Chapter 4

Plain language around the world

In the United States

Beginnings The document that marks the coming-of-age of the plain language movement in the United States is the plain language consumer loan note formally launched on 1 January 1975 by First National City Bank (now Citibank). In 1973 Citibank made the decision to move to plain language voluntarily, because it had become worried by the large number of suits against consumers it had to run to collect its debts.\(^1\) It was, in fact, the third largest claimant against consumers in New York City. As early as 1970, a committee had been appointed to analyse consumer-related problems and it discovered that not only consumers, but also lawyers, judges and Citibank’s own lending officers were having trouble with the language in the promissory note (as it was called then).

Citibank developed the new plain language consumer loan note and found that, not only was the bank praised by clients, consumer advocates, politicians and judges, but also there was a substantial reduction in the number of suits the bank brought against consumers. The bank says the plain language consumer loan note was one of the things that helped it increase its market share in the 1970s and 1980s.\(^2\)

Citibank acted voluntarily to rewrite its loan note, but legislation to require certain documents to be written in plain language was not far off.

In 1975, the Magnuson-Moss Consumer Product Warranty Act was passed by Congress. It stated that warranties must be written in “simple and readily understood language”. The Federal Trade

\(^1\) See Chapter 3, p 33.
Commission passed judgment on the warranties being offered by several insurance companies and found them wanting. The insurance companies had to rewrite them in plain language. To their surprise, many of them found that simplifying their documents was good for business.

At around the same time, US insurance companies started thinking about simplifying a wide range of insurance policies, even though the Magnuson-Moss Act did not apply to all insurance policies – only to warranties on consumer goods. Among the first to move, in 1975, were Sentry Insurance, St Paul Fire and Marine Insurance Company and Aetna Life & Casualty.

Plain language laws and regulations In 1978, President Carter issued an order that “regulations should be as simple and clear as possible”. He followed this up in 1979 with an order that government forms “should be as short as possible and should elicit information in a simple straightforward fashion”.

In 1978 the State of New York introduced its plain language law (often called the “Sullivan Law” after the politician who introduced it) which required that all residential leases and consumer contracts be written in understandable language. The exact requirement is that they have to be:

1. Written in “a clear and coherent manner using words with common and everyday meanings; and
2. Appropriately divided and captioned by its various sections.

It applies to agreements that involve amounts of $50,000 or less “primarily for personal, family or household purposes”.

Since then, nine other States have passed laws which require either plain, clear, conspicuous, accurate or understandable language to be used in certain consumer transactions. Some State laws also govern the language to be used on ballots submitted to voters, in acts or joint resolutions, and even on things like gas, electric and water service bills. Around 35 States have laws or regulations

5 NY Gen Obl Law 5-702.
6 The 10 States are: Connecticut, Hawaii, Maine, Minnesota, Montana, New Jersey, New York, Oregon, Pennsylvania and West Virginia. Texas has recently legislated (Tex Fin §341.502, beginning September 2001) to require plain language contracts to be used for certain consumer loans covered by the Texas Finance Code.
requiring easy-to-read life-insurance policies. Most of these are based on the National Association of Insurance Commissioners’ Model Act No 575, Life and Health Insurance Policy Language Simplification Model Act (1984). The laws based on the Model Act use the Flesch Reading Ease Test\(^7\) to measure readability. And in addition to these State laws, there are many federal laws which govern the language to be used in some banking transactions, benefit programs, product labelling and so on.\(^8\)

The legislative drafting manuals of at least 31 US jurisdictions recommend plain language principles. In 2001 every US State, plus the District of Columbia and the US Virgin Islands, adopted a revised version of article 9 of the Uniform Commercial Code. The Code regulates a wide range of commercial transactions, and article 9 deals with security interests in personal property. The taskforce that worked on the revision set out to make the text of article 9 as reader-friendly as possible, and used many of the techniques of plain language drafting.\(^9\)

From its 1999 session, the Connecticut General Assembly adopted a new, reader-friendly style and format for bills and amendments. The new format uses many plain language document design techniques.\(^10\)

The Executive Memorandum

One of the most encouraging developments in the plain language movement came on 1 June 1998 when President Clinton issued his Executive Memorandum on plain language. This was sent to the heads of executive departments and agencies, directing them to:

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\(^7\) Named for the person who devised the test, Rudolph Flesch: see Flesch, R. 1974, *The Art of Readable Writing*, revised 25th anniversary edition, Harper & Row, New York. This test has been applied in Australia to various documents, including Victorian legislation; see Lyons, G and Tanner, J “Legal Documents: Can anyone understand them?” *Legal Services Bulletin*, August 1977, p 283. See Chapter 17, p 297 for more information about, and criticism of, readability formulas.

\(^8\) Many of these US laws and regulations have been listed by Professor Joseph Kimble in “Plain English: A Charter for Clear Writing” (1992) 9(1) *Cooley Law Review* 31. The US section of the article was updated in summary form and was published in the plain language journal *Clarity*, No 38, Jan 1997, p 21. I am grateful to Professor Kimble for his permission to draw on the information in those articles.

\(^9\) For more information, see Weise, SO, “Plain English comes to the Uniform Commercial Code”, *Clarity* No 42, Sept 1998, p 20.

\(^10\) For more information, see Shapiro, L, “Legislative document design in Connecticut”, *Clarity* No 45, Dec 2000, p 16.
• By October 1, 1998, use plain language in all new documents, other than regulations, that explain how to obtain a benefit or service or how to comply with a requirement you administer or enforce. For example, these documents may include letters, forms, notices, and instructions. By January 1, 2002, all such documents created prior to October 1, 1998, must also be in plain language.
• By January 1, 1999, use plain language in all proposed and final rulemaking documents published in the Federal Register, unless you proposed the rule before that date. You should also consider rewriting existing regulations in plain language when you have the opportunity and resources to do so.

Even after the end of the Clinton administration, there is still US government support for this initiative. A volunteer group of federal government employees has formed “PLAIN” – the Plain Language Action & Information Network. PLAIN works to improve communications from the federal government to the public. PLAIN has a web site (<www.plainlanguage.gov>) and holds workshops and seminars.\textsuperscript{11} Anyone can participate. Many government agencies now offer advice and assistance on how to write various documents in plain language.\textsuperscript{12}

\textit{Securities and Exchange Commission} Another great leap forward for plain language came in January 1998 when the US Securities and Exchange Commission (SEC) announced new rules calling for plain language in prospectuses.\textsuperscript{13} These rules apply only to the prospectus that a public company or mutual fund must give to prospective investors in their securities. One rule, Rule 421(d), requires the prospectus issuer to use “plain English principles” to organise, write and design the front and back covers, summaries and risk factors sections of the prospectus. Another rule, Rule 421(b), had required “clear, concise and understandable” information in prospectuses. Now the rule has been revised to give specific guidance as to how to do this.

\textsuperscript{11} Secretary of Health and Human Services, Tommy G Thompson, is the Bush administration’s champion for plain language. Membership of PLAIN is open to non-federal government employees as well.
\textsuperscript{12} For example, the Federal Trade Commission’s “How to Write Readable Credit Forms” at <www.ftc.gov/bcp/conline/pubs/buspubs/readcred.htm> and the US Small Business Administration’s “Plain Language – What is it?” at <http://www.sba.gov/plain/whatis.html>.
More help for companies trying to comply with these rules is in the SEC’s *Plain English Handbook*, which is available in print and online.\(^\text{14}\)

The recent Enron corporate scandal and subsequent prosecutions have given new impetus to the SEC’s efforts to encourage better disclosure by companies to their shareholders. In early 2003 the SEC ordered 350 of the Fortune 500 companies to rewrite their last annual reports or make better disclosures in future. The SEC said companies were still using “boilerplate” provisions rather than plain language.\(^\text{15}\)

**The courts** A further major achievement in the US is the effort to “restyle” all the rules of procedure in the federal courts. In 1991 the formidable named Judicial Conference of the United States’ Style Subcommittee of the Standing Committee on Rules of Practice and Procedure began a monumental job: reviewing and rewriting the federal appellate court rules for clarity, simplicity, and consistency. So far the Federal Rules of Appellate Procedure, and of Criminal Procedure, have been restyled. There is no *shall* left in any of the restyled rules. Now work continues on the Federal Rules of Civil Procedure.\(^\text{16}\)

The Federal Judicial Center (the educational and research agency for the US federal courts) published a set of jury instructions in plain language as long ago as 1988. The Center teaches federal judges to write their opinions in plain language.

**Lawyers’ groups and legal education** Then there are the many organisations and committees that are devoted to reviewing legal practice and procedure to simplify legal language and make it is easier to understand. One of the longest running organisations is what is now the Plain English Subcommittee of the State Bar of Michigan’s Publications Committee.\(^\text{17}\) This group was formed in 1979 and for 20 years has published the monthly “Plain Language”

\(^{14}\) [www.sec.gov/news/extra/handbook.htm].


\(^{16}\) Two leading lights of the plain language movement are key figures in this work: Bryan Garner was the initial drafting consultant to the project, and Professor Joseph Kimble is the current drafting consultant. For more information, see Garner, BA, “The Substance of Style in Federal Rules”, *Clarity* No 42, Sept 1998, p 15 and Garner, BA, 2002, *Guidelines for Drafting and Editing Court Rules*, Administrative Office of the US Courts, Washington DC.

