents will be as easy to read as a current affairs magazine. Make no mistake – writing simply and concisely isn’t easier – in fact, it’s quite the opposite. However, your clients will love you for it.

The legal profession has an unenviable reputation for legal gobbledegook. That reputation is thoroughly deserved. But it does not have to be so. Throughout the world, individual lawyers, firms, groups, and professional bodies are actively promoting plain language in legal writing. That movement has barely scratched the surface of what needs to be done, but it is vibrant and growing.

Support for the movement towards the use of plain language can only benefit the reputation of the profession and improve its service to clients.

Answering the critics

The following discussion is taken from an article written by Professor Joseph Kimble of the Thomas Cooley Law School, Michigan, entitled Notes Toward Better Legal Writing.38

Myth: Plain language means baby talk or street talk. It’s not ‘literary’.

Reality: Plain language is all about clear and effective communication - nothing more or less. It does, though, signify a new attitude and a fundamental change from past practices. It is the language that good writers use when they are determined to be understood. What’s more, plain language has a long literary tradition, Abraham Lincoln and Mark Twain being two notable examples.

If anything deserves to be called artless, it is the great bulk of traditional legal writing. One legal academic has described law books as "the largest body of poorly written literature ever created by the human race".39

As for the notion that plain language is unsophisticated, once again just the reverse is true. Use of sophisticated or complex language does not indicate intelligence, being very learned or wise. When a highly learned or qualified person uses simple language, people are usually impressed. They know that the person is capable of using complex language and appreciate the fact that he or she chose to speak or write in plain language. There are many people who are of the view that complex language is often used to hide or mask something.

It is much harder to simplify than to complicate. Anybody can take the sludge from formbooks, thicken it with a few more provisions, and leave it at that. Only the best minds and best writers can cut through. In short, writing simply and


directly only looks easy. It takes skill and work and time to compose in plain language.

**Myth:** Plain language is mainly concerned with getting rid of archaic terms like "hereby" and "aforesaid."

**Reality:** Plain language is concerned with all the techniques for clear communication – dozens of them. These techniques and guidelines are flexible and varied. They include planning, design, organisation, sentences, words, and testing. Getting rid of archaic terms is only a liberating first step.

**Myth:** Plain language is not as accurate or precise as traditional legal style.

**Reality:** The truth is that lawyers usually do not have to choose between accuracy or clarity: "the instances of actual conflict are much rarer than lawyers often suppose". What’s more, by aiming for both, the drafter will usually improve both.

Of course, legal writers must aim for precision. But plain language is an ally in that cause, not an enemy. Plain language lays bare the ambiguities, uncertainties and conflicts that traditional style tends to hide. At the same time, the process of revising into plain language will often reveal all kinds of unnecessary detail. In short, you are bound to improve the substance – even difficult substance – if you give it to someone who is devoted to being intelligible.

In many demonstration projects worldwide, statutes and contracts have been redrafted into plain language with no loss of precision. By way of local examples:

- As noted already, the Victorian Law Reform Commission redrafted Victoria’s complex Takeovers Code. They cut it by almost half. And the redraft was checked and rechecked for accuracy by substantive experts. And in testing, lawyers and law students took between a half and a third of the time to comprehend the new plain-language version.

- The Parliamentary Counsel of Queensland and of New South Wales have publicly endorsed a plain-language style of drafting.

- A 1993 Commonwealth inquiry into legislative drafting released a report saying that "the plain English style developed by the drafting agencies since the mid-1980s has made new Commonwealth legislation much easier to understand". The report sets out a series of recommendations to further improve the process and style of legislative drafting.

So plain language is not normally at odds with precision. In fact, clarity and precision are most often complementary goals. Having said that, three cautions are required:

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40 Garner, footnote no. 38, at 664.
41 See Plain English and the Law, footnote no. 4, at [29-33] (illustrating the problem of “unnecessary concepts”); Plain English: A Charter for Clear Writing, footnote no. 38, at 17 (illustrating “the self-defeating over-precision and over-elaboration that legal documents are so prone to”).
Plain language documents do not necessarily mean shorter documents – sometimes a longer explanation is needed to explain a complex subject.

In a similar vein, complexity will always exist in complex subject matter. However, it should not be compounded by difficulty in language.

Technical terms and terms of art are sometimes necessary, and some legal ideas can be stated only so simply. But technical terms and terms of art are only a small part of any legal document – less than three per cent in one study. The rest can be written in plain English, or a lot plainer than lawyers are used to writing. And even technical terms can often be translated into plain language at the cost of some extra words.

In any event, the notion that traditional legal writing is precise is a dubious assumption to begin with. The precision over clarity criticism is a little hard to believe when viewed in light of the standard boilerplate provision:

... the masculine shall include the feminine, the singular shall include the plural, and the present tense shall include the past and future tenses.

How precise can legalese be when “he is a man” also means “girls will be girls”?

Myth: Plain language won’t reduce litigation because the essence of law is in the legal interpretation of meaning.

Reality: This criticism ignores the unnecessary litigation that poor legal drafting produces.

In gauging what we can and cannot prevent, we need to be clear about the difference between vagueness and ambiguity. The law depends to a large extent on vague terms, like good cause or reasonable person or gross negligence. In fact, nearly all terms are vague to some degree; they will always present some uncertainty at the margins, some uncertainty about how they might apply to peculiar facts. Ambiguity, on the other hand, presents an either-or choice, a choice between alternative meanings. Ambiguity is almost always unintended and almost always a sin, but it’s always preventable.

Myth: Judges and clients expect and prefer traditional legal style.

Reality: In a study that was carried out in four US states, almost 1,500 judges and lawyers were invited to choose between the A or B version of six different legal paragraphs. One choice was written in plain English and the other one in traditional style. In all four states, the judges and lawyers preferred the plain-language versions by margins running from 80% to 86%.

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47 The three surveys referenced in this section are discussed in in greater detail in Plain English: A Charter for Clear Writing, see footnote no. 38.
Similarly, in California, ten appellate judges and their research attorneys, reading passages from appellate briefs, rated the passages written in legalese as "substantively weaker and less persuasive than the plain English versions." And the readers inferred that the lawyers who wrote in legalese came from less prestigious firms than those who wrote in plain English.

As for clients, a survey conducted for the State Bar of California found that 90% of the public said there is a need for simpler legal documents. In another public survey, for the Plain Language Institute in Vancouver, British Columbia, 57% said that legal documents are poorly written and hard to read; and 33% said that lawyers do not even try to communicate with the average person.

If some clients expect legalese, it's because they have been conditioned to think that legal documents have to be that way. Increasingly, clients are learning that it's not true.

For a more detailed discussion of the traditional and more recent criticism of plain English, refer to Professor Kimble's follow-up article, 'Answering the Critics of Plain Language'.

