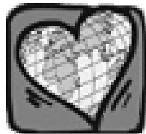

Plain Language Association International (PLAIN)
Fourth Biennial Conference Proceedings
Toronto, Canada — September 26 - 29, 2002

International Plenary Panel:
Plain Language Progress Around the World

Recent Developments in the Plain Language Movement in Australia

Michèle Asprey

Presented to the Fourth Biennial Conference of the PLAIN Language Association International, September 27, 2002

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The story of the plain language movement in Australia is slightly different to the story in Canada and the US, and, I think, much of Europe. In Australia, the impetus to move towards plain language has come mainly from the private sector. We haven't had as much government regulation as some other countries (such as the USA). We have had Government initiatives, but they have been focussed mainly on Government departments and the public service. And we haven't had the Government funding that has been so characteristic of the plain language movement, particularly in Canada. In that sense, maybe we are more similar to the UK plain language movement.

Because I am a lawyer, and because that is the field of my plain language consultancy, I'll be concentrating today on plain language developments in the legal area in Australia.

I was going to say that my involvement in plain language began in around 1987, but it just occurred to me that it actually began when I first learned to speak, when I spoke in words of one syllable. But 1987 was the year of the landmark Law Reform Commission of Victoria Report (that's the Australian state of Victoria) called *Plain Language and the Law*. I was working as legal precedents manager at Mallesons Stephen Jaques, a big Australian law firm, and that firm was very quick to see the advantages of adopting a plain language writing style. We picked up the plain language ball and ran with it. Other law firms did the same and are still running with it.

Australian lawyers have been so enthusiastic about plain language that it is almost possible to argue (as my colleague Christopher Balmford does) that the battle for acceptance of plain language is already won there. Certainly now, as a consultant, I am rarely asked to come to persuade law firms that plain language is safe (10 years ago I had to do regularly). Now the demand is for in-house training in plain language writing. And, interestingly, there is

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very little demand from law firms for external consultants to come in and actually *rewrite* documents. The skills are already in the law firms. That seems like a healthy development – though not so healthy for my bank account. But it is also a sign that Australian lawyers feel *confident* that they know what they are doing and *believe* they can write in plain language. Plain language drafting *has* been taught in Australian law schools now for a decade.

What these advances are forcing me to do is not to look to the past of the plain language movement, but to look to the future. So what I'm doing nowadays is casting a critical eye over what is lacking in the Australian legal scene in terms of plain language and clear communication. And what I'm seeing – and it came into focus very quickly in the first half of this year – is a desperate need for reform in the courts and tribunals.

In Australia, in the past few years, governments have been radically cutting the financial aid available for people who cannot afford to pay for a private lawyer. There's only very limited legal aid available for civil litigation, and nowhere near enough for family law and criminal cases. And there are not enough court-appointed lawyers. The private profession does some "pro-bono" work, but it is not enough. At the same time, Australia is becoming an increasingly litigious society. For those, and other reasons, the *perception* is that the courts are flooded with self- representing litigants. And that neither the courts nor the litigants are coping.

I say, "the perception is" because until recently there have not been reliable statistics. However, here are some from an Australian law Reform Commission report from 2000[1]:

- 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%)[2]
- 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.

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[1] Australian Law Reform Commission, Managing Justice: a review of the federal Justice System, Canberra, 2000 (Report 89)

[2] *Litigants in Person in the Family Court of Australia*, John Dewar, Barry W Smith and Cate Banks, 2000, Family Court of Australia

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But instead of me talking statistics and *telling* you why reform is necessary in the language and procedure of the courts, let me – in the best practice of clear communication - *show* you.

I thank the Australian Broadcasting Commission and the Law and Justice Foundation of New South Wales for providing me with this excerpt from the film series *DIY Law – "Secrets and Lies."* [3]

At this point Ms Asprey showed a short excerpt from a 30 minute film. It told the story of Sokkun Yamamoto, a political refugee from war-torn Cambodia, living in Australia since 1998. She had applied to the Department of Immigration to sponsor her elderly mother to come and live in Australia, but her application was rejected. Sokkun appeals to the Migration Review Tribunal. Sokkun conducts the appeal herself, but when it comes time to receive the verdict, it comes in a form that she cannot understand, and she is forbidden by court procedure to ask question of the Tribunal member.

For me, apart from the Tribunal member's Cheshire Cat Grin as she walks away up the corridor, the most chilling moment of the film is when Sokkun has to sign the document containing the decision - a decision that she does not understand.

The film I just showed highlights that it is not just the language of the law that needs changing, but the whole way the decision is given to the applicant. It is not just how the decision reads, but the way you find out if you have won or lost. Surely that is the most basic requirement of all. It is a matter of justice, and a matter of consumer rights too.

Now Australian courts have already begun to recognise this, and to act. Efforts are bring made, particularly by Family Court of Australia and the Judicial Commission of NSW, to improve judicial communication. And we have a new Judicial College of Australia just starting up now.

But it really *is* just beginning. As you can see from the film, the courts and tribunals need help. They need to see what other jurisdictions are doing, so I want to collect material. Please, if you see me after this and you have any

[3] © 2002 Australian Broadcasting Corporation

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information to share, I'd love to speak to you. Introduce yourself to me and we can talk. But, for now, thank you for listening.

Michèle M Asprey
September 2002

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Michèle Asprey is an Australian lawyer with a special interest in plain language writing. Her book, *Plain Language for Lawyers* (Federation Press, 1991; second edition, 1996; third edition, forthcoming in 2003) was the first such Australian text. It has been very well received. Michèle now works freelance, rewriting documents, giving seminars, and consulting on plain language.