\(^{17}\) The Committee is chaired by George H Hathaway. Professor Joseph Kimble is a committee member and an eloquent advocate of plain language in the law.
column for the *Michigan Bar Journal*. Another long-standing organisation was the Information Design Center of Washington DC (formed in 1979 as the Document Design Center, but closed in the late 1990s). Both organisations have done much to increase our knowledge of how lawyers can use plain language techniques (including improved document design) in their daily work.

In 1992, the Michigan committee devised its annual “Clarity” awards to encourage lawyers to eliminate legalese. The State Bar of Texas Plain-Language Committee also used to give annual awards - the “Legaldegook” awards - which lampooned the worst in legal drafting.\(^{18}\) The Missouri and Pennsylvania Bar Associations have plain language committees. The Pennsylvania Bar Association has been giving “Clarity” awards since 1999. The National Conference of State Legislatures held a workshop on plain language at its annual drafting seminar for 1995. The 1995 meeting of the American Bar Association also included a session on plain language in legal writing.

In August 1999, following up on President Clinton’s 1998 Executive Memorandum, the American Bar Association passed a resolution urging government agencies “to use plain language in writing regulations, as a means of promoting the understanding of legal obligations”.

Various US legal writing organisations are advocates of plain language. The Legal Writing Institute is based in the US, but has around 1700 members worldwide. At its 1992 conference, the participants adopted a resolution that said:

1. The way lawyers write has been a source of complaint about lawyers for more than four centuries.
2. The language used by lawyers should agree with the common speech, unless there are reasons for a difference.
3. Legalese is unnecessary and no more precise than plain language.
4. Plain language is an important part of good legal writing.
5. Plain language means language that is clear and readily understandable to the intended readers.
6. To encourage the use of plain language, the Legal Writing Institute should try to identify members who would be willing to work with bar associations to establish plain language committees like those in Michigan and Texas.

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\(^{18}\) An Australian case received the “Heinous Headnote” award in 1993!
This resolution is significant, because most of the members of the Legal Writing Institute teach legal writing at law schools, and will influence the writing styles of future lawyers in America. The Institute presented its first “Golden Pen” Award in January 2000 to Arthur Levitt, then Chair of the US Securities and Exchange Commission, for his leadership in requiring plain language in financial disclosure documents.19

Another well-respected legal writing organisation, the American Society of Writers on Legal Subjects, is a plain language champion. Its journal, *The Scribes Journal of Legal Writing*, regularly publishes articles about plain language in legal writing.

**In Canada**

*Beginnings* North of the border, in Canada, things also began to happen in the 1970s. In 1979 the Bank of Nova Scotia worked with lawyer Robert Dick to redesign and rewrite its loan forms. At the same time Royal Insurance of Canada had produced a plain language insurance policy.

In 1976 the Canadian Legislative Drafting Conventions were produced and sanctioned by the Uniform Law Conference of Canada. These conventions adopt many of the principles of plain language drafting. They were designed to modernise and standardise the drafting styles that may be used in uniform statutes in Canada. They are models for the Legislative Counsel offices of the federal and provincial parliaments in Canada, which can adopt them as they are, or with modifications. The Office of the Legislative Counsel in Ontario20 has had a policy of drafting in ordinary language, and for the intended reader, since at least 1991.

In 1988 the Justice Reform Committee of British Columbia issued its report, called *Access to Justice*. It recommended establishing a plain language committee to develop a strategy for introducing plain language into the justice system. Then in 1990, the Canadian Bar Association and the Canadian Bankers’ Association issued a report called “The Decline and Fall of Gobbledygook: Report on Plain Language Documentation”. It recommended ways to promote the use of plain language in the legal profession and in

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19 See under the heading *Securities and Exchange Commission* earlier in this chapter, pp 4-5.
20 Chief Legislative Counsel is Donald Revell.
banking. The Canadian Bar Association adopted these recommendations by resolution in 1991, urging banks (and governments and other organisations) to draft their documents in plain language. Ironically the first word of the resolution was “Whereas”.

Plain language in the financial sector It seems that the financial sector is the most recent leader in the move to plain language in Canada. In March 2000 the Canadian Bankers Association followed up on the “Decline and Fall of Gobbledygook” report and subsequent resolution. It announced that its members were “committed to providing customers with banking information which they can easily understand and use”. It promised to take three steps to do this:

1. We will conduct a plain language audit of our mortgage documents to identify if and how our documents need to be changed to reflect plain language writing principles.
2. We will develop a strategic plan and timetable for “translating” existing mortgage documents into plain language, if the existing mortgage documents do not reflect plain language principles. CBA members aim to have this process largely complete by 2005.
3. We will apply plain language principles when revising or developing new residential mortgage documents.21

It is up to the individual financial institutions to decide how they will adapt their mortgage policies and documents to reflect that commitment.

Also in the financial services sector, the insurance company Clarica embarked on a major plain language program in 1999. From that date its policy is to write all new documents in plain language. At the same time it began to rewrite its existing insurance policies and related documents in plain language.22

There are legislative incentives for other financial services sector companies to follow Clarica’s lead. On 1 February 2000 the Canadian Securities Administration required all mutual prospectuses to be written in a standard, plain language format. And in March 2001 the Canadian government released four model plain language loan disclosure documents. It encouraged all financial

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22 For more information, see Milne, S, “Plain language at Clarica”, Clarity No 45, Dec 2000, p 19.
institutions and retail loan providers to use them to help them develop their own equivalent documents. So using the model documents is voluntary, but the idea behind them is two-fold: to make it easier for consumers to understand credit card, line of credit and other loan agreements, and to help financial institutions meet their obligations under new federal disclosure requirements. In addition there is the work being done by the British Columbia Securities Commission, which I outline later in this chapter.\textsuperscript{23}

\textit{Laws in or requiring plain language} It is part of the communications policy of the Canadian government that government institutions must communicate effectively – in plain language.\textsuperscript{24} As we have just seen, the Canadian government has passed laws either requiring or encouraging the use of plain language in certain documents.\textsuperscript{25}

Laws written in plain language have been passed in various Canadian provinces, including the Yukon and Alberta. The governments of Saskatchewan, Alberta and Nova Scotia all announced plain language programs or policies in the 1990s.\textsuperscript{26} Several provinces, including British Columbia, Quebec, Manitoba, Saskatchewan and Alberta, have either passed, or at least drafted, legislation requiring certain types of contracts to be written in plain language, or in language that is comprehensible or intelligible.\textsuperscript{27} Alberta passed a plain language law in 1990: the Financial Services Act achieved a dual feat. It not only imposed a “duty to use plain language” for certain documents (section 13), but the Act was also written in plain language.

\textsuperscript{23} Under the heading \textit{New projects}, in this chapter on p 11.
\textsuperscript{25} Other examples are: Bank Act (1991, c 46), Agriculture and Agri-Food Administrative Monetary Penalties Act (1995, c 40), Index-linked Deposits Interest Disclosure Regulation (SOR/2002-102), and various Cost of Borrowing Regulations passed in 2001 and 2002.
\textsuperscript{26} Alberta’s program was announced by Hon Dennis Anderson, Minister of Consumer Affairs, on 28 October 1991. Saskatchewan’s Cabinet endorsed a clear language program for all government ministries in 1990. Nova Scotia’s government communications agency endorses and encourages plain language through its web site: <http://www.gov.ns.ca/cmns/plainlanguage/default.htm>.
\textsuperscript{27} In Alberta, the lawyer and expert drafter David Elliott has been a driving force in the plain language movement.
In April 1997 British Columbia adopted a new format for all its statutes. The revision consolidated all BC statutes to 31 December 1996. The specific goal of the revision was to improve readability using plain language principles, both in matters of format and layout, and in drafting technique. Some of the improvements were based on work done on legislative format in Australia and New Zealand.

Testing plain language laws In 1995 the Canadian government chose a portion of the Explosives Regulations (the Consumer Fireworks Regulations) for a pilot project to rewrite government regulations in plain language. A Department of Justice team ran the project, which demonstrated not only that it was possible to write technical material in plain language, but also the value of extensive user consultation and usability testing.

Then in 1997 the Canadian government decided to rewrite the Employment Insurance Act in plain language, and test it on potential users (there’s more about this in Chapter 17). As at this book’s press-time the rewriting process was close to completion and the plain language Bill was almost ready. The plain language rewrite of the Explosives Regulations continues. Similar projects are planned. As each rewrite nears completion, other government departments show interest in improving the way they communicate the law to citizens.

Plain language in government agencies Various provincial and federal government departments produce forms in plain language. For example, Alberta Agriculture, Food and Rural Development hired a plain language consultant to help them rewrite the hundreds of forms they use in their wide-ranging work. And the Canada Customs and Revenue Agency has redesigned tax forms and supporting documentation, including tax guides, in an effort to make them more comprehensible and usable by all Canadians. The Agency participates, along with the Treasury Board and many other federal departments and agencies, in the Interdepartmental Committee on Plain Language.

That Committee is one of many initiatives in plain language that have been driven by the National Literacy Secretariat. The
Secretariat has published several plain language guides and supports and encourages provincial literacy groups such as the Canadian Public Health Association to develop plain language training and services.