Is ‘plain’ English safe (some liability issues)

A burden that we lawyers bear is the knowledge that our advice and documents may be picked apart many years in the future by other parties looking to exploit errors or ambiguity. Will your document stand up to such scrutiny?

It is one thing to aim to write in a way that is clear and concise and readily understandable by the intended reader. However, that is not to say that accuracy need be a casualty of the cause.

By way of example, in 1998 the US Securities and Exchange Commission introduced a new regulation requiring all insurance product prospectuses filed after 1 October to be written in plain English. The new requirement applied to both new products being registered and to old products being updated.

At the time, corporate lawyers expressed concern about increased exposure to liability as a consequence of having to say things in plain English.

*The trick will be to streamline prospectuses and to include all the risks investors need to know ... Without risk disclosure, corporations are vulnerable to shareholder lawsuits, especially when stock values go south. Part of the reason that these prospectuses have become so difficult to read and so long is the fear of liability ... You throw in the kitchen sink in terms of all the risks of investing. Simplicity might equate in the minds of the plaintiff's bar that you haven't covered it all.*

The SEC rejected these concerns (as well as a call for ‘safe harbour’ protection), saying that both conciseness and full disclosure were achievable under the new rule. It further observed

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that liability might even be reduced because investors would be better informed. As noted earlier, so far the skies have not come crashing down.

Critics of plain English often argue that important nuances will be lost if the law is stated in plain English. In addition, legal language facilitates communication within the profession; it might be very time-consuming the try to explain the entire law in fully understandable language.

However, as Professor Eagleson has observed:

*An advanced text on cancer or a law about the ownership of shares ... will remain complex. But the complexity will reside solely in the subject matter, and not be compounded by difficulty in language. For it is an error to assume ... that difficulty in context must be matched by difficulty in language ... complexity in subject matter does not call for complicated convoluted language.*

There are certain categories of legal documents – particularly those that affect the rights and obligations of ordinary consumers – that should be stated as plainly as possible. Those of you in the audience from the finance sector will be only too familiar with this imperative.

Even in the case of contracts between large multinational corporations that are all represented by lawyers, there is no justification for impenetrable language; these contracts can often be drafted much more clearly than they currently are.

Properly done, plain English creates no greater threat of liability. If anything, if reduces that prospect. The courts have routinely upheld plain language documents. For example, in the Piccolo case, the Full Federal Court upheld a plain language guarantee. In fact one of the judges commented that the plain words of the guarantee were “conclusive evidence” against the guarantor’s proposed interpretation of the guarantee.

That said, there are also examples of judges that have commented unfavourably on plain language statutes and contracts.

Can you afford *not* to use plain English?

Governments, major corporations, trade associations and professional bodies across the world have adopted plain English as the style for writing all documents because they recognise customer letters, brochures, email messages, management reports and legal documents should be clear and concise, but most documents fail any basic, plain English test. They also recognise the sound, commercial logic — plain English saves time and money. The savings claimed are remarkable:

- The US Navy estimated plain English could save it between $250–$300 million every year.
- General Electric saved $275,000 by redrafting manuals into plain English.

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51 See Butt and Castle (footnote no. 36), pages 110-111.

The US Department of Veterans Affairs saved $40,000 redrafting one standard letter into plain English.

Customers in three surveys of standard letters from banks unanimously preferred the plain English versions.

British Telecom cut customer queries by 25% by using plain English.

The Royal Mail saved £500,000 in nine months by redesigning one form in plain English.

A UK Government Plain English initiative saved £9 million in printing costs.

And the list of government agencies and corporations that have saved significant money as a consequence of adopting plain English in their documents continues to grow:

- The US Department of Commerce documented 12 case studies showing that when a company clarifies its visual and verbal language, it "builds business..., streamlines procedures, eliminates unnecessary forms, and reduces customer complaints".
- Motorola’s corporate finance department now closes their books in four days, down from 12 in 1987. Changes such as clearer directions on forms and an easy-to-use format for computer screens have helped streamline the process – and save $20 million a year.
- Allen-Bradley Corporation, a maker of programmable controllers, found that customer-service calls dropped from 50 calls a day to two calls a month after they redesigned their documents using plain English & readable formats.
- A technical-publications group at AT&T streamlined the process of technical documentation, thereby reducing the cost of documentation by 53%, reducing production time by 59%, and increasing the number of projects individual writers were able to complete by 45%.
- The US Federal Communications Commission rewrote its regulations for citizen-band radios and was able to reassign five employees who had done nothing but answer questions.
- In 1984 the UK Department of Health and Social Security spent $50,055 to develop and test a series of new forms for legal aid. They report saving about $2.9 million in staff time every year by using the plain-language forms.
- The UK Department of Defence revised its claim form for travel allowances and reduced the time spent completing the form by 10%, the processing time by 15% and the error rate by 50%. The savings add up to about $600,000 a year.
- Since the British government began its review of forms in 1982, it has scrapped 27,000 forms, redesigned 41,000 forms & saved over $28 million.
- In Holland, a division of the Department of Education & Science reported that a form for applying for educational grants created so many difficulties that on average 60,000 forms had to be returned each year because of incorrect or missing answers. After a

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revision, only 15,000 to 20,000 forms have to be reprocessed each year, saving enormous clerical costs, postage, and handling.

- The Victorian government saved the equivalent of $400,000 a year in staff salaries by rewriting one legal document.

- In 1989, Capita Finance Group in Australia decided to combine 17 of its application forms into a single, plain English version. This cost the company less than $100,000 to do and it is estimated that the savings from the reduced number of errors was $230,000 a year\(^5\).

- In 1991 NRMA Insurance estimated that it had saved $500,000 a year from rewriting its insurance forms and policies in plain English. It is not clear how this sum is calculated. However, it is likely to include savings as a result of fewer disputes involving the documents\(^5\). The process of rewriting the forms and policies started in 1974 with the car insurance policy and ended in 1982 when the revised home insurance policy was introduced. The plain English version of the car insurance policy took 5,000 hours and 20 drafts to rewrite. It was 1,600 words (27%) shorter than the original\(^6\).

- A large number of law firms in Australia have committed themselves to drafting legal documents in plain language.

These savings come from organisations training key staff and employing professional writers and editors. But these people can only edit a few of the thousands of documents produced every day in large organisations.

Imagine the savings if you developed and led training to guarantee everyone used plain English in every document.

**How much could you save if everyone wrote in plain English?**

Unfortunately, the costs of poor communication do not appear in the balance sheet. If they did, you would do something to control them. In the following examples, the biggest cost is staff time (author’s time plus the reader’s time), multiplied by the number of employees who receive the document.

1. The UK’s National Audit Office estimated the cost of producing one page in government departments varied between £3.50 ($5.70) to over £100 ($163).

