

Convincing Business That Clarity Pays

By Mark Duckworth and
Christopher Balmford

These two Australian lawyers toured the United States last summer, visiting law firms, government agencies, and law schools. In Michigan, they spoke to Miller, Canfield, Paddock & Stone, in Detroit and Kalamazoo; to Varnum, Riddering, Schmidt & Howlett, in Grand Rapids; and to the Legal Division of the Legislative Service Bureau. They also gave a Krinock Lecture at Thomas Cooley Law School. Their tour was covered by legal and general newspapers throughout the country.

One editing note: To avoid an international incident, I left the Australian spelling.

—JK

The ultimate success of the plain-language movement depends on business recognising that clear communications improve efficiency, effectiveness, and competitiveness. It also depends on lawyers and law firms recognising that they can add value to a client's business by writing documents and giving advice in plain language. However, attorneys are likely to write in plain language only when their clients demand it.

This article discusses a groundbreaking cost-benefits study of plain language be-

ing developed by the Centre for Plain Legal Language at the University of Sydney in Australia. The article also discusses the experiences of Phillips Fox, a leading Australian law firm, which set up a plain-language department in late 1992 and is now mobilising every lawyer in the firm to adopt plain language.

Beyond Anecdote

Two of the main reasons for using plain language are:

- **To save time and money.** Millions of dollars are wasted each year because people do not understand legislation, forms, and the many other documents published by governments, banks, insurance companies, and other organisations. This misunderstanding leads to needless mistakes and delays.

- **As a tool of microeconomic reform.** One of the main goals of microeconomic reform is to reduce the incidental costs of business. Obscure legal language adds to these costs. The Trade Practices Commission (Australia's antitrust body) has recently focussed on the way information is provided in the credit and insurance industries—in particular, on the lack of plain-language documents. The Commission notes that poorly written documents have a significant impact on the bargaining position of the parties involved in transactions. This in turn leads to a less competitive marketplace.

These potential benefits were recognised by the U.S. Department of Commerce in 1983, when it organised a seminar on the productivity of plain English.

The Document Design Center, in Washington, D.C., and other organisations have produced some empirical evidence to show the benefits of plain language, but most of the evidence gathered to date has been anecdotal.

In Australia, however, these claims have begun to move beyond anecdote. Several major insurance companies have attempted to measure possible savings from redesigned

documents. These small, company-specific exercises need to be gathered together, examined, and reported on. But there is a greater need than that. The plain-language movement needs a methodology for examining and predicting the costs and benefits of plain-language documents. Mark Duckworth at the Centre for Plain Legal Language and Professor Gordon Mills at the Centre for Microeconomic Policy Analysis, both at the University of Sydney, have begun a major project on this front.

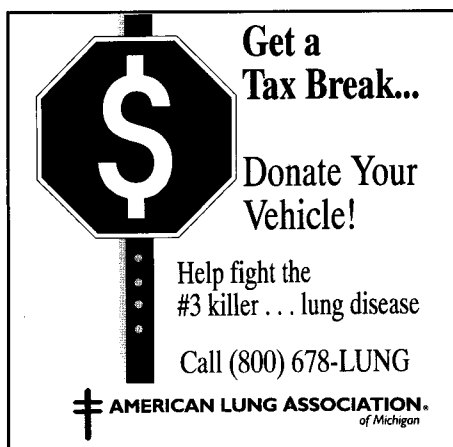
Measuring the Benefits of Plain Language

The Centres' cost-benefit analysis will provide a systematic framework that can be used to help compare a proposed redraft with existing documents. The first aim of the analysis is to identify all the consequences of change, including indirect consequences. The analysis will measure the dollar value of each cost and benefit that can be sensibly valued. Those effects that cannot be valued in any reasonable economic way will not be discounted.

Introducing plain-language documents appears to do more than make things easier to read. Effective communication can result in better work practices, more streamlined administration, better customer service, and enhanced company image. The study will also assess these benefits.

The study will measure value on the basis of the valuation made by the affected

"Plain Language" is a regular feature of the **Michigan Bar Journal**, edited by Joseph Kimble for the State Bar's Plain English Committee. The assistant editor is George Hathaway, chair of the Committee. The Committee seeks to improve the clarity of legal writing and the public opinion of lawyers by eliminating legalese. Want to contribute a plain English article? Contact Prof. Kimble at Thomas Cooley Law School, P.O. Box 13038, Lansing, MI 48901.



Get a Tax Break...

Donate Your Vehicle!

Help fight the #3 killer . . . lung disease

Call (800) 678-LUNG

AMERICAN LUNG ASSOCIATION
of Michigan

party. For example, if a profit-seeking enterprise benefits by saving staff time, the measure of that direct effect is the savings in staff pay and overhead. There may be other effects that are less direct—for example, a reduction in office space needed. Again, these are valued by applying prices paid. If the relevant value or price is not immediately available, the cost-benefit analysis will try to find satisfactory dollar values to represent the worth of such benefits to the affected parties.

The Centres hope to establish a method that all organisations involved in plain-language programs could use to measure savings. In September 1994, the Centres produced a discussion paper called *The Costs of Obscurity*. This paper surveys the existing literature, begins to construct a conceptual framework for identifying and measuring the costs and benefits, and outlines the issues involved in undertaking a full study.

That full-scale study would:

- examine the conceptual issues and problems of measurement (this has never been seriously tackled before anywhere in the world);
- survey organisations that are introducing plain language, to assess the costs and benefits they have found, both qualitative and quantitative;
- prepare a manual on how to plan, introduce, and evaluate effects of plain-language documents, both tangible and intangible;
- develop a methodology to help assess in advance the costs and benefits of introducing plain-language documents; and
- gather more worldwide information on attempts to measure the costs and benefits of plain language.