**New projects** An exciting new project at the British Columbia Securities Commission shows that BC is still a leader in the Canadian plain language movement. The BC Securities Commission is the government agency responsible for regulating securities in BC. It aims to reduce the burden of regulation on investors and other market participants, and it wants a clearer and simpler regulatory system. So in 2001 it launched a plan to simplify and write all their rules in plain language. The project is part of a wider national initiative to develop uniform securities legislation for Canada. The project is still underway in BC, but already the Ontario, Alberta, and Manitoba Securities Commissions have joined the effort, all with the common goal of achieving plain language throughout the Canadian regulatory system and securities industry.

Alberta continues its plain language work. As well as the Alberta Securities Commission’s project to simplify its regulations, there is the plain language effort underway at the Office of the Auditor-General of Alberta. Seeking to improve the quality and persuasiveness of their advice to government, they decided to improve the quality of their writing. So they embarked on a project to make the 2002 annual report clear, concise and shorter. The results were dramatic: they found that changing the way they communicate was changing the way they did their work. Writing more clearly and concisely showed up any weakness in the evidence supporting their recommendations, and left no room for substandard audit work.

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29 Including *Plain Language – Clear and Simple*, 1991, Multiculturalism and Citizenship Canada) and *The Plain Language Trainer’s Guide*.
32 For more information, see Saher, M, “The plaining of writers”, Clarity No 49, May 2002, p 27.
Legal education  Law schools at the Windsor, Ottawa, Queen’s and McGill universities all teach plain language principles in their legal writing courses.

From 1973-92, the Canadian Law Information Council ran a Plain Language Centre in Toronto. It provided resources to those interested in plain language and designed and ran training courses in plain language drafting. Unfortunately, its funding ceased, and it had to close in March 1992. And there was a Plain Language Institute in Vancouver, which played a similar role there, until the British Columbia government closed it in March 1993. Nevertheless, people in British Columbia remain active in the plain language movement, with a new Plain Language Society formed in 1993, and a BC Plain Language Section of the Canadian Bar Association formed in 1994. Much work was done in continuing legal education in the 1990s to encourage lawyers to write in plain language. In British Columbia, for example, the Continuing Legal Education Society funded a three-year Plain Language Project from 1990. Its aim was to introduce plain language to the legal community, by teaching plain language principles and by rewriting standard form precedents in plain language. The Alberta Law Reform Institute organised a demonstration project to draft several model plain language documents, including a guarantee. They were published in 1992 as part of its Plain Language Initiative. And for 20 years the Canadian Institute for the Administration of Justice has held courses on legal drafting and judgment writing. Those courses incorporate plain language principles.

PLAIN Two Canadians, Cheryl Stephens and Kate Harrison, were the founders of what is now called PLAIN (the Plain Language Association International). PLAIN is a group of “professionals who plan, write, design and create communications projects to better serve the needs of the public, clients, customers, students, and staff”. PLAIN has a web site, a lively internet discussion group, and it holds an international conference every

33 The suite of documents included a will, a guarantee, an enduring power of attorney, minutes of settlement, a restraining order and a parental consent form.
34 Quoted from PLAIN’s web site: <http://www.plainlanguagenetwork.org/networkindex.html>.
other year. Through PLAIN, plain language professionals and other interested people can swap ideas and share the results of their work.

Plain French in Canada One of the things that distinguishes Canadian plain language efforts from those in other countries is that Canada has two official languages. At the federal level, laws, regulations and court reports are published in both English and French. Federal Acts and regulations are “co-drafted”, with one English and one French drafter for each Act and regulation. So the plain language policy of the Canadian government applies equally to each language. In fact, according to the Law Reform Commission of Canada, bilingual drafting can improve the text.36

Some provinces, too, are constitutionally bilingual. One territory, Nunavut, has three official languages (the third language is Inuktitut).

Ontario was an early adopter of plain language in legislation. There, French translators work from the (plain) English source and apply plain language principles when translating. But in Quebec, French is the official language of law and government. Laws are drafted first in French, and then translated into English, and plain language has been slower to take off. However, there was early interest in plain language. In the 1980s the government of Quebec engaged US plain language consultants Siegel and Gale to help them simplify tax forms. And various institutions in Quebec have made great changes in the way they communicate with their clients, particularly in the areas of social security and retirement benefits.37

From 1988 to 1992 the Canadian Law Information Council (headquartered in Toronto) had a French division in Montréal, Quebec. This division worked with various federal departments to train legal and administrative writers, linguists and lawyers writing in French.

Interestingly, the proponents of plain French in Canada are likely to get a boost from the work being done in the European

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38 See this chapter, p 12.
Union in general and in France and Belgium in particular to simplify and clarify the language of the law and bureaucracy.\footnote{See this chapter, pp 21-23 and 24-25. For more information on plain French in Canada, see Fernbach, N, “Getting the message across in languages other than English”, cited at note 37 and “Plain French in Canada: a review of past and present activities”, Clarity No 38, Jan 1997, p 16.}

**In the United Kingdom**

*The Renton Report* In the early 1970s the Renton Committee was appointed to investigate and report to Parliament on the process of formulating statutes, and on 7 May 1975 the *Renton Report\footnote{The Preparation of Legislation, 1975, Cmd 6053, Chapter VI, Appendix B, HMSO, London.}* was published. It highlighted examples of convoluted drafting in British statutes and recommended improving the explanatory materials which accompany statutes.

The United Kingdom government adopted a plain English policy for government forms in 1982. Since then, officials have been working both to reduce the number of forms and to improve the design of those that remain. The civil service has reviewed well over 100,000 forms, and many thousands of forms have either been completely redesigned or abandoned altogether. The government’s Civil Service College now runs courses on information design, and at least two of these are aimed squarely at lawyers and legal documents. In 1994 the Secretary of State for Wales announced a program to simplify, and reduce the number of, government forms and circulars. He directed that all guidance be given in plain English, rather than “managerial jargon”. Since then, simplification has occurred in local government, small business, the arts and other areas.

*National Consumer Council* In 1975, the National Consumer Council was formed, and soon joined the plain language cause, calling on lawyers to write in plain language and issuing booklets to show them how. In 1984 the Council published “Plain Words for Consumers”, a booklet which proposed the introduction of a plain language Act along similar lines to the New York plain language law. But it seems unlikely that it will ever be passed.

However, the plain language movement in Britain continued to grow. The National Consumer Council issued several other
booklets on plain language writing, including *Gobbledygook* (1980), *Plain English for Lawyers* (1984), *Making Good Solicitors* (1989) and *Plain Language – Plain Law* (1990). More recently, the Council has announced that plain language is one of the issues being put to the European Community by the Consumers in Europe Group (which merged with the National Consumer Council on 1 April 2001) for its consumer policy action program 1999-2002. The Consumers in Europe Group says:

> Obscure and ambiguous language in green papers and draft legislation is a barrier to proper consultation, scrutiny and decision-making including in consumer and food policies.41

**Plain English Campaign and Plain Language Commission** In 1979, the Plain English Campaign was formed. This organisation began giving Plain English Awards in 1980. During the 1980s it worked with the National Consumer Council to begin a process of reviewing thousands of government forms which were badly worded and poorly designed. It publishes various books and magazines about plain language, and promotes the use of plain language all over the world. It has held international conferences in the United States and, in 1995, in South Africa. The most recent conference was held in London in 2002.

The Plain English Campaign was founded by Chrissie Maher and Martin Cutts. It had its origins in the Salford Form Market, a consumer advice centre Maher and Cutts had set up three years earlier in Salford, near Manchester. The Form Market helped people who were having problems claiming welfare benefits, and worked with the Supplementary Benefits Commission to rewrite a series of forms. Since 1994, Martin Cutts has operated his own successful plain language and document design consultancy, the Plain Language Commission. It offers training, writing, editing and typography services and gives its own writing accreditation and awards. Cutts is the author of several books about plain language, including *Lucid Law*42 and *The Plain English Guide*.43

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Clarity

Then there is an enthusiastic group of lawyers and others who have formed "Clarity", an international movement to promote plain legal language. Clarity’s journal, also called Clarity, is a mine of information both on the plain language movement in the law, and on drafting techniques. It is published twice a year. Clarity was founded in England but it is now truly international. It has over 900 members in 34 countries. It has a web site, and it gives its own awards – the Clarity Awards – to recognise documents that are drafted in modern language, are set out clearly, and communicate efficiently and effectively.

Clarity has two distinguished patrons: the Right Honourable Sir Christopher Staughton, formerly a Lord Justice of the Court of Appeal of England and Wales, and Justice Michael Kirby of the High Court of Australia.

Tax Law Rewrite Project

One of the most significant developments in plain language in the UK is the project to rewrite the UK tax laws. On 28 November 1995 the Chancellor of the Exchequer announced a five-year project to rewrite the existing direct tax legislation.

Inland Revenue’s stated aim for the project is “to rewrite the United Kingdom’s primary direct tax legislation to make it clearer and easier to use, without changing the law”. The five-year project is now in its eighth year. Inland Revenue publishes annual reports on its progress and its plans for the next year.