   The low figure was for a one-page letter, typed, printed and sent to 200 people resulting in a cost of £700 ($1,140). The higher figure was for each page of a short report that goes through several authors and drafts, before a senior manager presented it to the management committee. This means the cost of such a 50-page report read by 15 senior managers was £5,000 ($8,155).

2. A government department sent a two-page memo to 15,000 employees who took an average of 10 minutes to read and process it. The real cost to the department was

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\(^5\) Asprey (footnote no. 35), page 39 and [http://www.plainlanguageaustralia.com/benefits.html](http://www.plainlanguageaustralia.com/benefits.html).

\(^6\) Asprey (footnote no. 35), pages 37-39.

$100,000 in salaries, overheads and associated costs. The memo was about keeping staff kitchens clean! Was it really a $100,000 problem?

3. A bank had a sales letter rewritten by a professional, plain English editor. The clearer redraft brought in an extra $11 million of new business. No conventional accounting method would record the previous $11 million of missed business opportunity.

4. One council sent 1.3 million pages of committee reports to councillors in one year. If councillors worked a sixteen-hour day, seven-days a week, reading a page every minute, they would eventually get through all the documents after 3.7 years.

Plain English will potentially cut these types of costs by 30%. Can you afford not to be part of this transformation?

Tips for plain English (effective) communication

The following guidelines have been adopted from a presentation given by Professor Peter Butt to a Houston plain English conference 11 years ago. They remain as applicable today as they were when he presented the paper.

There are no plain English rules, in the sense of inviolable principles. They are only guidelines. But there are some fundamental concepts. And the most important is: write for the audience. If we write consciously with the audience in mind, our writing should be clearer and easier to read. From this guiding concept, the other guidelines flow naturally.

The global and the specific

In considering the fundamentals of plain English, Professor Butt distinguishes between the global and the particular or specific, between the macro and the micro. There is a natural temptation to leap into the specific, for example short sentences instead of long, active instead of passive, verbs instead of nouns, and the like. While there is a very real place for these matters, the big picture is usually more important than the small picture.

Global principle #1: Write for your audience

This is the most important global matter. Effective writing concentrates on the needs of the audience. Who is the ‘audience’? The answer will vary with the circumstances. To use an example from legal writing: when a judge decides a case, the primary audience is the parties to the case. But, of course, the audience includes others as well: the lawyers in the case; appellate judges to whom the case may go; and later readers, who may come to the decision for a number of reasons.

In the example given, it’s a matter of discerning the dominant audience and writing for them. But this does not justify writing in a way that others in the audience find incomprehensible. Almost always, we can accommodate the abilities of different audiences by applying the principles of clear writing. And so (to return to the example), a thoughtful judge can write the decision in a way that is accessible to the parties, their lawyers, appellate judges, and later readers.
Global principle #2: Organise your material logically

This is the second of the global matters. It is closely allied to the first because it concentrates on the needs of the audience.

It requires writing to be organised in a way that flows logically for the audience. Too often, writers organise material from their own point of view. Perhaps that is only to be expected, as the writer may have lived and breathed the project for months. But familiarity with the material can obscure its inherent difficulty for readers coming to it for the first time. We should write for the audience, not for the writer.

The need to organise material logically from the reader's point of view can be broken down into a number of sub-points:

**Put the main points up front**

By "main", I mean the points that will most interest the reader. Put these points up front. Don’t keep the reader in suspense. Nothing deters readers more than having to trawl through incidental material to find what (to them) is crucial.

Judicial decisions are a prime example of writing that takes little or no heed of the needs of the audience. Typically, reasons for decision are organised along these lines:

- Discussion of the facts
- Discussion of the relevant law
- Conclusion and orders.

For most readers, this organisation is less than helpful. Beginning with a discussion of the facts is not much use without a context in which to put those facts. In judgments, these facts often run for page after page, without any help from the writer (the judge) about their relative significance. How much better to state the issues first, giving the facts some context.

This criticism of court judgments was recently confirmed by Michael Black, a former Federal Court judge57.

However, there is hope. In the recent, high profile NRL v Optus case58, the court summarised the facts, main issues and its decision on those issues in the introduction to the judgment.

**When arguing an issue, state the conclusions early**

Where is the most logical place for a conclusion? For writers who do not consider the audience, it is at the end of the document. This location probably reflects the writer's own thought processes: the writer has worked through the facts and the issues to reach the conclusion. However, this order is not the most helpful for readers. For them, it is more logical to place the conclusion up front, for that gives the facts and issues more relevance.

The conclusion may be all that the reader wants to know. To return to the example of a judge’s decision: most readers, familiar with the traditional judgment-writing style, will jump

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58 *National Rugby League Investments Pty Ltd v Singtel Optus Pty Ltd* [2012] FCAFC 59.
to the end to find the conclusion, and then go back to read the reasoning. Less experienced readers may not be so adept, and will be forced to follow the writer through the whole text.

**Global principle #3: Be human**

We should strive to be human in our writing style. Too often a formal, bureaucratic tone is adopted, as if gravity and distance were necessary qualities for ‘good’ writing. This tone is particularly evident in legal writing. Mark Adler (the Chair of Clarity and author of a book on legal drafting) says:

> Lawyers with pens or dictating machines forget they are people: however amiable and unpretentious they may be at other times, when they compose the written word a strange personality emerges.

Allied to need to treat readers as human beings is the need to write ‘inclusively’. This includes (but is not limited to) being alert to language that is gender-specific. Most writers are aware of this need (although chauvinistic traits still exist, particularly in legal writing). However, in aiming for this goal we should avoid using techniques that strain the language.

A number of techniques exist for producing gender-neutral writing that is both precise and idiomatic. One that enjoys growing popularity is the use of ‘they’ as a singular pronoun. For those who may be sceptical about the grammatical ‘correctness’ of this usage, see the discussion paper written by Dr Eagleson and issued by the Australian Attorney-General’s department as part of its Corporations Law Improvement Project.

**Global principle #4: Layout and design**

The best written plain English document won’t be effective – or perhaps won’t even be read – if it is badly designed. Clear design is just as important as good writing ... a well-designed document can help entice readers; a poorly-designed document will almost certainly deter them.

It is universally acknowledged that good ‘design’ requires attention to at least the following.

- **Use visual cues.**
  Let your reader know where to start reading, and where to continue reading. Headings, subheadings, initial capitals, and even numbered paragraphs, can act as important signposts through the text. Visual cues must be consistent throughout your document.

- **Break-up slabs of text.**
  Long, grey ‘slabs’ of type are like a long, boring speech – people tend to tune out. Break up your document with short headings. These help the reader to easily find the section they want. You can also break up your document with small graphics, as long as it doesn’t look messy.

- **Use lots of white space.**
  White space is an important aid to legibility. Use wide margins and plenty of room at the top and bottom of your page.