Creating Business Demand for Plain Language

One of the aims of the study is to encourage business to use plain language in its own communications and to demand plain language from the organisations that write to business and for business. Most law firms will write in plain language only when their clients demand it.

Another way to create business demand for plain language is to supply plain-language services and publicise that service. The Australian and Asian-Pacific law firm Phillips Fox has spent the last 18 months doing just that.

These are a few of the plain-language developments in Australia:

- The Law Reform Commission of Victoria produced the most important study to date, *Plain English and the Law* (1987), which debunked all the arguments for traditional legal writing.
- The federal government, in a report called *Clearer Commonwealth Law* (1993), has endorsed the plain-English style of drafting laws. So have the legislative-drafting offices in two states, Queensland and New South Wales.
- As one example of the federal effort, the Commonwealth Attorney-General has appointed a plain-language expert to help simplify Australia's troublesome corporations law. Before adopting the new version, they plan to test it on typical users—lawyers and business officers.
- Some of the largest and most respected law firms in Australia are converting their standard form documents to plain language. Phillips Fox is one. Mallesons Stephen Jaques is another. See Kerr, *Using Plain Language in Law Firms*, 73 Mich B J 48 (1994).
- The national banking association has committed itself to documents that are clearly expressed.

—JK

Setting Up a Plain-Language Department in a Law Firm

Phillips Fox's commitment to plain language began in late 1992, when David Kelly and Christopher Balmford joined the firm from the Law Reform Commission of Victoria. Until its abolition by a new government in 1992, the Commission led the plain-language movement in Australia. Under David Kelly's guidance, the Commission prepared several groundbreaking reports on plain language and a number of demonstration rewrites of agreements, forms, and legislation.¹

The reports and demonstrations led several businesses—including Hewlett-Packard Finance—to ask the Commission to rewrite documents in plain language. The Commission gained considerable publicity from this work, and several other organisations requested plain-language services.

Since they joined Phillips Fox in 1992, Kelly and Balmford have continued to promote the use of plain language by business and government, and have rewritten many documents for a wide range of organisations.

Phillips Fox's commitment to plain language has brought the following benefits to the firm:

- raised the firm's profile in the marketplace through almost 100 radio and television interviews, more than 25 print-

media items, and more than 30 speaking engagements;

- given the firm a feature that distinguishes it from its competitors and provides tangible benefits to its clients;
- attracted new clients—including life offices, insurers, manufacturers, a bank, and a major government department—all of which came to the firm because of its commitment to plain language;



Christopher Balmford (left) heads the Plain English Department at Phillips Fox, a major Australian and Asian-Pacific law firm. Mark Duckworth (right) is director of the Centre for Plain Legal Language at the University of Sydney.

Duckworth and Balmford formerly worked for the Law Reform Commission of Victoria, which produced the landmark four-volume report, *Plain English and the Law* (1987).

LEGAL ADMINISTRATOR SECTION

STATE BAR  OF MICHIGAN

Established 1990

Join the Section dedicated to enhancing awareness of the legal administration profession, effective legal management principles and providing excellent educational seminars

For membership information, write or call:

Mary F. Galasso
Colombo & Colombo
P.O. Box 2028
Bloomfield Hills, Michigan 48303
(313) 645-9300

- added to the firm's profits; and
- given Phillips Fox a cultural focus as "the plain-language firm."

Difficulties in Changing the Firm's Culture

The process of convincing all attorneys in the firm that plain language is legally valid has been slow and difficult. Attorneys have raised all the traditional arguments against plain language. Gradually these concerns have been overcome in the same ways they have been overcome elsewhere—through education. Some attorneys who initially resisted have become strong advocates of plain language and are delighted with the response they have received from clients who see plain language as adding value.

Conclusion

There are benefits for organisations that adopt plain language. Because of that, there are benefits for law firms that provide plain-language documents and give advice in plain language.

Phillips Fox is in the process of abolishing its specialised plain-language department. Instead, it is training and inspiring every attorney in the firm to completely rethink the way in which he or she writes. This has involved running training seminars in each of the firm's seven offices throughout Australia and New Zealand.

In the long run, it is not enough to produce plain-language agreements as an extra service. Clarity must become part of the culture of the entire firm—part of everything it writes. Achieving that nirvana will be difficult and time-consuming, but it is worth it.

Today some businesses are demanding plain legal documents. One day, business will refuse to accept legal advice or agreements unless they are plain. On that day, the plain-language movement may look to Australia as having led the way. ■

Footnote

1. *Legislation. Legal Rights and Plain English* (1986); *Plain English and the Law* (1987); *Access to the Law: The Structure and Format of Legislation* (1990). Mark Duckworth was heavily involved in preparing one of the reports and many of the demonstration rewrites.

AUTOMATED DOCUMENT DELIVERY SERVICE

ADDS

24 hours-a-day, 365 days-a-year
by FAX, mail or overnight express
Orders, Information: Call (800) 955-1478

\$4.00 per call, \$1.00 per page:

ARTICLE REPRINT SERVICE—Topical indexes and reprints of all *Michigan Bar Journal* substantive articles, 1980 to the present.

COURT OPINION SERVICE—The full text of all court opinions summarized in the Opinion Notes sections (6th Circuit, Federal Districts, Michigan Supreme, and Court of Appeals).

ETHICS OPINIONS—The full text of all Ethics Committee opinions, formal and informal, since 1988.

All you need to use ADDS is a touchtone phone and a P-number (Michigan Bar Identification number). Law firm librarians, legal assistants and others may establish an account number by calling ADDS Customer Service at (800) 678-4329.