The first Bill produced by the project (on capital allowances) is now law. The Capital Allowances Act 2001 was enacted in March 2001 and applied from April 2001. The second, the Income Tax (Earnings and Pensions) Act 2003 came into effect on 6 April 2003. Inland Revenue plans two further income tax Acts. The third is to cover the remainder of income tax charges and calculation rules. A draft will be available in 2004, planned for introduction into parliament at the end of that year. The fourth is to cover the remainder of the income tax code and is planned for introduction into parliament at the end of 2006.

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44 Clarity’s President is Peter Butt and the Clarity journal Editor in Chief is Michèle Asprey. Both are Australian lawyers.
45 <www.clarity-international.net>.
According to Inland Revenue, both Parliament and potential users of the legislation have been receiving it warmly. Inland Revenue reports that various tax industry groups have commented favourably on what was the second Bill:

Another major step forward in improving the intelligibility of UK tax legislation in areas of law that affect the majority of taxpayers.

– The Institute of Chartered Accountants in England and Wales.

The Bill is a most significant achievement.

– The Chartered Institute of Taxation.

It is a very great improvement on the existing legislation.

– Confederation of British Industry.

The new text is clearer, more logically ordered and more user friendly while preserving the effect of the present legislation.

– The Share Scheme Lawyers Group.47

Planning continues into 2007.

The project team recognises that not just the text, but also the way it is presented, can affect clarity and readability. In February 1998, partly as a result of the work of the Tax Law Rewrite Project team, a working group was established to review the format of statute law. There is now a new statutory format for all public Bills in the United Kingdom.

Format of legislation From 2001, UK statutes have a new typeface, Book Antiqua (similar to Palatino). There are running heads on each page showing the Act name, part and chapter number. Instead of marginal notes in small type, there are bold section headings above the text, on the same line as the section number. And the text has hanging indents rather than wrap-around text.

Since November 1998, most UK Bills and Acts resulting from Bills come with Explanatory Notes. They are designed to help the reader understand what the legislation does and how it does it. The Notes are published alongside the Bills, but do not have the force of law. They take the place of the previous Explanatory and Financial Memoranda and Notes on Clauses, and are intended to extend and improve that information. They can summarise provisions, give background and show working examples. And they must be

47 Same work, para 3.6, p 9.
written “in clear and simple English, using as few technical terms as possible (and then with adequate explanation”).

*Civil Procedure Rules 1998* Following hard on the heels of the statute format overhaul came a radical review of the Civil Procedure Rules of England and Wales, based on the recommendations of Lord Chief Justice Woolf. The Civil Procedure Rules 1998 came into force on 26 April 1999. The primary purpose of the review was to reduce the cost and duration of litigation.

The new Rules combine the rules for most county courts, the High Court and the Court of Appeal in a single set of rules. They are written in plain language and are intended to streamline civil litigation by simplifying certain procedures and by requiring early disclosure of evidence and witness statements. They also introduce certain changes in terminology: for example, “pleadings” becomes “statement of case”, “writ” becomes “claim form”, “plaintiff” becomes “claimant”, “subpoena” becomes “witness summons” and “discovery” becomes “disclosure”. Latin is out and more familiar, everyday words are in. Lawyers and other court staff are being encouraged to adopt them. There is no actual requirement in the new Rules that litigants and their lawyers must use plain language, but there is a rule that says that particulars of claim must include “a concise statement of the facts on which the claimant relies”. But this requirement for concision does not seem to apply to other statements of case (formerly pleadings).

*Unfair terms in consumer contracts* The European Community is also having an effect on plain language in legal documents. On 1 July 1995, the European Union directive on unfair terms in consumer contracts came into force in the UK. It was enacted in the form of the Unfair Terms in Consumer Contracts Regulations 1994, which have since been revoked and replaced by the Unfair Terms in Consumer Contracts Regulations 1999. The regulations state that a standard term must be expressed in “plain, intelligible language”. An “unfair term” in a consumer contract is not binding on the consumer. A term is open to challenge if it could put the consumer at a disadvantage because he or she is not clear about its meaning.

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49 Rule 16.4(1)(a).
even if its meaning could be worked out by a lawyer. If there is doubt as to what a term means, the meaning most favourable to the consumer will apply.\textsuperscript{50}

There are no direct sanctions for breach of the regulations, but various organisations can apply for injunctions against suppliers who breach the regulations. The 1999 amendments also introduced what is known (in admirable plain language) as a “Stop Now” Order. This is a court order, which the Office of Fair Trading can get against a trader who has breached the regulations. \textit{Clarity} reported\textsuperscript{51} that the regulations were having an effect: by 1995 consumer contracts in plainer language had started to appear throughout Britain.

\textit{UK Law Society} In March 2003 the UK Law Society published a new set of Customer Guides to various legal transactions and issues, and a Clients Charter. The Law Society says they are written in plain English (though there are versions in other languages) and the Plain English Campaign has given “Crystal Marks” to the versions in English. The Clients Charter promises that a solicitor will:

\begin{quote}
make every effort to explain things clearly, and in terms you can understand, keeping jargon to a minimum.
\end{quote}

The Charter so far only applies to solicitors in England and Wales, but there are calls to extend the reach of the Charter to Scotland.

While we are on the subject of the Crystal Mark, in a recent letter to the editor of the London \textit{Times}, a writer noted that he had just received his council tax bill with a Crystal Mark proudly displayed on the accompanying notes to the bill. However, the last four pages of the booklet each have the heading:

\begin{quote}
Plain English Campaign’s Crystal Mark does not apply to this page as the wording has been set by the Government.\textsuperscript{52}
\end{quote}

\textbf{In Ireland}

The private sector has taken the lead in moving towards plain language in Ireland. The largest telephone company, Eircom plc,
has a policy of using plain language. So has a major life assurance company, Irish Life, which began working with plain language consultants in 1998. The Bank of Ireland also uses plain language. Documents prepared by each of the Bank of Ireland and Irish Life have received “Crystal Marks” from the UK Plain English Campaign.

The Offices of each of the Ombudsman and the Information Commissioner have plain language initiatives. In its recent Annual Reports the Insurance Ombudsman repeatedly called on the Irish insurance industry to adopt plain language.

Although the Irish government does not have an official plain language policy, it did issue a government report in 1999 called Reducing Red tape: An Action Programme of Regulatory Reform in Ireland. That report called on all government departments to “provide user-friendly information to client groups and easily-read guides to legislation”. Notably, it did not call for the legislation itself to be “user-friendly” or “easily-read”.

However, the Irish Law Reform Commission called for plain language in legislation, in its report Statutory Drafting and Interpretation: Plain Language and the Law, published in December 2000. The Commission recommended:

a comprehensive programme of plain language reform in Irish statute law. In this regard we support the initiatives currently being undertaken by the Office of the Parliamentary Counsel to the Government and the Statute Law Revision Unit.53

One of the initiatives of the Office of Parliamentary Counsel is the legislative Drafting Manual prepared for drafters in that Office. It was published in November 2001, and deals with the language, structure and layout of legislation. It advocates plain language principles “in so far as that is possible without giving rise to ambiguity”.54 That drafting manual is available on database to all legal staff within the Office of Parliamentary Counsel.

The Statute Law Revision Unit was set up in 1999 to revise and consolidate the statute law of Ireland, to modernise and update it, and make it more accessible to the public, as part of the

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government’s national policy of “Better Regulation”. In the report called *Towards Better Regulation*, the Irish Prime Minister (Taoiseach) said:

> Best practice requires the undertaking of a comprehensive programme of general revision (revising all legislation and modernising the language, style and structure of legislation) followed by limited revision (of individual Acts) as needed to maintain coherence.55

The Statute Law (Restatement) Act 2002 was passed early in 2003 to enable the restatement to take place. According to the Office of the Attorney-General of Ireland, the policy for that Act was developed “having regard to developments in other countries and, notably, Australia”56.

Finally, the Interpretation Bill 2000 is before the Irish Parliament. This Bill is part of the effort to modernise Irish statute law. If passed, it will enable updates to legislative language and make interpretation provisions in other Acts more concise. The Office of the Attorney General hopes to be able to incorporate aspects of the Irish Law Reform Commission’s 2000 report at the Committee stage of the Bill.

**In the European Union**

I have already mentioned57 the European Union directive on unfair terms in consumer contracts which required all member states to enact the directive by 1 January 1995. This had been preceded two years earlier by the European Council of Ministers Resolution on the quality of drafting of European Community legislation,58 which began by stating:

> 1. the wording of the act should be clear, simple, concise and unambiguous; unnecessary abbreviations, ‘Community jargon’ and excessively long sentences should be avoided;

and went on to specify other ways of helping make legislation more accessible. Unfortunately, the spirit of the resolution is not always reflected in the material the Eurocrats publish.

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57 See this chapter pp 18-19 in the context of the UK.
58 [93/C 166/01](http://www.eur-lex.europa.eu).
To help remedy this, Martin Cutts worked with the translation service of the European Commission to recast an EC directive into plainer language. The results are published in *Clarifying Eurolaw*. And in *Clarifying EC Regulations*, Cutts, together with Emma Wagner, rewrote an EC regulation in plainer language. Emma Wagner was the driving force behind the “Fight the Fog” campaign which began in 1998, aiming to encourage clear writing in EU institutions. The campaign involves lectures by specialist writers, a booklet on clear writing, the Clear Writing Awards and a web site.