- **Font selection ... Serif versus sans serif typefaces.**
Typefaces with a serif (small strokes at the end of characters) are generally easier to read than sans-serif typefaces (e.g. the main body of this paper uses a serif font, Georgia, whereas the headings use a sans serif font, Calibri). However, some popular sans-serif typefaces have been carefully designed for maximum legibility.

Choose clear typefaces for your main text. Quirky or unusual typefaces can add character to covers and headings, but when used for text they will make your document much harder to read.

- **Font size**
- **Don’t shout!**
  Avoid overusing **bold** or **italics**.
  And never set a whole sentence or paragraph in **CAPITAL LETTERS**.

- **Use of colour.**
  Black type on a white background is always the easiest to read. Type on a shaded background has an important role in forms design, and headings or highlighted quotes can be effective on a coloured background. But black on white is by far the best option for your main text.
  
  For interest or design reasons, you may want to use dark coloured type on white, or black type on a pale coloured background or coloured paper, but every step away from black on white will decrease legibility.
  
  The least legible colour scheme is white or coloured type on a black background.

- **Reading between the lines.**
  Four interrelated factors affect the legibility of body text: (i) the line length; (ii) the type size; (iii) the space (or leading) between lines of type; and (iv) the alignment of the right-hand side.
  
  There’s a limit to the number of words that readers can comfortably follow in a line of type. If the lines are too long, readers tend to lose track. But if the lines are too short, the reading flow is interrupted too often.
  
  Generous space between lines increases legibility. The extra white space helps readers stay on the line. If the lines of type are too close, readers may accidentally read the same line twice, or skip a line.
  
  There’s an intimate relationship between line length, type size and space between lines. If you increase the length, you should also increase both the type size and the leading.
  
  Left-justification of text increases legibility. This is because the space between words stays even, and the eye ‘knows’ immediately when it has come to the end of a line. Conversely, ‘fully justified’ text (namely, where both sides of the column or page of type are straight) creates uneven gaps between words and sentences. These gaps interrupt the reading flow.

- **Capitals versus lower case.**
The unnecessary use of capitals is old-fashioned, and can also be intimidating to the reader. The tendency to overcapitalise persists in many forms of business writing. For example, many public servants would write:

When the Department issued its Annual Report, the Minister tabled it in the Federal Parliament.

Yet a more modern -- and readable -- style:

When the department issued its annual report, the minister tabled it in the federal parliament.

Global principle #5: Test your writing

Finally on global matters: the effectiveness of good writing should be tested against the audience. Proponents of effective writing have long known this, although cost constraints often make it difficult to carry out.

Another useful technique, time and confidentiality permitting, is to seek peer review of your writing. Or even leave it overnight and revisit it with the benefit of a night’s sleep.

Specific matters

There are numerous tips and guides that fall into the specific category. Many of you will have your favourites. The following discussion deals with only a few of them – those that I consider of most importance.

Specific principle #1: Sentence and paragraph length

Keep sentences short. All linguists agree on this (though they vary on the ‘ideal’ length). Over-long sentences are particularly evident in legal documents such as leases and mortgages, where sentences running to hundreds of words are common. We may marvel at the grammatical ingenuity of lawyers who can construct such leviathans; but we rarely thank them for the agony we must endure in reading the end-product.

Sometimes, reducing sentence length can be difficult, requiring careful re-organisation of the text. But usually it is a simple matter; and after a while it becomes second nature.

Have only one or two ideas in each sentence. If you need to explain a term or qualify a point, use a separate sentence.

But don’t confuse clarity for brevity. Just because a sentence is short doesn’t necessarily mean it is clear. You may need to use more, rather than fewer, words to get your message across. Don’t slavishly follow any rule that says a sentence should only contain a certain number of words. A better guideline is to use only as many words as necessary.

Organise your thoughts into brief paragraphs, with one central topic in each. This makes your writing much easier to read and understand.

Specific principle #2: Prefer the active to the passive

As a general guide, prefer the active voice to the passive. The active is more direct and effective; it helps drive home the message.
Passive: This agreement may be terminated by giving 30 days’ notice.
Active: Either party may terminate this agreement by giving 30 days’ notice to the other party.

The passive is less effective; it may obscure the message – in the example provided, it is unclear who may terminate the agreement. Yet the passive is endemic. Its overuse probably reflects a misconception that the passive voice produces a better ‘tone’. This isn’t to say that ‘tone’ is not important; but so is effective communication.

Some texts suggest that we should never use the passive. But that is going too far. Sometimes the passive is convenient - for example, where the doer of an act is intentionally left unstated; or where it is useful to invert the sentence for emphasis.

The problem lies in the instinctive use of the passive. We should avoid the passive, except where we make a conscious decision to use it.

**Specific principle #3: Use verbs, not nouns**

The practice of turning verbs into noun phrases (referred to as nominalisation) is endemic in bureaucratic and legal writing. For example, we rarely "decide"; instead, we "make a decision" and we don’t "resolve", we "pass a resolution".

Here too, the practice probably results from an overzealous desire to achieve a formal tone. So a police report will say: "The accused was observed endeavouring to effect an escape", where it could more effectively have said: "We saw him running away".

Circumlocution of this kind (and indeed of any kind) impedes effective communication. Verbs, especially strong verbs, communicate much more effectively than noun phrases.

**Specific principle #4: Prefer the simple to the complex, the specific to the general**

We should write as simply as the subject matter will allow. This principle can be broken down into a number of overlapping subsidiary points:

- Prefer short words to long ones
- Prefer simple words and phrases to complex ones (or, in the words of the UK Plain English Campaign, "Prefer words learned early in life")
- Prefer English words to foreign words (perhaps an over-generalisation)
- Prefer concrete terms to abstract ones

No-one will think any less of our writing if we adopt these techniques. Far from ‘dumbing down’ the language, we are using it to communicate as effectively as possible. The best writing is writing that communicates effectively with its audience, and that is best done by writing in a style that is simple, direct and clear.

Annexed to this paper is a list of ‘complex’ words and expressions and their suggested more simple substitutes. It is not intended to be prescriptive. Like all of the plain English guidelines, use it as a guide.
Specific principle #5: Avoid synonym-strings

A common failing of much formal writing is the use of synonym-strings – lists of words with similar meanings. We can all recite examples, although generally the best (worst?) come from lawyers: "give, devise and bequeath", "right, title and interest", "null and void" (or even, "absolutely null and void and of no further force or effect whatsoever"), and so on.

As noted earlier, the explanation for these couplets and triplets derives from the Norman conquest of England. However, their continued use is almost always unnecessary. In virtually every case, a single generic noun can be used in place of a noun-string.

Specific principle #6: Informative headings

We should use informative headings to guide the reader through the text.

Headings are always useful signposts, but for some reason bureaucratic writing often omits them. This omission is particularly noticeable in statutes and legal documents. Perhaps it is due to a fear that, through oversight, a heading may not accurately mirror the substance of the clause it announces, giving rise to possible ambiguity. But self-protection against careless drafting hardly justifies denying readers the signposts that headings provide.

