



Australian Government

Office of Parliamentary Counsel

First Parliamentary Counsel

Survey of Users of Legislation

Background

1 During the 1990s, OPC experimented with a range of innovations to our drafting style. These were all intended to improve the usability of legislation.

2 Some are quite visible (such as outlines) whereas others are less obvious to the reader (such as the use of shorter provisions).

3 First Parliamentary Counsel received feedback at conferences and Board of Tax meetings that indicated that some of these features are appreciated by users whereas others are disliked by users.

4 Consequently, OPC thought that it would be useful to run a survey of a range of users of Commonwealth legislation to see how different innovations are viewed by users.

The range of users

5 There is of course a wide range of users of legislation. While the general public is potentially a user of legislation, it was considered that it would be too difficult to contact an appropriate sample.

6 The groups surveyed were:

- (a) Federal Court Judges;
- (b) associates/research staff for Federal Court Judges;
- (c) Family Court Judges;
- (d) associates/research staff for Family Court Judges;
- (e) Federal Magistrates;
- (f) associates/research staff for Federal Magistrates;
- (g) AAT members;
- (h) associates/research staff for AAT members;

- (i) solicitors (with groups drawn from Sydney, Melbourne and Brisbane);
- (j) barristers (with groups drawn from Sydney and Melbourne and from junior and senior counsel);
- (k) Commonwealth Public Servants from instructing areas and advising areas in Departments;
- (l) Australian Government Solicitor (AGS) employees;
- (m) employees of the Director of Public Prosecutions (DPP); and
- (n) parliamentary Table Office staff.

7 For the purposes of analysing results, a number of groups were combined. For example, all of the judges, magistrates and AAT members were combined into one group.

Structure of survey

8 The survey asked respondents to comment on how useful they consider a range of innovations to be and to provide comments on the different innovations.

9 Examples showing the innovations were provided to the respondents.

10 In some cases, respondents were given the same provisions drafted in two different ways (e.g. using formulas compared to method statements and comparing different commencement provisions).

11 The aim was to make the survey fairly easy to respond to while ensuring that respondents understood what they were being asked about.

12 Respondents were given space to add additional comments. The quantity and quality of these comments was high.

Conduct of the survey

13 The survey was conducted by ORIMA research who are a professional survey company.

14 OPC contacted the organisations from which we were seeking respondents asking for volunteers. The list of volunteers was passed on to ORIMA who contacted the respondents directly. OPC did not see the individual responses: ORIMA provide OPC with consolidated data from the responses.

15 The survey document was put together by ORIMA based on material provided by OPC.

Innovations tested

16 The following innovations were included in the survey:

- (a) commencement provisions;

- (b) overviews;
- (c) guides;
- (d) decentralised tables of contents;
- (e) object provisions;
- (f) examples;
- (g) notes;
- (h) using asterisks to identify words that have been defined;
- (i) the use of tagging of concepts;
- (j) section headings in the form of questions;
- (k) subsection headings;
- (l) using tables to organise large amounts of information;
- (m) diagrams;
- (n) method statements;
- (o) drafting legislation in the second person;
- (p) the new format for legislation including indenting conventions.

17 Some other innovations were not included as it was considered that it would be too difficult to explain them in a way that would ensure that people understood the issue. Having seen the high quality of responses on this survey, it may be possible to run a subsequent survey covering some of these matters and other matters related to the drafting of Bills. Alternatively, these matters may be better tested in focus groups or some other testing environment. The innovations that were not tested were:

- (a) organising many amending Bills by topic; and
- (b) provisions stating “this section/Division applies if...”.

Results

18 Generally the innovations that were tested received very favourable feedback from across the groups that were surveyed.

19 Those that rated particularly well were:

- the new format for legislation;
- the new form of commencement provisions;
- the use of notes;

- the use of tagging of concepts;
- the use of tables; and
- the use of subsection headings.

20 Only one feature rated very poorly. This was the use of the second person (i.e. drafting in the form “You are liable for tax if...”). More respondents in the AGS/DPP group, the judges/magistrates group and the private sector lawyers group were dissatisfied with this feature than were satisfied.

21 Other innovations that did not rate particularly well were:

- the use of asterisks to identify defined terms;
- the use of diagrams; and
- the use of method statements.

22 Detailed results for all of the innovations are available in the final report. This is published on OPC’s website at www.opc.gov.au/plain/docs.htm.

Conclusions and future action

23 The results of the survey provide strong support for OPC to continue the use of most of the innovations that were tested. Therefore, OPC will continue to use those features. OPC will look to incorporate some innovations, such as outlines, that are currently only used in some Acts into a broader range of Acts.

24 Of course, as was noted by some respondents, all of the features need to be used judiciously. For example, while notes were considered useful, the overuse of notes can disrupt the flow of the text.

25 The hostility generated by the use of drafting in the second person (which was described in numerous comments as “patronising”) and the low level of support for this feature indicate that it is one that should not continue to be used. There are some Acts that are currently drafted in this style and generally it will be necessary to continue to use the style within those Acts. However, it should not be used in any new principal legislation.

26 Similarly, the use of asterisks does not seem to have sufficient support to suggest that its use should be expanded.

27 Diagrams and method statements are also features that we will use in more limited circumstances than previously.

28 The survey has also provided OPC with access to a group of respondents who may be able to help us with future research into drafting techniques.

29 The survey asked respondents whether they had any suggestions for additional innovations to our drafting style that OPC could implement. Respondents suggested a number of potential innovations, and also topics to be covered in future research. The high quality of these suggestions will help inform the preparation of any future research into drafting techniques.

30 I would like to take this opportunity to thank all of the participants who took the time to complete the survey.

A handwritten signature in black ink, appearing to read 'P. Quiggin', with a horizontal line drawn underneath the name.

Peter Quiggin PSM
First Parliamentary Counsel
14 September 2010