Two other, consumer-oriented, organisations – European Research into Consumer Affairs and the Consumers in Europe Group mentioned earlier) – have also been active in trying to improve the language of the Eurocrats.

Sweden’s presidency of the EU in 2001 provided a much-needed boost for plain language. A European Law Conference was held and one of the major topics was “The Need for Clarity and Public Access”. The European Commission’s High Level Advisory (Mandelkern) Group has a Swedish delegate who is promoting plain language as a vital part of the Commission’s commitment to “better regulation”.

On 5 June 2002 the European Commission presented the Seville European Council with an Action Plan for simplifying and improving the EU regulations. The Plan contains 16 specific actions for better European regulation, including most of the key Mandelkern Group recommendations. One of the key elements of the Action Plan is to create a program to simplify existing legislation in order to reduce the volume of Community law.
Sweden and Denmark

In many ways, Sweden was ahead of the rest of the world in the plain language movement. In 1713 King Charles XII dictated this ordinance:

His Majesty the King requires that the Royal Chancellery in all written documents endeavour to write in clear, plain Swedish and not to use, as far as possible, foreign words.

In 1976 the Swedish government appointed a linguist to the Cabinet Office. His task was to modernise legal language in laws and ordinances. Since 1980 there has been a team of language experts who revise written material before it reaches the parliament, prepare writing guidelines and run training courses. This work spread outside the Ministries, and in 1993 the government appointed a Plain Swedish Group consisting of three judges, two linguists, three political scientists and a secretariat. The Group encouraged state agencies all over Sweden to start plain language projects. Today, more than half of all Swedish government authorities are involved in plain language projects.

The Plain Swedish Group now consists of three judges, two linguists, two information managers and two political scientists. It works within the Division for Legal and Linguistic Draft Revision at the Ministry of Justice. No government bill, ordinance or committee term of reference can be sent to the printers without the Division’s approval.

The Group also arranges plain language conferences and lectures, and publishes a plain language bulletin and a web site. Each year the Group awards the Plain Swedish Crystal to one or two of the state agencies to recognise their plain language work. The Group also has an evaluation system, the “Plain Language Test”, which it uses to assess texts for comprehensibility. However, Swedish legislative drafters still face a challenge to their plain language skills. The European Union regulations and directives to be incorporated in Swedish law are often written in an incompatible style. To counter this the Swedish government has created a new position: a language expert to work specifically on EU

67 For more detail, see Ehrenberg-Sundin, B, “Plain Language in Sweden”, Clarity No 33, July 1995, p 43.
language issues. And as we have already seen, Sweden has taken a lead in plain language issues within the EU.

Finally, since 1978 the Department of Scandinavian Languages at Stockholm University has offered a course in Swedish Language Consultancy. The initial purpose of the course was to train people to reform bureaucratic language. Graduates joined the staff of the Swedish government and started to work on plain language projects. Now graduates can be found in the private sector as well.70

Denmark too has had a long-standing commitment to plain language in legal and business writing. Much of the work in this area has been spearheaded by the Århus School of Business,71 which has been keen to involve linguists in the debate. In August 1994, the School hosted a successful international conference of lawyers and linguists in Århus. This gave the lawyers at the conference the chance to hear the linguists’ views on legal language and related issues.

France

In July 2001 the French government established COSLA (Comité d’orientation pour la simplification du language administratif), a committee to simplify official language.72 The committee comprises language experts, civil servants and end users, and is headed by the Minister for the Civil Service and the Minister for Culture and Communication. Its role is to simplify official forms and government correspondence.

The COSLA directed its work initially to six forms that were used by the administration more than 132 million times each year.73 These forms have now all been modified to meet the requirements of COSLA.

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69 This chapter, p 22 under the heading In the European Union.
71 Especially by Anna Trosberg and Jan Engberg.
73 They are: (1) legal aid form (2) application for nationality identity card (3) claim for family allowances (4) application for general health cover (5) retirement application (6) declaration of estate.
COSLA has published on its website a drafting guide to assist public agencies, as well as a lexicon offering simple alternatives to complex administrative terms. COSLA has also developed software to help civil servants with administrative drafting.

On 5 May 2003, the government announced that it had requested COSLA to prepare a new program to simplify 75 other official forms.

Germany
Since 1966, the German Language Society (GLS) has checked and edited proposed legislation, aiming to make it more understandable. The GLS is a non-political body established in 1947 to protect and research the German language.

Protocol requires government departments to send legislation to the GLS in draft. The GLS suggests clearer alternative language. The government then reviews the suggestions and, in the vast majority of cases, accepts them. The most common improvements are those to syntax, vocabulary and layout.

However, the German Parliament has not yet made adoption of the editing mandatory, and the process faces a challenge of resources: the GLS parliamentary editing service involves a single part-time position.

Italy
Italy is one of the more active of the European members of the plain language movement, especially recently.

In 1994, as part of the more general civil service reform efforts, the Italian government announced a scheme to simplify bureaucratic language. Public servants are trained to simplify their writing, and they have a computer program that corrects errors in public documents.

74 [http://www.fonction-publique.gouv.fr/cosla].
75 See [http://www.fonction-publique.gouv.fr/communications/revue_service_public/ref_91_1].
76 Paragraph 42(5) of the Common Rules of Procedure of German National Ministries.
77 The material in this section was digested from Wieners-Horst, B, "Editing in the German Parliament", Clarity No 47, May 2002, p 12.
In 1995 the Italian Ministry of Public Administration commissioned the Faculty of Law at the University of Rome to study administrative language. The task was to find out what government agencies could do to improve and simplify administrative language so as to increase people’s confidence in the agencies. With this aim in mind, the faculty held a conference in December 1995. Members of the Italian and other European administrations discussed administrative language and the relationship between governments and citizens.

This project bore fruit in May 2002 when the Italian government announced the program called Chiaro! (Clear!), which aims to simplify the way government communicates with its citizens. Mr Frattini, the Civil Service Minister described the effort as “a cultural revolution in our relationship with citizens”.

Chiaro! will award the Chiaro! stamp to government departments and ministries that simplify their writing and avoid using “il burocratese”. Its web site proudly proclaims:

Chiaro!
Il nuovo progetto per semplificare il linguaggio amministrativo.

Drafting legislation in Italy is a complex process. Laws enacted by the Italian Parliament originate primarily in committees, but proposed legislation is often significantly amended in the parliamentary assembly, in many cases after difficult political compromises.

In January 1998 the rules of procedure of the Chamber of Deputies were amended to give the parliamentary committees primary responsibility for ensuring minimum “quality” requirements for proposed laws, including clarity. To assist the committees, a Legislation Committee – equally representing the government majority and opposition – meets to give opinions on the drafting of the specialist committees. Advice includes suggestions for improving simplicity and clarity, and in the majority of cases the opinions of the Legislative Committee have been taken into account.

The Legislation Committee has also conducted seminars educating MPs, regional authorities and people working in the court system, on the quality of legislation.

79 Chiaro! <http://www.funzione pubblica.it/chiaro> (in Italian).
80 The material in the last three paragraphs of this section was digested from Murgia, S and Rizzoni, G, “How politics can be used to improve the quality of legislation”, Clarity No 47, May 2002, p 20.
In South Africa

In 1995 the South African government began to consider questions of language and law as part of its reform of access to justice. It faced an overwhelming legislative agenda as it began to dismantle the legal legacy of Apartheid. The government wanted to reflect the transformation to a democratic state in the style of language of that legislation. It saw the need to improve the people’s access to justice, to encourage people to participate in the new democratic system, and to demystify government. The then Minister for Justice, Mr Dullah Omar, said in 1995:

Simplicity of language reflects a commitment to democracy. The use of language above the heads of the average citizen may swell the heads of its users, but it does little else. 81

The government faces two other problems in communicating with its citizens. Before the change of government in 1994, legislation was published in the two official languages: English and Afrikaans. Now South Africa has 11 official languages, and more than that number are spoken there. Nearly half the population is functionally illiterate. 82

Against this background, the government called on international plain language experts 83 to help it kick-start its plain language work with a seminar, which was held in Cape Town in March 1995. As a direct result of that seminar, plain language legislative drafting began in earnest in South Africa, with plain language experts helping draft the Labour Relations Act 1995 and the Constitution of 1996. Since then, plain language principles have been applied in a variety of Bills, though drafters have not always been as successful as they may have wished. 84

The process of drafter education continues. In August 1997 the Public Law Centre of the US-based Tulane and Loyola Law Schools held a four-day workshop on legislative drafting in Johannesburg.

81 Clarity No 33, July 1995, p 8.
83 The Plain English Campaign (UK), Christopher Balmford (Australia), Philip Knight (Canada) and Professor Joseph Kimble (US). See Clarity No 33, July 1995, pp 8-10.
Legislators, parliamentary drafters, government officials and law school personnel attended the workshops, which featured lectures and exercises on plain language drafting. The Public Law Centre returned to Bisho, South Africa, in October 1997 for another workshop on legislative drafting.

A course called “Effective Legal Writing”, which covers plain language drafting principles, is taught at the Johannesburg Practical Training School for law graduates. The University of Witwatersand teaches a course in business communication for accountants that emphasises plain language principles. The Law Faculty at the University of Cape Town offers a certificate course in legal drafting, which emphasises principles of clarity and comprehensibility.

