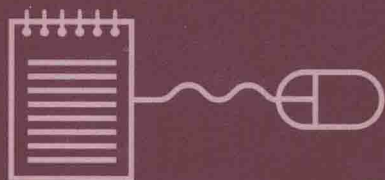


# Modern Legal Drafting

A Guide to Using Clearer Language



Second Edition

Peter Butt & Richard Castle

# MODERN LEGAL DRAFTING

A Guide to Using Clearer Language  
Second Edition

PETER BUTT  
AND  
RICHARD CASTLE



CAMBRIDGE  
UNIVERSITY PRESS

CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo

Cambridge University Press

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

Published in the United States of America by Cambridge University Press, New York

[www.cambridge.org](http://www.cambridge.org)

Information on this title: [www.cambridge.org/9780521674522](http://www.cambridge.org/9780521674522)

© Peter Butt, Richard Castle 2006

First published 2001

Second edition published 2006

Printed in China by Everbest

*A catalogue record for this publication is available from the British Library*

*National Library of Australia Cataloguing in Publication data*

Butt, P. J. (Peter J.).

Modern Legal Drafting: A Guide to Using Clearer Language.

2nd ed.

Bibliography.

Includes index.

ISBN-13 978-0-52167-452-2 paperback

ISBN-10 0-52167-452-2 paperback

I. Law – Language. 2. Legal composition. 3. Legal documents – Interpretation and construction. I. Castle, Richard (Richard William), 1943–. II. Title.

808.06634

ISBN-13 978-0-521-67452-2 paperback

ISBN-10 0-521-67452-2 paperback

### **Reproduction and Communication for educational purposes**

The Australian *Copyright Act 1968* (the Act) allows a maximum of one chapter or 10% of the pages of this work, whichever is the greater, to be reproduced and/or communicated by any educational institution for its educational purposes provided that the educational institution (or the body that administers it) has given a remuneration notice to Copyright Agency Limited (CAL) under the Act.

For details of the CAL licence for educational institutions contact:

Copyright Agency Limited

Level 15, 233 Liverpool Street

Sydney NSW 2000

Telephone: (02) 9394 7600

Facsimile: (02) 9394 7601

E-mail: [info@copyright.com.au](mailto:info@copyright.com.au)

---

### **Reproduction and Communication for other purposes**

Except as permitted under the Act (for example a fair dealing for the purposes of study, research, criticism or review) no part of this publication may be reproduced, stored in a retrieval system, communicated or transmitted in any form or by any means without prior written permission. All inquiries should be made to the publisher at the address above.

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication, and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

---

# MODERN LEGAL DRAFTING

## A Guide to Using Clearer Language

### Second Edition

In the second edition of this highly regarded text, the authors show how and why traditional legal language has developed the peculiar characteristics that make legal documents inaccessible to the end users. Incorporating recent research and international examples, the book provides a critical examination of case law and the rules of interpretation. Detailed case studies illustrate how obscure or outdated words, phrases and concepts can be rewritten, reworked or removed altogether – without compromising legal exactitude. In emphasising the benefits of plain language drafting, the focus is on clarity and accessibility. Particularly useful is the step-by-step guide to drafting in the modern style, using practical examples from four types of common legal documents: leases, company constitutions, wills and conveyances.

Readers will gain an appreciation of the historical influences on drafting practice and the use of legal terminology. They will learn about the current moves to reform legal language; and they will receive clear instruction on how to make their writing clearer and their legal documents more useful to clients and colleagues.

*Modern Legal Drafting: A Guide to Using Clearer Language* will benefit lawyers, law students, legislative drafters, and all who work in law-related fields.

PETER BUTT is Professor of Law and founding director of the Centre for Plain Language at the University of Sydney.

RICHARD CASTLE is a former solicitor, currently working in New Zealand.

## ACKNOWLEDGEMENTS

### Extract from First Edition

This book is the product of many years' practice and research in the techniques of drafting legal documents in modern, standard English. We are grateful to many people for their contributions towards the ideas and experiences that have helped shape our views.

Richard Castle would particularly like to thank:

- the law librarian of the University of Exeter, and the librarians of the University of Plymouth and the College of St Mark and St John Plymouth for the use of their facilities
- the staff of Devon public libraries for their unfailing helpfulness
- colleagues on the drafting courses formerly run by the Centre for Commercial Law Studies, for their inspiration
- Professor John Adams of Queen Mary & Westfield College London for his advice and guidance on early work which led to this book
- his clients and colleagues in Plymouth who directly and indirectly provided a good deal of the material which appears here
- Wendy Castle for her support and untiring efforts in typing, retyping and retyping again many early drafts
- Sarah, Emma and Ally for their indulgence and motivation during the years of research and writing.

Peter Butt would particularly like to thank:

- the librarian and staff of the law schools in the Universities of Sydney and Bristol
- his students at the University of Sydney, who for a decade have provided inspiration and feedback in lecture courses on plain language drafting techniques
- Marion Butt, for her efforts in typing the later drafts of the book.

Both of us would also like to thank a number of colleagues who reviewed drafts of the manuscript, and whose enthusiastic support for the project was a great encouragement. They include Robert Eagleson (Australia), Mark Adler (England) and David Elliott (Canada).

