

REVIEWS

PLAIN LANGUAGE FOR LAWYERS

by Michel Asprey; The Federation Press, Annandale, 1991; RRP \$25.00.

You may have heard about plain legal language without being sure what it is. You may suspect you should be using it without knowing how. You may even scorn the notion of plain language, considering using it would reduce your effectiveness as a lawyer.

If you fit into any of these categories, read Michele Asprey's *Plain Language for Lawyers*.

Asprey is a lawyer herself, well aware of the problems lawyers face as they write, and well informed about recent Australian cases hinging on language. From that background, and from extensive experience as a director of precedents for Mallesons Stephen Jaques, she argues convincingly that lawyers can do a better job if they use plain language; better for the clients, better for the public and better for the courts.

First, Asprey explains what plain language is and why you, as lawyers, should use it. Then she shows how you should go about it. Her aim is to help you communicate with your primary readers, usually clients and the public, and she achieves this aim brilliantly.

The book is packed with relevant examples and with quotations from a great range of writers; including many authorities on legal writing such as Dick, Dickerson, Mellinkoff and Eagleson.

The book is well shaped. At every stage you know what to expect. Asprey says what she will do in the beginning, does it in a straightforward manner linking each chapter with the next, and closes briskly.

In the text she looks closely at organisation, word choice and problem words, and supplies a good store of words and phrases as alternatives. Her section on definitions is extremely useful. If you know everything else

about plain language already, the book would be worth reading for that alone.

I consider, though, that the book has two limitations: it offers little help on grammar and almost none on testing. Knowledge of both is important in plain writing.

Asprey does spend quite a lot of space on grammar but her attention is misdirected. She fusses about split infinitives and terminal prepositions, dismissing the so-called 'rules', just as writers on writing have dismissed them for years. But she says nothing about the ambiguities that can result from real lapses in grammar like mis-related participles, misplaced words and phrases, and pronouns without clear antecedents.

Testing is hardly mentioned in the book. How can lawyers write plain English, which is writing with the *reader's* needs in mind, without testing to see what readers understand before they write, as they write and after they write?

Fortunately, Eagleson, Jones and Hassell's book, *Writing in Plain English*, has a particularly strong section on testing. If you intend to read both books, the omission would not matter. However, this book is written for governments and lacks the rich store of legal examples Asprey offers.

I am ambivalent about the writing style. Certainly an occasional group of words without a verb can become an effective sentence. It can startle by being direct and unexpected. Like this. But in a series such fragments can become irritating, like talking constantly in a loud voice. I cite:

This book does analyse text and deal briefly with some of the rules of interpretation. But fundamentally it is about taking a different approach to drafting. About thinking of legal drafting as another aspect of all the communication we do every day. About doing more in our legal drafting than just seconding a transition as an event. About really communicating with our readers.

Her casual style, in a book on writing, is disconcerting too. I refer to 'less words' (p.91 and elsewhere), to strange pronoun use like 'The Lender may demand payment of the loan, but

it may not do so unless the Borrower has failed to make an interest payment . . . ' (a rewriting of an admittedly worse construction, p.108).

She also uses 'that' as an adverb of degree: 'Words aren't that static' (p.19) and she uses relative pronouns like 'this' without a clear antecedent. I found these breaches distracting but expect they were intentional. Asprey wants lawyers to make their writing close to speech. Her chatty enthusiasm is infectious. You can almost hear her talking. When she uses phrases like 'normal people' to refer to all those who are not lawyers you can almost see the twinkle in her eyes. And she has a neat way of following her own advice, using, for example 'already cited' in footnotes rather than *op. cit.* which some readers, even some lawyers, might not understand exactly.

If you are already convinced that you should use plain language and have read the standard texts like the Document Design Centre's *Guidelines for Document Designers*, the Law Reform Commission of Victoria's drafting manual, *Plain Language and the Law*, and Eagleson, Jones and Hassell's *Writing in Plain English*, there may be little new in this book for you except the section on definitions and the legal slant in discussing specific words and construction.

If you are not already a convert, you owe it to yourself and your clients to read *Plain Language for Lawyers*. You'll enjoy reading it and who knows, your whole attitude to legal writing might change. Remember Felsenfield's words: 'Lawyers have two common failings. One is that they do not write well and the other is that they think they do'.

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