

The New World of Legal Design

By Adeline Cheok and Andrew Lumsden

There's an exciting and important development in legal communication: the field of legal design, which this column illustrates. Good design can greatly improve the effectiveness of many forms of legal, business, and government writing. Just look at the difference between the letter of advice shown on the following pages and the typical opinion letter produced by U.S. firms. Don't think about how you might change the wording here and there. Just look at the design.

Unfortunately, space limitations allow only 2½ pages of the original 6. We changed the page numbers to reflect an omitted page. You can find the full document at <https://corrs.com.au/news/2012/07/corrs-incisive-advice-honoured-at-australian-international-design-awards>.

Australia, by the way, has for many years been a leader in promoting plain, clear legal communication. See the columns for August 1993, December 1994, June 2010, and August 2001. —JK

Corrs Chambers Westgarth is Australia's leading independent law firm. It is known for its client-focused approach and commitment to excellence.



“Plain Language,” edited by Joseph Kimble, has been a regular feature of the *Michigan Bar Journal* for 35 years. To contribute an article, contact Prof. Kimble at WMU-Cooley Law School, 300 S. Capitol Ave., Lansing, MI 48933, or at kimblej@cooley.edu. For an index of past columns, Google “Plain Language column index.”

Corrs seeks to build these principles into all aspects of its interactions with clients, including the way it provides advice. Most notably, the firm developed an Incisive Advice Template to deliver considered but succinct legal advice, and the template won an Australian International Design Award.¹

It incorporates best-practice document-design principles and is driven by what clients want and expect: clear, focused advice that they can easily act on.

In consultation with clients, Corrs developed the following key principles for the template:

- Align the advice to the client's business needs.
- Clearly define the issue or problem.
- State the relevant facts.
- Give a short answer.
- Give a straight answer.
- Make clear and practical recommendations.
- Make the advice navigable.
- Draft in clear language.
- Use appropriate visual tools (e.g., tables, timelines, charts).
- Ensure that the advice is only as long as it needs to be.

The template's innovative visual and modular design is a significant shift away from the traditional letter of advice. In-house lawyers have reacted very positively, highlighting the value in being able to forward

advice directly to their board, management, or business units without the need for re-packaging or legal “translation.” ■

Adeline Cheok is the projects and talent development manager at Australian leading law firm Corrs Chambers Westgarth. She is trusted within the firm on strategy people engagement and talent development. Adeline is highly regarded for her client-driven insights and exceptional communication ability. She was formerly a commercial IT lawyer. Adeline is a graduate of The University of Technology, Sydney (MA) and The University of Sydney (BA LLB).

Andrew Lumsden is a partner at Australian leading law firm Corrs Chambers Westgarth, concentrating in M&A, securities transactions, and corporate governance. He is listed as a leading lawyer by directories including Chambers for his work in corporate governance, equity capital markets, and M&A. Andrew is an adjunct faculty member for the Faculty of Law at the University of Sydney. He is a graduate of Macquarie University (BA LLB).

ENDNOTE

1. *Corrs incisive advice honoured at Australian International Design Awards*, News, Corrs Chambers Westgarth (July 24, 2012) <<https://corrs.com.au/news/2012/07/corrs-incisive-advice-honoured-at-australian-international-design-awards>> [website accessed August 1, 2019].

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Advice for XYZ Limited

Prepared for: Ms Jane Doe, General Counsel
 Copy to: Mr John Brown, Business Manager
 Prepared by: John Partner and Alice Lawyer



1 July 2019

Privileged and confidential

Application of Public Works Committee Act 1969 (Cth) to XYZ Limited

Question

You have asked us these questions in relation to the National Bridges project:

- Is XYZ Limited (XYZ) exempt from the operation of the *Public Works Committee Act 1969* (Cth) (Act) (which requires certain projects to be referred to the Public Works Committee)?
- Are there any other bases upon which XYZ, or the works it proposes to undertake, may be exempted from the operation of the Act?