During 2001, South Africa’s Parliament developed and piloted a Parliamentary Plain Language Project under the auspices of the Language Services Section of Parliament and the European Union’s Parliamentary Support Programme.

The pilot project aimed to develop plain language policy and guidelines, and train parliamentary staff in the use of plain language in documents such as committee reports and public fact sheets, both in English and in the 10 other official South African languages.

The project produced an information pack, which they used to lobby key parliamentary figures on the importance of using plain language for all internal and public communication. They developed practical training workbooks to train staff from those sections of Parliament that they thought would benefit the most from adopting plain language principles.

The project identified several areas of need for the future:

- institutional support for plain language principles, both in policy and implementation
- customised training workbooks and programs for other sections of South Africa’s parliament and its nine provincial legislatures
- refresher training and a mentoring system
- an electronic plain language definition glossary
- plain language editing packages in all South African languages.
Plain language is also taking hold outside the government arena. Non-government organisations publish information in plain language, on topics such as HIV/AIDS and the law, women’s rights and gender issues, socio-economic rights, election laws and voter education, and parliament and other statutory institutions. Some even field test their materials and re-edit them after receiving user feedback.85

The private sector is moving towards plain language too. Private firms with plain language drafting and document design expertise are beginning to help corporations and professional firms simplify and improve their documents. And the Law Society of South Africa (along with various other organisations) publishes manuals explaining the legal rights of citizens, using simple language and with illustrations.86

Another landmark was reached on 1 April 2000 when all the major banks adopted a Code of Banking Practice. Under the Code, all banking contracts were to be revised in plain language before October 2000. This timetable proved to be overly ambitious, but most major retail banks had at least complied to some extent by the deadline. The Office of the Banking Adjudicator, which enforces the Code, announced on 11 November 2000 that, to avoid injustice, “unfair terms” and “legal and technical language” would be “disregarded unless the bank could show it was explained to the client”.87

In India

Another country that has to cope with problems of illiteracy and the difficulties caused by hundreds of languages is India. English is the language of business and government in India, but it is not yet plain English.

The growing consumer movement in India has recognised the need for plain language in consumer documents and laws, and has called on the international plain language movement for help. In 1992, the Federation of Consumer Organizations of Tamilnadu

85 For more information, see Fine, D, “Plain Language and developing human rights materials”, Clarity No 46, July 2001, p 8.
(Fedcot) invited Martin Cutts, a British plain language expert, to hold a series of workshops and lectures. They were so popular that Cutts visited India four times during the 1990s. He gave many workshops, seminars and lectures, including several at the National Law School of India University at Bangalore.

Cutts continues to work with a statutory body, the Tariff Advisory Committee, based in Mumbai. Together they have been rewriting an insurance document – the Standard Fire and Special Perils policy – which is incorporated into many thousands of insurance policy documents for consumers and business people. Also in the field of insurance, the Insurance Regulatory and Development Authority in Delhi has a clarification program underway.

The UK-based Plain English Campaign has run several plain language courses in India in the past. And in 1999 Indian accountants began to lobby for plain language in Indian tax laws.\(^8^8\)

**In Singapore**

With the help of the international plain language group Clarity, in 1998 Singapore’s Academy of Law held a series of workshops on plain legal language for bankers, conveyancers and insurers. Also in 1998 the insurance company Prudential Assurance began a Plain English initiative, which made them the first insurer in Singapore to rewrite policy documents in plain language. The company claims that both customer satisfaction and productivity rose as a result of the change to plain language.\(^8^9\)

**In Hong Kong**

In Hong Kong, members of Clarity formed a local chapter in 1999. But much of the plain language work there is being done by individual organisations and lawyers.

The Law Drafting Division of the Department of Justice in the Hong Kong Special Administrative Region is a keen supporter of plain language. It has incorporated the topic of plain language in its training programs for law drafters, and has held and sponsored

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\(^8^9\) See Chen, P, “The prudence of always listening to the audience”, Clarity No 49, May 2003, p 18.
seminars on plain language and clear drafting. The Division’s policy is that, whenever possible, plain and modern language must be used in draft legislation. This applies not only to the English, but also to the Chinese text. (Laws in the Hong Kong Special Administrative Region are published in both English and Chinese, and both texts are authentic.)

The Hong Kong Mortgage Corporation has also become interested in plain language. It has been working with legal practitioners and other professionals to produce model mortgage deeds and related documents, which, it says, are easier to read and comprehend. Again, these improvements were made to both the English and Chinese versions of the documents.

In Papua New Guinea

In September 1996 in Port Moresby, the Centre for Plain Legal Language from the University of Sydney Faculty of Law conducted a workshop on writing in plain language for the magistrates and judges of Papua New Guinea (PNG). It was offered as part of the PNG Continuing Legal Education Committee’s two-day Judicial Writing Workshop for Judges and Magistrates. More than 50 judges did the course.

As in India, English is the official judicial language of PNG, but hundreds of other languages are also spoken there. Most judges and magistrates speak English as a second or third language. Many of those who appear in court are not represented by a lawyer. So clarity and plainness are vital. The Centre reported that the judges and magistrates said that they benefited greatly from the redrafting exercises they did in the course.90

The PNG Integral Human Development Trust works for popular education and literacy in PNG. The Trust is supported by Community Aid Abroad and has been working to educate people about recent legislation (the Internal Security Act, often described as “draconian”) to deal with law and order problems in PNG. The Trust wrote and distributed pamphlets and information leaflets that explained the legislation in plain language. The campaign led to calls from MPs and the judiciary to repeal the legislation.

In New Zealand

Plain language pioneers It was nearly 20 years ago, in 1985, that the Public Trust Office began its pioneering work to rewrite its wills precedents in plain language. Clients began to ask that their wills be written in plain language. By 1988 the Office reported that it was drafting a record number of new wills, and the following year a record number of its clients revised their wills. Various insurance companies subsequently rewrote their insurance policies or related documents in plain language.

Some eminent New Zealand lawyers have long been at the forefront of the campaign for plain language legislation. Sir Geoffrey Palmer, Sir Kenneth Keith and Garth Thornton presented papers on the topic of plain language in legal drafting at the Meeting of Commonwealth Law Ministers and Senior Officials held in New Zealand in 1990.

New Zealand Law Commission It is part of the “Open Government” policy of the New Zealand Labour Party to simplify laws so as to make them as readily understandable as possible and to reduce the number of statutes and regulations. In 1985, when the Labour Party came to power, a full time law commission was established.

The New Zealand Law Commission has a brief to “propose ways of making legislation as understandable and accessible as practicable and of ensuring that it is kept under review in a systematic way”. It must also “ascertain what changes, if any, are necessary or desirable in the law relating to the interpretation of legislation”. In its Report No 17, issued in December 1990, the Commission made suggestions aimed at improving the form and style of laws and prepared a draft Interpretation Act subtitled with its purpose: “to avoid ‘Prolixity and Tautology’”. In 1993 the Commission published Report No 27, called “The Format of

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92 For example, State Insurance, Tower Corporation and Sun Insurance.

Legislation”, in which it recommended changes to the design and typography of legislation. Report No 35 is called “Legislation Manual, Structure and Style”. It gives guidelines for drafting legislation, and recommends plain language principles. This was timely.

Tax law rewrite In 1994 New Zealand undertook a 5-year project to review and simplify its tax laws. An expert plain language drafter was brought in from Canada to head the Core Provisions part of the project.

The first part of the rewrite process involved reorganising the structure of the Income Tax Act 1976, so that it is more logical and accessible. That resulted in the Income Tax Act 1994. The next stage involved the rewriting of “core provisions” of the old Tax Act. That became law in 1996, with effect from the 1997-98 tax year. The third stage of the project involves rewriting Parts A to E and Y of the old Act. At the time this book was written, submissions on the rewrite were still being received. The new Act should come into force on 1 April 2004, and apply to income for the 2004-05 tax year and following years. That leaves a balance of about half of the old Tax Act still to be rewritten.

The Minister of Finance’s Commentary on the Income Tax Bill 2002 (NZ) describes the aim of the project (and the logic behind it) as:

to produce tax legislation that is clear, uses plain language and is structurally consistent. Clear language makes an important contribution to increasing voluntary compliance with tax laws, because taxpayers can more easily identify and observe their income tax obligations.

Chapter 5 of the Commentary explains the plain language principles that have been used in rewriting the legislation.

Private sector tax specialists have been consulted extensively during the rewrite process, and other feedback has been received as a result of the Exposure Draft process. In 1996 the New Zealand Inland Revenue Department hosted an international conference on plain language tax law. Specialist drafters from seven countries

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95 Elizabeth McAra brought with her considerable experience working on plain language projects in Alberta, Canada. She also organised the 1996 plain language tax law conference in Auckland hosted by the IRD.
attended the Auckland conference, including representatives of the law rewrite teams from Australia, Canada and the United Kingdom. The conference enabled them to share their knowledge and experience with their New Zealand counterparts.