We might also consider the benefits of headings in the form of questions: for example, “What is the next step?” or “What are the relevant facts?” This is a particularly useful technique if the headings mirror questions in the reader’s mind – as any well-crafted heading should do.

Specific principle #7: Avoid legalese & other jargon (including the archaic)

In trying to achieve a certain ‘formality’ of tone, some writers invoke archaic words (or legalese). We should omit them. Examples include: hereinbefore, hereafter, whereas, aforementioned, abovementioned, and so on.

Whilst such words were once were common, they have long since fallen into general disuse. However, lawyers love them, perhaps thinking they add legal feel; but in fact they add no legal substance. Almost always they can be struck out without loss of precision.

Specific principle #8: Beware of unintended ambiguity

A frequent problem in many forms of writing, particularly in legal documents, is unintended ambiguity. Something is ambiguous when it is open to two contrasting meanings – leaving the reader uncertain about which meaning the writer intended. It goes without saying that ambiguity is always to be avoided.

Less serious than ambiguity is lack of verbal awareness (as Bryan Garner describes it). This occurs where the writer juxtaposes words or phrases in a way that provides unintended humour. It causes the reader no real uncertainty, as the context usually clarifies the meaning (it may even raise a welcome chuckle). Examples include:
Signs in the London Underground railway used to state: “Dogs must be carried at all times.” Did this mean that everyone using the underground must carry a dog? Or did it mean that if you are travelling with a dog, you must carry it at all times?

A news report that read: "The police restrained a man with an axe".

However, this type of ambiguity also causes the careful reader to question the writer’s skills and attention to detail, downgrading the writer in the reader’s mind.

**Specific principle #9: Tables, graphs, diagrams and flow charts**

We shouldn’t be afraid to use tables or graphs to clarify or explain.

Being wordsmiths, we tend to prefer words to diagrams. Sometimes, however, a diagram can save the reader – and the writer – a lot of effort. To cite examples from the law, legal documents and court judgments traditionally describe land boundaries in words alone (metes and bounds). This forces the reader to plough through complex verbal descriptions, all the while cursing the writer for not providing the simple expedient of a diagram.

Flow charts can be useful in explaining the operation of complex systems or transactions. In Australia, flow charts have found their way into legislation. The following extracts from the *Minerals Resource Rent Tax Act 2012* provide good examples of the progressive use of diagrams and formulas by Australia’s parliamentary counsel.

There is no reason why they cannot be included in other forms of writing, as an aid to understanding.

This is an example of writing for your intended audience. If the intended reader is an engineer, a diagram or flow chart may substantially improve his (or her) ability to grasp the concept under discussion.

**Specific principle #10: Some general "tips"**

The following are a few ideas and ‘tips’ that I have developed through trial and error over the years. They may or may not prove to be of assistance.
Imagine speaking in person

For some reason, committing a concept to writing causes us to forget how we would say something if the client was in front of us. Quite often, imagining that you are speaking to your client in person has made it much simpler to convey a message in print without the legalese!

Avoid over-capitalisation

Why do we need to make everything capitalised? This is especially a problem in business-writing. It serves no purpose other than to add unnecessary formality to a document.

Avoid over-using "of"

We can often dramatically shorten sentences and improve the punchiness of our writing by finding ways around using "of". The “court’s new rules” reads far more naturally than the “new rules of the court”.

Avoid throat-clearing phrases

This is a problem commonly encountered in legal documents, but bureaucratic writing exhibits it as well:

- "It is hereby agreed and declared ..."
- "If I were to be completely frank ..."

Write in the positive

Positive sentences are shorter and easier to understand than their negative counterparts. For example:

Before: Persons other than the primary beneficiary may not receive these dividends.
After: Only the primary beneficiary may receive these dividends

Also, your sentences will be shorter and easier to understand if you replace a negative phrase with a single word that means the same thing, for example use “reject” instead of “not accept”, “few” instead of “not many”.

Personalise it

Write you, I and we: speak directly to the reader.

Consistency

Use words and terminology consistently. Especially if you have included a dictionary or definitions section.

It is okay to start a sentence with And or But.

Avoid parenthetical numerals, for example there are three (3) claimants.

Use footnotes only to give references & citations.
Appendix – ‘Big word’ alternatives