Answer

- It is unlikely that XYZ could obtain the benefit of a regulation under section 6A(3) exempting it from the Act.
- Because of the nature of the construction, it is unlikely any other exemptions will apply.

Risk analysis

This is our assessment of the key legal risks having regard to likelihood and impact.

Key issues	Low	Low to Medium	Medium	Medium to High	High
Risk that XYZ is found not to be engaging in competitive trading activities		✓			
Risk that Ministers might find it is not appropriate to exempt XYZ			✓		
Risk of disallowance motion in the Senate and unfavourable public scrutiny			✓		
Reputational risk for XYZ, its directors and officers in being seen to try to avoid the Act			✓		

Next steps

XYZ should proceed on the basis that the Act will apply, and that the construction will need to be referred to the Public Works Committee before commencement.

Our ref: AL/JPL//HR01-HR01
 3464-3938-6881v6

XYZ Limited

1 July 2019

Application of Public Works Committee Act 1969 (Cth) to XYZ Limited

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Is XYZ eligible to be exempted under section 6A(3) of the Act?

Section 6A(3) could apply to exempt XYZ from the operation of the Act. But it needs to be shown that “it is appropriate for XYZ to be exempted”, and such a proposition might be difficult to sustain.

Exemption under section 6A(3)

- 8 Section 6A(3) could apply to exempt XYZ from the operation of the Act because XYZ is currently ‘engaging in trading or other activities’ in competition with other bodies.
- 9 Section 6A(3) states:

‘Where the Governor General is satisfied that an authority of the Commonwealth is **engaging in trading or other activities, or is providing services, in competition with another body or other bodies** or with persons, the Governor General may make regulations declaring that this Act does not apply to that authority.’
- 10 Although XYZ is not currently providing services in competition with other bodies, in our view XYZ is currently ‘engaging in trading or other activities’ in competition with other bodies.
- 11 The reasons for this conclusion are that:
 - (a) under trade practices law, a business that is not currently supplying goods or services can be a competitor of an existing business if the actions of the existing business are, to some extent, constrained by the first; and
 - (b) existing road operators are likely to be constrained, to some extent, by XYZ even though XYZ is yet to commence supplying services.

Is it appropriate for XYZ to be exempted?

Process before Governor General

- 12 Before a regulation is put before the Governor General, the Minister responsible for the Act (The Hon Mary Smith) will need to be satisfied of the following:
 - (a) section 6A(3) is able to be applied; and
 - (b) having regard to section 6A(3), and the purposes of the Act generally, **it is appropriate for XYZ to be exempted from the operation of the Act.**

Is it appropriate to exempt XYZ?

- 13 In relation to **paragraph 12(b)**, it may be considered inappropriate to exempt XYZ because:

⁴ Section 17

XYZ Limited

1 July 2019

Application of Public Works Committee Act 1969 (Cth) to XYZ Limited



- (a) The Committee is considered to be an important mechanism for Parliamentary scrutiny over Government expenditure on works.
 - (b) Section 6A(3) appears to have as its purpose the protection of public sector bodies from a level of Parliamentary oversight that might reduce their ability to operate in a competitive market. Because of the level of Commonwealth Government commitment to XYZ, and the likely regulatory changes that will be made to support it, XYZ will be able to effectively compete even if it remains subject to Committee scrutiny.
 - (c) There was resistance and debate in Parliament on 10 October 2009 over a motion that was brought by The Hon Mary Smith to exempt the 'national tunnels' project from the operation of the Act.
- 14 On the other hand, it may be considered appropriate to exempt XYZ because XYZ is subject to the Senate Select Committee on the National Bridges project, and there is already adequate Parliamentary scrutiny of XYZ (including its works projects). The Senate Select Committee is due to table its final report next month.

Our view

- 15 In our view it is likely that **it will be considered inappropriate to exempt XYZ** from the operation of the Act. In particular:
- (a) it is likely that any regulation to exempt XYZ from the Act would be closely scrutinised; and
 - (b) a motion to disallow the regulation might be brought before Parliament under section 42 of the *Legislative Instruments Act 2001* (Cth).

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community service

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pro bono