Both the Institute of Chartered Accountants of New Zealand and the New Zealand Law Society support the rewrite, and members of the rewrite team say that the rewritten legislation has been "reasonably well received".97

The Inland Revenue Department commissioned researchers to test portions of the rewritten tax law, as we’ll see in Chapter 17.98 In addition, a law was passed which allows the Inland Revenue Department to draft and print government Bills.99

**Format of legislation** The Law Commission’s Reports and Legislation Manual proved to be influential in other ways, too. A Steering Committee was set up to advance and refine the work of the Law Commission. The Committee included representatives from the Law Commission, the Inland Revenue Department and the Parliamentary Counsel’s Office. On the Committee’s recommendation the Parliamentary Counsel’s Office surveyed users of legislation on a range of issues raised by the Law Commission’s 1993 report on “The Format of Legislation”, including typeface.

With this work as a foundation, a new format for legislation was introduced in New Zealand on 1 January 2000. Some of its features are:

- section headings are above the text of the section, and are more distinctive
- running headers with part and provision numbers
- defined terms in the interpretation section are in bold rather than double quotes
- simplified punctuation: colons are omitted from the end of definitions
- simplified layout: simple indents rather than hanging indents
- more white space.100

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97 Private email correspondence dated 22 April 2003 from members of the rewrite team.
98 Page 291.
99 Section 8A of the Statutes Drafting and Compilation Act 1920.
At the Parliamentary Counsel's Office there is a strong focus on plain language drafting, and an emphasis on public access to up-to-date official legislation in both printed and electronic form. The “Public Access to Legislation” project is making legislation available free to all via the Internet.

Legal education At the University of Waikato, plain language principles have always been part of the undergraduate writing courses in Business Communication and Professional and Public Relations Writing. The Institute of Professional Legal Studies teaches plain language to newly graduated lawyers as part of their professional training. The New Zealand Law Society has organised a number of seminars on plain English. Some private law firms have organised plain language training for their staff.

The private sector Many of the major law firms in New Zealand have adopted a plain language policy. Some even have plain language specialists on staff and plain language documents are now emerging.

There are definite moves towards consumer-oriented reform in the banking and insurance industries. The New Zealand Bankers’ Association’s Code of Banking Practice promises, with a little equivocation: “We will provide information to you from time to time using plain language where we can”.101

In 1994, the Rugby rulebook was rewritten in plain language so that the rules would be easier to understand for referees, players and spectators.102 Surely there could be no stronger evidence that plain language has really begun to take hold in New Zealand.

In Australia

In Australia, NRMA Insurance was among the first corporations to join the plain language movement. It introduced its “Plain English” car insurance policy in September 1976, and “Plain English” versions of all the other NRMA insurance policies were introduced over the next five years. Other insurance companies, such as NZI and AMP followed the NRMA.

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Writing laws in plain language

There is no legislation in Australia which is analogous to the North American plain language laws, but federal and State governments are moving towards plain language. Both the Commonwealth and the New South Wales Parliamentary Counsel’s Offices have had plain English policies since 1986. But even as long ago as 1973 efforts were being made to improve the readability of federal laws.

Plain English is the official drafting policy of the Victorian, Queensland and Australian Capital Territory Parliamentary Counsel’s Offices. The Parliamentary Counsel of South Australia, Tasmania, Western Australia and the Northern Territory do not have an “official” plain language policy, but they are all aware of the principles of plain language drafting. They all say that they aim to draft legislation as simply and clearly as possible, bearing in mind the interests of the reader.

Since mid-1986 the Parliamentary Counsel Committee (which consists of the heads of the Commonwealth, State and Territory offices of the Parliamentary Counsel) have held regular discussions about how to simplify legislative drafting. And so we have begun to see legislation written in a new, simpler style. Some of this legislation, such as the Queensland Land Titles Act 1994, is in many respects exemplary.

By the mid-1990s there were two major projects to simplify Commonwealth laws: the Corporations Law Simplification Program, and the Tax Law Improvement Project. The teams working on both laws included expert drafters and plain language consultants. Both projects rewrote significant amounts of legislation.

Corporations law

The First Corporate Law Simplification Act commenced on 9 December 1995. A key feature of this Act is to make company law more accessible through improved layout. This is achieved by navigation aids such as including running headers with chapter, part, division and section, and using tables and diagrams. The drafting approach also adopts shorter sentences, careful use of definitions and explanatory notes. The project team conducted document testing of the proposed structure of the

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103 Announced in April 1993.
104 Established in December 1993.
changes and of the text, on focus groups. The team considered that it received “generally good press” for the project.

The Second Corporate Law Simplification Bill was introduced into Parliament on 3 December 1997 and enacted as part of the Company Law Review Act 1998. But by this time, the federal government had established the Corporate Law Economic Reform Program (CLERP) to take corporate law reform beyond simplification into the area of policy reform and economic development. Corporate law continues to be rewritten to simplify procedures: the amendments known as CLERP 7 came into effect on 1 July 2003 as an amendment to the Corporations Act 2001 (Cth). The amendments are intended to simplify document lodgement and compliance procedures for companies.

The trend away from complex verbose legislation has been welcomed by at least one judge of the High Court of Australia. But a member of the original simplification project team has noted that while the drafting produced by the new program is supposed to be continuing the style of the simplification program, the same testing and consultative processes are not being used.

Tax law The Tax Law Improvement Project (TLIP) was established in 1993 to restructure, renumber and rewrite the existing Income Tax Assessment Act 1936. The TLIP team produced three substantial instalments of rewritten law, dealing with the core provisions of tax law and some specific areas such as capital gains tax. These were enacted in the Income Tax Assessment Act 1997. But after a change of government the priority shifted to tax policy reform, and by 1999 the resources and expertise of the TLIP had been reallocated to the new tax reform effort. Since then some further sections of the old Act (dealing with thin capitalisation and

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106 See Chapter 17, p 289.
dividend imputation) have been rewritten and placed in the 1997 Act. Those rewrites and other “stand-alone” tax legislation resulting from the continuing tax reform process continue to use the new style developed by the TLIP.

There has been considerable criticism of the results of the TLIP. Much of it stems from the fact that the old 1936 Act remains on the books, partly to cater for the affairs of taxpayers before the 1997 Act came into being, and partly because not all of the 1936 Act has yet been rewritten. This means taxpayers and their advisers have to deal with two parallel tax laws, with all the potential for confusion that might involve.

In addition, there has been resistance to some of the plain language techniques. One critic called the language “kindergarten babble”. Many have criticised the use of “you” instead of “the taxpayer”. But, as noted in Chapter 15, many users appreciate the improvements in logic, structure, numbering and navigational and other reader aids. Users also appreciate the reduction in the amount of repetition and the sheer number of words from about 19,000 to 11,000. The average number of words per sentence has been reduced from 241 to 37.

Other laws Other Australian Commonwealth Acts, beginning with the Social Security Act 1991, have been rewritten in a “reader-friendly” form. That Act pioneered a number of drafting and design innovations that would later become standard legislative drafting techniques. It has a better structure than the old law, and uses shorter sentences. It has a “Reader’s Guide” to help readers find what they need. As well, there are notes to help readers navigate through the text, and “method statements” and examples to help readers use it.

112 See p 260.
114 The TLIP may yet be resuscitated. The federal government’s tax advisory body, the Board of Taxation, has called for a major restructuring of income tax law. It is considering a project to rewrite the tax law again, or to consolidate the two separate tax Acts (“Push to simplify income tax rules”, Australian Financial Review, 3 June 2003, p 1).
In the years from 1992 to 1999 the Australian Office of Parliamentary Counsel rewrote legislation in the following areas:

- sales tax (1992)
- offshore mining (1994)
- corporations (1995-2000)\(^{115}\)
- income tax (1995-2000)\(^{116}\)
- aged care (1997)
- incentives for export market development (1997)

First Assistant Parliamentary Counsel Vince Robinson noted that these rewrites covered both highly technical areas of interest to expert audiences, and topics with a broader audience. This shows two things, he says:

- even legislation that deals with highly technical areas can be put into a much more readable form
- even expert readers can benefit from efforts to improve the readability of the legislation they work with.\(^{117}\)

Finally, on 1 December 1999 new Australian Road Rules were proclaimed – the result of a long-term project to rewrite them in plain language.\(^ {118}\)

**Victorian Law Reform Commission** One of the major catalysts for the plain language movement in the law in Australia was the Victorian Law Reform Commission’s report, called *Plain English and the Law*, published in June 1987. That report made 15 recommendations and prepared a drafting manual which it recommended be adopted by the government as the official drafting guide for government departments and agencies for Acts, regulations, forms and explanatory material. It recommended that a Legal Drafting Institute be established at Monash University, that a Plain English unit be established to help rewrite existing government forms and

\(^{115}\) Described in this chapter on pp 36-37.
\(^{116}\) Described in this chapter on pp 37-38.

39
documents, and that a legislation rewriting program be established, aimed at around 50 Acts and the regulations made under them.