<table>
<thead>
<tr>
<th>Pretension</th>
<th>Comprehension</th>
</tr>
</thead>
<tbody>
<tr>
<td>as a consequence of</td>
<td>because of</td>
</tr>
<tr>
<td>a large number of</td>
<td>many</td>
</tr>
<tr>
<td>a number of</td>
<td>some or several or many or something more precise</td>
</tr>
<tr>
<td>accede to</td>
<td>grant, allow</td>
</tr>
<tr>
<td>accord <em>(verb)</em></td>
<td>give</td>
</tr>
<tr>
<td>accord respect to</td>
<td>respect</td>
</tr>
<tr>
<td>acquire</td>
<td>get</td>
</tr>
<tr>
<td>additional</td>
<td>more</td>
</tr>
<tr>
<td>additionally</td>
<td>also</td>
</tr>
<tr>
<td>adjacent to</td>
<td>next to or near</td>
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<tr>
<td>advert to</td>
<td>mention</td>
</tr>
<tr>
<td>afforded</td>
<td>given</td>
</tr>
<tr>
<td>aforementioned</td>
<td>often best omitted</td>
</tr>
<tr>
<td>alleviate</td>
<td>ease, lessen, reduce</td>
</tr>
<tr>
<td>ambit</td>
<td>reach or scope</td>
</tr>
<tr>
<td>any and all</td>
<td>all</td>
</tr>
<tr>
<td>approximately</td>
<td>about</td>
</tr>
<tr>
<td>as a consequence of</td>
<td>because of</td>
</tr>
<tr>
<td>ascertain</td>
<td>find out</td>
</tr>
<tr>
<td>assist</td>
<td>help</td>
</tr>
<tr>
<td>at present</td>
<td>now</td>
</tr>
<tr>
<td>at the place</td>
<td>where</td>
</tr>
<tr>
<td>at the present time</td>
<td>now</td>
</tr>
<tr>
<td>at this point in time</td>
<td>now or currently or some such</td>
</tr>
<tr>
<td>at this time</td>
<td>now or currently or some such</td>
</tr>
<tr>
<td>attempt <em>(verb)</em></td>
<td>try</td>
</tr>
<tr>
<td>because of the fact that</td>
<td>because</td>
</tr>
<tr>
<td><strong>Pretension</strong></td>
<td><strong>Comprehension</strong></td>
</tr>
<tr>
<td>--------------------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>cease</td>
<td>stop</td>
</tr>
<tr>
<td>cease and desist</td>
<td>stop</td>
</tr>
<tr>
<td>circumstances in which</td>
<td>when or where</td>
</tr>
<tr>
<td>cognizant of</td>
<td>aware of or knows</td>
</tr>
<tr>
<td>commence</td>
<td>Start or begin</td>
</tr>
<tr>
<td>conceal</td>
<td>hide</td>
</tr>
<tr>
<td>concerning the matter of</td>
<td>about</td>
</tr>
<tr>
<td>consensus of opinion</td>
<td>consensus</td>
</tr>
<tr>
<td>consequence</td>
<td>result</td>
</tr>
<tr>
<td>contiguous to</td>
<td>next to</td>
</tr>
<tr>
<td>demonstrate</td>
<td>show</td>
</tr>
<tr>
<td>desire</td>
<td>want</td>
</tr>
<tr>
<td>despite the fact that</td>
<td>despite or though</td>
</tr>
<tr>
<td>dispatch</td>
<td>send</td>
</tr>
<tr>
<td>does not operate to</td>
<td>does not</td>
</tr>
<tr>
<td>donate</td>
<td>give</td>
</tr>
<tr>
<td>due to the fact that</td>
<td>because</td>
</tr>
<tr>
<td>during the course of</td>
<td>during</td>
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<tr>
<td>during the time that</td>
<td>while</td>
</tr>
<tr>
<td>echelon</td>
<td>level</td>
</tr>
<tr>
<td>elucidate</td>
<td>explain or perhaps clarify</td>
</tr>
<tr>
<td>endeavour (verb)</td>
<td>try</td>
</tr>
<tr>
<td>erroneous</td>
<td>wrong</td>
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<tr>
<td>evince</td>
<td>show</td>
</tr>
<tr>
<td>excessive number of</td>
<td>too many</td>
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<tr>
<td>exclusively</td>
<td>only</td>
</tr>
<tr>
<td>exit (verb)</td>
<td>leave</td>
</tr>
<tr>
<td>facilitate</td>
<td>help</td>
</tr>
<tr>
<td>firstly, secondly, ...</td>
<td>first, second, ...</td>
</tr>
<tr>
<td>Pretension</td>
<td>Comprehension</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------</td>
<td>--------------------------------------</td>
</tr>
<tr>
<td>for the duration of</td>
<td>during or while</td>
</tr>
<tr>
<td>for the purpose of doing</td>
<td>to do</td>
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<tr>
<td>for the reason that</td>
<td>because</td>
</tr>
<tr>
<td>forthwith</td>
<td>immediately</td>
</tr>
<tr>
<td>frequently</td>
<td>often</td>
</tr>
<tr>
<td>fundamental</td>
<td>basic</td>
</tr>
<tr>
<td>has a negative impact</td>
<td>hurts or harms</td>
</tr>
<tr>
<td>I would argue that / it is arguable that / it could be argued that</td>
<td><em>don't say what you'll argue; just argue it</em></td>
</tr>
<tr>
<td>in a case in which</td>
<td>when or where</td>
</tr>
<tr>
<td>in accordance with</td>
<td>by or under</td>
</tr>
<tr>
<td>in an X manner</td>
<td>Xly, e.g., &quot;hastily&quot; instead of &quot;in a hasty manner&quot;</td>
</tr>
<tr>
<td>in close proximity</td>
<td>near</td>
</tr>
<tr>
<td>in light of the fact that</td>
<td>because or given that</td>
</tr>
<tr>
<td>in order to</td>
<td>to</td>
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<tr>
<td>in point of fact</td>
<td>in fact (or omit altogether)</td>
</tr>
<tr>
<td>in reference to</td>
<td>about</td>
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<tr>
<td>in regard to</td>
<td>about</td>
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<tr>
<td>in the course of</td>
<td>during</td>
</tr>
<tr>
<td>in the event that</td>
<td>if</td>
</tr>
<tr>
<td>indicate</td>
<td>show or say or mean</td>
</tr>
<tr>
<td>individual (noun)</td>
<td>person</td>
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<tr>
<td>inquire</td>
<td>ask</td>
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<tr>
<td>in the event that</td>
<td>if</td>
</tr>
<tr>
<td>is able to</td>
<td>can</td>
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<tr>
<td>is binding on</td>
<td>binds</td>
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<tr>
<td>is desirous of</td>
<td>wants</td>
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<tr>
<td>is dispositive of</td>
<td>disposes of</td>
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<tr>
<td>is unable to</td>
<td>cannot</td>
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<tr>
<td>Pretension</td>
<td>Comprehension</td>
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<tr>
<td>------------------------------------------------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td>it has been determined that</td>
<td><em>Don’t use this</em></td>
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<tr>
<td>it is apparent that</td>
<td>clearly or don’t use it</td>
</tr>
<tr>
<td>it is clear that</td>
<td>clearly or don’t use it</td>
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<tr>
<td>it should be noted that</td>
<td><em>Don’t use this</em></td>
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<tr>
<td>locate</td>
<td>find</td>
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<td>manner</td>
<td>way</td>
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<td>methodology</td>
<td>method</td>
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<td>modify</td>
<td>change</td>
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<tr>
<td>necessitate</td>
<td>require, need</td>
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<tr>
<td>negatively affect</td>
<td>hurt or harm or decrease</td>
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<tr>
<td>notify</td>
<td>tell</td>
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<tr>
<td>notwithstanding</td>
<td>despite</td>
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<tr>
<td>null and void</td>
<td>void</td>
</tr>
<tr>
<td>numerous</td>
<td>many</td>
</tr>
<tr>
<td>objective <em>(noun)</em></td>
<td>goal</td>
</tr>
<tr>
<td>observe</td>
<td>see or watch</td>
</tr>
<tr>
<td>obtain</td>
<td>get</td>
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<tr>
<td>on a number of occasions</td>
<td>often or sometimes</td>
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<tr>
<td>on the part of</td>
<td>by</td>
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<tr>
<td>owing to the fact that</td>
<td>because or since</td>
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<tr>
<td>period of time</td>
<td>time or period</td>
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<tr>
<td>permit</td>
<td>let or allow</td>
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<tr>
<td>personnel</td>
<td>people</td>
</tr>
<tr>
<td>point in time</td>
<td>time or point</td>
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<tr>
<td>portion</td>
<td>part</td>
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<tr>
<td>possess</td>
<td>have</td>
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<td>presently or currently</td>
<td>now</td>
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<tr>
<td>prior to</td>
<td>before</td>
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<tr>
<td>procure</td>
<td>get</td>
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<tr>
<td>Pretension</td>
<td>Comprehension</td>
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<td>--------------------------------</td>
<td>--------------------------------------------------------------------------------</td>
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<tr>
<td>provide</td>
<td>give</td>
</tr>
<tr>
<td>provided that</td>
<td>if or but</td>
</tr>
<tr>
<td>provision of law</td>
<td>law</td>
</tr>
<tr>
<td>purchase</td>
<td>buy</td>
</tr>
<tr>
<td>rate of speed</td>
<td>speed</td>
</tr>
<tr>
<td>referred to as</td>
<td>called</td>
</tr>
<tr>
<td>remainder</td>
<td>rest</td>
</tr>
<tr>
<td>render assistance</td>
<td>help</td>
</tr>
<tr>
<td>request (verb)</td>
<td>ask</td>
</tr>
<tr>
<td>require</td>
<td>need</td>
</tr>
<tr>
<td>retain</td>
<td>keep</td>
</tr>
<tr>
<td>said (adjective)</td>
<td>the or this, e.g., &quot;said contract&quot; should almost always be changed to &quot;the contract&quot;</td>
</tr>
<tr>
<td>subsequent</td>
<td>later</td>
</tr>
<tr>
<td>subsequent to</td>
<td>after</td>
</tr>
<tr>
<td>subsequently</td>
<td>after or later</td>
</tr>
<tr>
<td>substantiate</td>
<td>prove</td>
</tr>
<tr>
<td>terminate</td>
<td>end</td>
</tr>
<tr>
<td>termination or terminate</td>
<td>end (sometimes)</td>
</tr>
<tr>
<td>the fact that</td>
<td>that</td>
</tr>
<tr>
<td>the instant case</td>
<td>this case</td>
</tr>
<tr>
<td>the manner in which</td>
<td>how</td>
</tr>
<tr>
<td>this case is distinguishable</td>
<td>all cases are distinguishable; what you probably mean is that this case is different</td>
</tr>
<tr>
<td>to the effect that</td>
<td>that</td>
</tr>
<tr>
<td>until such time as</td>
<td>until</td>
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<tr>
<td>upon</td>
<td>on</td>
</tr>
<tr>
<td>utilise</td>
<td>use</td>
</tr>
<tr>
<td>very</td>
<td>consider omitting</td>
</tr>
<tr>
<td>was aware</td>
<td>knew</td>
</tr>
</tbody>
</table>
What we will cover ...