Among the first documents to be rewritten in Victoria as a result of the Commission’s work were three court forms relating to traffic offences. Two forms were eliminated and one was redesigned. The savings estimated by the Commission on those forms alone are between $400,000 and $600,000 a year.\(^{119}\)

In May 1990 the Victorian Law Reform Commission issued its second report on legal drafting. It is called *Access to the Law: the structure and format of legislation*. It proposed a change in the organisation and format of legislation. It included a sample of the way the proposed new legislation should look to make it easier to follow. The legislation that the Law Reform Commission chose to rewrite was the “uniform” credit laws, which were the forerunner of the Consumer Credit Code that I referred to in Chapter 1.\(^{120}\)

Some of the new features that the Victorian Law Reform Commission included in the draft “Credit Bill” were:

- a “boxed” explanation of the effect and intent of each provision (instead of the old “explanatory memorandum” style)
- a decimal numbering system
- the definitions and other more “technical” sections are at the end of the Bill (rather than in their traditional position at the beginning)
- each defined word is clearly marked with a cross each time it appears so the reader knows to look up the definition.

**Plain language in government** Back in 1983, the Australian government had launched its “Plain English and Simpler Forms” program. Much work was done by, among others, the Department of Administrative Services to produce model documents and guides to better, simpler writing.

In September 1990, as part of that program, the Australian government published a book called *Writing in Plain English*\(^{121}\) which was written by Dr Robert D Eagleson, whose work in the plain language movement is known throughout Australia and the


\(^{120}\) See p 5.

\(^{121}\) 1990, AGPS Press, Commonwealth of Australia, Canberra.
world. The aim of that book is to help public servants to express themselves clearly. Also in 1990, the International Year of Literacy, we saw the launch of the Reader Friendly Campaign and Awards.

The Independent Commission Against Corruption (ICAC) has had a plain language program for several years. ICAC was established in 1988 to expose and minimise corruption in the New South Wales public sector. ICAC realised early on that to communicate effectively with the public, they had to do so in plain language. They brought in plain language consultants, organised training programs and developed a plain language style guide. They are reviewing their web site and their archive of publications. And they continue to run staff training courses.

Centre for Plain Legal Language In August 1990, the Centre for Plain Legal Language was launched in Sydney within the University of Sydney. It began by developing and running successful training programs for lawyers and others in plain legal writing. It formed a library of plain language resources. It did valuable research into various aspects of plain language drafting, including looking into the “legal” meanings of certain words. It publicised that research in a monthly column in the NSW Law Society Journal, which was one of the most popular features of the Journal. It provided consultancy services for organisations that wanted to rewrite documents in plain language. In 1995 it was involved in a major research project with the Centre for Microeconomic Policy Analysis at the University of Sydney. The project studied the effects of introducing plain language documents into an organisation. 122 Sadly, the Centre closed in 1997 when its funding ended.

Format of legislation Next, there was a new focus on document design. In 1993, the New South Wales Parliamentary Counsel began to experiment with different formats and design techniques in the Local Government Act 1993. That Act has various drafting and design innovations such as:

- flow charts
- bullet points for some lists
- tables of information and explanatory notes to sections set out in boxes

122 See Chapter 3, p 37.
• introductory explanations to Chapters – again in boxes\textsuperscript{123}
• Chapter headings in the form of questions. For example:
  Chapter 1 — Preliminary
  Chapter 2 — What are the purposes of this Act?
  Chapter 3 — What is a council’s charter?
  Chapter 4 — How can the community influence what a
council does?
  Chapter 5 — What are a council’s function?
  Chapter 6 — What are the service functions of a council?

During 1994, the Centre for Plain Legal Language worked with
the New South Wales Parliamentary Counsel’s Office to develop an
improved design for NSW legislation. The new design was tested,
refined and settled, and almost all NSW Acts passed from 1995 on
are in the new format. These are some of the new features:

• The section numbers are highlighted and indented so they
  are easier to see, and they appear on the same line as the
  section heading.
• There is more space between sections and subsections and
each new part starts on a new page, so you can easily see
where sections, subsections and parts begin and end.
• There are fewer capital letters, especially in headings,
  which are now in “sans serif” typeface.\textsuperscript{124}
• Unnecessary punctuation has gone.
• There are running headings on each page which give the
  name of the Act and the part, and the clause and part
  numbers.
• The page number is now in a running footer, because that
  information is less important for the reader.
• Defined words are shown in the definitions section in bold
  italic type, without quotation marks.

Throughout the 1990s and into the 2000s there was con-
siderable cross-pollination in the work being done on the format of
legislation. The new format adopted by New South Wales, the
work done in the Tax Law Improvement Project and the

\textsuperscript{123} But there are disadvantages – see Chapter 15, p 264.
\textsuperscript{124} See Chapter 15, p 244 for an explanation of this term, and Chapters 15 and 16
generally for more information about document design.
Corporations Law Simplification Program (as well as the 1993 New Zealand Law Commission report on “The Format of Legislation”, and the follow-up work done there) have all informed each other and have influenced the legislative review processes of other jurisdictions as well.125

Since the mid-1990s, all the Australian jurisdictions, except South Australia and Tasmania, have adopted a new format for legislation. South Australia and Tasmania have plans to update their formats in the near future.

Lawyers promoting plain language The Law Societies of New South Wales and Queensland both established plain language committees in the 1990s. The Law Society of Western Australia has had a Clear Writing sub-committee since 1996. The Queensland Committee published a book on plain language that is now used in Law Schools.126 Unfortunately, the New South Wales Committee was subsumed into another committee after a few years of doing interesting work, including running plain language seminars and doing a survey of the attitudes of New South Wales solicitors to plain language in the law.127


125 Notably, the tax law rewrite project in the United Kingdom and certain Canadian legislation.
128 No longer active.
In fact, one of the greatest success stories of plain language in Australia is that of Australian law firms. They were early adopters of plain language. From the late 1980s, they began to revise and rewrite their forms and precedents in plain language, and train their staff in plain language techniques. Some have even established plain language units, which provide plain language rewriting services.

With Australian lawyers enthusiastically embracing plain language, we have begun to see that plain style of drafting flow on into the documents our clients use in the marketplace. And as that continues, plain language will become the norm – or at least the benchmark – for legal drafting. Or as plain language expert Christopher Balmford puts it:

After all, today, commercial clients of Australian law firms are prepared to pay for legal services that are plain. One day, clients everywhere will refuse to pay for legal services unless they are plain.

**Plain language in the courts** In recent years, two factors lead us to suspect that there has been a vast increase in the number of litigants representing themselves in court. Those two factors are cuts to legal aid for litigation and the limited availability of court-appointed lawyers. This is more a suspicion or perception than a proven fact, since there have not been reliable statistics until recently.

However, according to an Australian Law Reform Commission report from 2000:

- in the Family Court, up to 41% of cases have at least one self-represented litigant (and another study has the figure as high as 50%).

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132 Dewar, J, Smith, BW and Banks, C, 2000, Litigants in Person in the Family Court of Australia, Family Court of Australia.
• in the Federal Court, 18% of cases involved self-represented litigants (and of these 31% were applicants in migration cases)
• in the Administrative Appeals Tribunal, 35% of all cases involved self-represented litigants.

Australian courts have already begun to recognise this, and to act. The Family Court of Australia and the Judicial Commission of NSW began several years ago to work to improve judicial communication. The Family Court of Australia has a Judicial Development Program, which has two-and-a-half days of seminars and lectures on judgment writing. Writing in plain language is an integral part of that course. Every judge does the program once every three years – that’s one-third of the judges each year.

The Federal Court of Australia is also aware of the increasing number of self-represented litigants, and has begun a program to review all of its brochures and guides to make sure they are in plain language and to make them more reader-friendly. The Federal Court’s Judicial Education Committee runs education days with sessions on better judgment writing. Both the Federal Court and the Family Court are working on their web sites, so that litigants can easily find the information they need to help them manage, or at least better understand, their cases.

The Family Court’s effort is part of its “Future Directions” strategic plan. That plan has many aspects, including the court’s web site becoming interactive, new court rules being written, court forms being revised and judges taking part in the judgment writing seminars.

The Judicial Commission of New South Wales is an independent statutory corporation and is part of the judicial arm of government. The Commission organises and supervises the continuing education and training of judicial officers. It runs a half-day session on judgment writing in its orientation program for judges, and does a similar session for magistrates. As Ruth Windeler, the Commission’s Education Director, told me: “No one would dare to suggest that judges should be writing in anything other than plain English.”

In 2002 there was a flurry of development in judicial education in Australia. Two new judicial colleges were set up: the National

133 Telephone interview with M Asprey, 2 September 2002.
Judicial College of Australia and the Judicial College of Victoria. The role of these Colleges is to provide professional development and continuing education and training for judicial officers in their respective jurisdictions. The National Judicial College will begin its courses in August 2003. There are plans for the two Colleges to collaborate in the near future to present a course on judgment writing.

In this area of judicial education in judgment writing techniques, Australian judges have been learning in particular from the experience of Canada’s judicial education programs, and New Zealand’s Institute of Judicial Studies.

They are some of the plain language developments throughout the world. They show that plain language for lawyers can hardly be seen as a passing fad. We have over 30 years of experience to look back on. The momentum continues to grow.

But despite these years of experience in many jurisdictions around the world, many lawyers are still cautious about or suspicious of plain language, often for the wrong reasons. There is no way to address those fears by using generalisations or speaking in the abstract. Even all this evidence of what is happening around the world is not enough. The only way to understand what plain language can do to legal writing is to begin to use it. So let’s learn what to do, and see what happens. That is what the rest of this book is about.