- Introduction
- What is plain English?
- It’s been a long journey ...
- Why plain English makes sense
- Answering the critics
- Is ‘plain’ English safe (some liability issues)
- Can you afford not to use plain English?
- Tips for effective communication
Introduction

- **Key skills of a good lawyer**
  - Communication
  - Active listening
  - Persuasiveness.
  (Source: 2007 study conducted by Robin Tapper interviewing a number of judges, solicitors and barristers)

- **Rapidly changing means of communicating**

- **How do we add value as in-house lawyers**
  - Translation service?

---

**From corporate counsel to valued adviser**

- Get on the team
- Don’t think like a lawyer
- Be social
- Be a solutions provider, not a blockade
- Get your priorities right
- Broaden your horizons
- Keep it brief
- But always remember you are still a lawyer

Source: Karen Perrett, Chief Counsel Kraft Foods - Australia & NZ at the ACLA 2010 national conference
What is plain English?

- Clear, straightforward expression
- Using only as many words as are necessary
- Avoiding obscurity, inflated vocabulary & convoluted sentence construction
- Letting the audience concentrate on the message instead of being distracted by complicated language
- It is not baby talk, nor is it a simplified version of the English language

It’s been a long journey ...

- At first thought, [plain style] would seem to be easy. But nothing is more difficult.  
  Cicero, Roman author and orator (106 – 43 BC)

- Objections to the obscurity & inaccessibility of legal language date back centuries
  - Statute of Pleading 1362
  - Jeremy Bentham (1748 – 1842)
  - John Adams & Thomas Jefferson
  - UK Plain English Campaign 1979
  - President Carter’s 1978 executive order
  - In Australia
    - 1975 re-write of social security claim forms & income tax returns
    - 1985 Victorian LRC report *Plain English & the Law*
    - 1991 Centre for Plain Legal Language at the University of Sydney
A very ‘legal’ Xmas

... Please accept without obligation, express or implied, these best wishes for an environmentally safe, socially responsible, low stress, non addictive, and gender neutral celebration of the holiday season as practised within the most enjoyable traditions of the religious persuasion of your choice (but with respect for the religious or secular persuasions and/or traditions of others, or for their choice not to practice religious or secular traditions at all) and further for a fiscally successful, personally fulfilling, and medically uncomplicated onset of the generally accepted calendar year (including, but not limited to, the Christian calendar, but not without due respect for the calendars of choice of other cultures). The preceding wishes are extended without regard to the race, creed, color, age, physical ability, religious faith, choice of computer platform, or sexual preference of the wishee(s).

Why plain English makes sense

- Respect for the law
- Legislated requirement
- Save time
- Save money
- Compliance tool
- Avoiding disputes & litigation
- Reputation of the legal profession
Why plain English makes sense

“The length of this document defends it well against the risk of its being read”

Winston Churchill

"I didn't have time to write a short letter, so I've written a long one instead"

Attributed to Blaise Pascal (1657), Mark Twain and Voltaire (and probably others too)

Answering the critics

• The traditional criticism
  ○ Plain English debases the language
  ○ The need for precision is paramount

• The new criticism
  ○ No hard evidence that plain language improves comprehension
  ○ Plain-language advocates tend toward a narrow, text-based (instead of reader-based) approach to communication
  ○ The only way to be sure whether readers understand a document is to test it on the readers
  ○ Plain language will not reduce litigation because the very essence of law is interpreting words

Prof. Joseph Kimble’s ‘Notes Toward Better Legal Writing’ available online at http://www.michbar.org/generalinfo/plainenglish/columns/126.html

• “He is a man” = “Girls will be girls”? 
Is ‘plain’ English safe?

**Before ...**

- The following summary is qualified in its entirety by the more detailed information contained elsewhere in the prospectus.
- Each certificate will represent an undivided interest in the trust and the interest of the certificateholders of each class or series will include the right to receive a varying percentage of each month's collections with respect to receivables of the trust at the times, in the manner and to the extent described herein, and with respect to any series offered hereby, in the Related Prospectus Supplement.

**After ...**

- This summary highlights some information in the Prospectus
- The certificateholders will receive interest and principal payments from a varying percentage of credit card account collections.

---

Can you afford not to use plain English?

- US Navy estimated plain English could save it between $250M–$300m every year
- General Electric saved $275K by redrafting manuals into plain English
- US Department of Veterans Affairs saved $40K redrafting one standard letter into plain English
- Customers in three surveys of standard letters from banks unanimously preferred the plain English versions
- British Telecom cut customer queries by 25% by using plain English
- The Royal Mail saved £500K in nine months by redesigning one form in plain English
- UK businesses lose £6 billion a year because of badly written letters
- UK Government plain English initiative saved £9M in printing costs

... and the list goes on
Tips for effective communication

Global

- Plan your communication
- Write for your audience
- Organise your material logically
- Be human
- Layout & design
  - Give visual cues
  - Break up slabs of text
  - Use lots of white space
  - Font selection & size
  - Don’t shout
  - Use of colour
  - Reading between the lines
  - Capitals versus lower case
- Test your writing
- You can never edit enough!

Specific

- Short sentences & brief paragraphs (KISS)
- Prefer the active to the passive
- Don’t make nouns out of verbs
- Prefer the simple to the complex, the specific to the general
- Avoid synonym-strings
- Use informative headings
- Avoid legalese & other jargon
- Beware of unintended ambiguity
- Tables, graphs, diagrams and flow charts
- Some general "tips"
  - Write as if you are speaking to the person
  - Shall, must and will
  - Write in the positive

Adapted from Prof. Peter Butt, *Brushing up on Fundamentals*, available at [http://plainlanguagesnetwork.org/conferences/2000/peterbutt.htm](http://plainlanguagesnetwork.org/conferences/2000/peterbutt.htm)

ACLA National Conference 2012, 'New Horizons'
9 November 2012
Before …

- As the applicant, it is a requirement that you provide a mailing address and an identification number when an application is made for a hardship grant.

- I trust this clarifies the matter for you and look forward to hearing from you in due course in respect of your decision whether or not you intend to take out a loan.

- I, the undersigned, hereby revoke, cancel and annul all and any wills, testamentary dispositions and codicils heretofore made by me.

- I’m afraid that is not comprised within the categories currently at my disposal*

After …

- You need to send a mailing address and an identification number when you apply for a hardship grant.

- Please let me know if you want to take out a loan.

- I cancel all earlier wills.

- I don’t know!

* In the Supreme Court, two barristers were overheard discussing a matter. One asked the other a question. This was the reply. Source: Column 8, SMH 08/02/2001.

Tips for effective communication

Check the whole document
- It’s simple, clear & concise
- The topic is obvious
- The main message is obvious
- It’s obvious what action the reader needs to take

Check the document structure
- Detailed, explanatory document title or page headline
- Summary or key message follows title or headline
- Content organised in a logical sequence for the reader
- Each paragraph starts with its topic
- Short paragraphs
- Sub-headlines and short lists break up solid text

Check your sentences
- Mainly short sentences
- Mainly active verbs
- Logically structured sentences (subject-verb-object)
- Only one main idea in each sentence
- Correct grammar, spelling & punctuation

Check your words
- Words that are common, simple, & familiar to your target audience
- Write you, I and we: speak directly to the reader
- No jargon (but technical terms are fine for a technical audience)
- No clichés or wordy phrases
- Consistent words: using the same word for the same thing throughout the document
- Only a few abstract nouns, e.g. words ending in -ment, -tion, -ance, -ence, -ancy, -ency, -ity, -ism
- Words positive in meaning and tone

Check readability
- Tip: Use the grammar checker in your word processor to check your document’s readability.

Check design
- The page looks orderly
- Plenty of white space (in margins, between paragraphs etc)
- Print that’s big enough to read
Tips for effective communication

- Where possible, use a verb rather than a noun

<table>
<thead>
<tr>
<th>Being verbose</th>
<th>Being clear &amp; concise</th>
</tr>
</thead>
<tbody>
<tr>
<td>... submit an application</td>
<td>... apply</td>
</tr>
<tr>
<td>... make a decision</td>
<td>... decide</td>
</tr>
<tr>
<td>... make a payment</td>
<td>... pay</td>
</tr>
<tr>
<td>... assists the resolution of problems</td>
<td>... helps solve problems</td>
</tr>
<tr>
<td>... make an election</td>
<td>... choose</td>
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<tr>
<td>... establish your argumentation</td>
<td>... argue</td>
</tr>
<tr>
<td>... take into consideration</td>
<td>... consider</td>
</tr>
</tbody>
</table>

- But avoid verbs that might cause confusion
  - Instead of saying 'shall' consider some of these alternatives for clarity and for avoiding a condescending tone:
    - must or need to—if someone is required to do something
    - may—if someone has a discretion to do something
    - can—if someone has the power to do something

Tips for effective communication

- Link your ideas with signpost words
  - Signposts—or transition words and phrases—thread your ideas together and give your reader clues about what lies ahead.
  - They also tell the reader about relationships within your document—they act as threads to link ideas and sentences and paragraphs to one another.

- Revise, revise, revise
  - 'Almost any poem is fifty to a hundred revisions—and that's after it's well along.'

Dylan Thomas
Signposts

<table>
<thead>
<tr>
<th>Supporting words</th>
<th>Indicate cause &amp; effect</th>
</tr>
</thead>
<tbody>
<tr>
<td>Also</td>
<td>In particular</td>
</tr>
<tr>
<td>In addition</td>
<td>For instance</td>
</tr>
<tr>
<td>As well as</td>
<td>Similarly</td>
</tr>
<tr>
<td>Furthermore</td>
<td>Again</td>
</tr>
<tr>
<td>Therefore</td>
<td>Because</td>
</tr>
<tr>
<td>For this reason</td>
<td>First, second</td>
</tr>
<tr>
<td>This means that</td>
<td>Accordingly</td>
</tr>
<tr>
<td>As a result</td>
<td>Consequently</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Provide contrast or comparison</th>
<th>Show sequence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Instead</td>
<td>However</td>
</tr>
<tr>
<td>Alternatively</td>
<td>Although</td>
</tr>
<tr>
<td>Nevertheless</td>
<td>Conversely</td>
</tr>
<tr>
<td>On the one hand</td>
<td>On the other hand</td>
</tr>
<tr>
<td>But</td>
<td>However</td>
</tr>
<tr>
<td>At first</td>
<td>To begin with</td>
</tr>
<tr>
<td>Meanwhile</td>
<td>Next</td>
</tr>
<tr>
<td>Then</td>
<td>In conclusion</td>
</tr>
<tr>
<td>With this in mind</td>
<td>For now</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Indicating diversion</th>
<th>For restatement</th>
</tr>
</thead>
<tbody>
<tr>
<td>By the way</td>
<td>In other words</td>
</tr>
<tr>
<td>Incidentally</td>
<td>Namely</td>
</tr>
<tr>
<td></td>
<td>In essence</td>
</tr>
<tr>
<td></td>
<td>That is</td>
</tr>
</tbody>
</table>

Further reading

A useful list of plain English resources available online is available at [http://www.write-better-english.com/better-legal-writing.aspx](http://www.write-better-english.com/better-legal-writing.aspx)

Adams, Kenneth: *Legal Usage in Drafting Corporate Agreements* (2001)


Garbl's Plain Language Resources: available on the web at [http://home.comcast.net/~garbl/writing/plaineng.htm](http://home.comcast.net/~garbl/writing/plaineng.htm)


Any questions?