We gratefully acknowledge those who have given permission to reproduce copyright material used in the book: Her Majesty's Stationery Office; Australia and New Zealand Banking Group Limited; Wellington District Law Society's Collection, Special Printed Collections, Alexander Turnbull Library, New Zealand; and VicRoads. Every effort has been made to trace and acknowledge copyright and we would be pleased to hear from those we have been unable to contact.

Finally, we emphasise that this book is very much a joint undertaking. Although we worked separately for a long time on opposite sides of the world, the final product is the result of our labours together for some six years. We take joint and several responsibility for it – or rather, we take responsibility for it separately and together.

PETER BUTT  
RICHARD CASTLE

## ACKNOWLEDGEMENTS

### Second Edition

This second edition incorporates a number of developments in legal drafting that have arisen since the publication of the first edition. As with the first edition, we are grateful to many people for their contributions to the ideas and experiences that have helped shape our views.

We would especially like to thank those who took the time to provide constructive comments on the first edition. These include the late Professor John Adams (United Kingdom), Hector Macdonald (Australia), and Christine Mowat (Canada), all of whom wrote long and detailed comments for our consideration.

Peter Butt would like to thank the Faculty of Law, University of Cambridge, where he wrote some of this edition. For part of that time, he was a Herbert Smith Fellow; for another part, he was a Visiting Fellow at Trinity College. Without this assistance it would not have been possible to complete the book, and to both entities we owe sincere thanks. Peter also owes special thanks to Professor Kevin Gray of Trinity College for his guidance and help in arranging the stay at Cambridge, and to both Kevin and his wife Susan for making the stay so enjoyable.

Finally, Peter's wife Lin helped type the manuscript and polish the prose. To her, we both owe sincere thanks.

We gratefully acknowledge those who have given permission to reproduce copyright material for use in this and the first edition. In this edition, they include Her Majesty's Stationery Office, Australia and New Zealand Banking Group Ltd and VicRoads. Every effort has been made to trace and acknowledge copyright and we would be pleased to hear from any copyright holders we have been unable to trace.

PETER BUTT  
RICHARD CASTLE

# PANELS AND TABLES

## Panels

1	Charges register extract	<i>page</i> 3
2	Handwritten conveyance	19
3	<i>Making It Plain</i>	89
4	Example of plain statutory drafting from New South Wales <i>Conveyancing Act</i>	100
5	New York plain English law	102
6	Extract from bank mortgage	143
7	Use of capitals to break up text	145
8	Historic use of capitals	161
9	Document layout	174
10	Regulatory signs	195
11	Example of flow chart from Australian <i>Native Title Act</i>	196

## Tables

1	'Before' and 'after' examples of US Federal Court Rules	106
2	Traditional and plain language legal clauses	114
3	Numbering systems	176
4	Use of a table in a contract	191



# TABLE OF STATUTES AND SUBSIDIARY LEGISLATION

## Imperial

*Statute of Additions* 1413, 147  
*Statute of Pleading* 1362, 25  
*Statute of Provisions* 1350–51, 65

## England and Wales

*Administration of Justice Act* 1982  
    s 17, 226  
    s 21, 70  
*Arbitration Act* 1996, 92  
    s 5(2), 190–1  
*Capital Allowances Act* 2001, 91  
*Conveyancing Act* 1845, 34  
*Conveyancing Act* 1881, 36  
*Fire and Rescue Services Act* 2004, ss 19, 20, 32, 33, 156  
*Human Rights Act* 1998, 201  
*Inquiries Act* 2005, 189  
*Land Registration Act* 2002, 220  
*Landlord and Tenant Act* 1954, Part II, 222, 223, 224  
*Landlord and Tenant Act* 1985, ss 8, 11, 49  
*Law of Property (Miscellaneous Provisions) Act* 1994, 13  
*Law of Property Act* 1925, 219  
    s 1(2), 9  
    s 44, 218  
    s 45, 218  
    s 52, 216  
    s 60, 9

s 61, 157, 209, 227

s 78, 230

s 79, 230

s 81, 157

s 205, 9

*Leases Act* 1845, 34

*Oil in Navigable Waters Act* 1963, 213

*Settled Land Act* 1925, 219

*Solicitors' Remuneration Act* 1881, 36

*Statute Law (Repeals) Act* 1989, 34

*Timeshare Act* 1992, 82

*Wills Act* 1837, s 9, 226

### Regulations and Statutory Orders

Civil Procedure Rules 1998 (SI 1998 No 3132 L 17), 92

Consumer Credit (Advertisements) Regulations 2004 (SI 2004 No. 1484),  
reg. 3(a), 122

Employment Tribunals (Constitution and Rules of Procedure) Regulations  
2004 (SI 2004 No. 1861), 92

Solicitors' (Non-Contentious Business) Remuneration Order 1994, 36

Solicitors' Remuneration Order 1883, 36

Solicitors' Remuneration Order 1953 (SI 1953, No. 117), 36

Solicitors' Remuneration Order 1972, 37

Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999, No.  
2083), reg. 7, 121

## Australia

### Commonwealth

*Corporations Law* 2001, 210

*Industrial Relations Act* 1988, s 150A, 124

*Industrial Relations Reform Act* 1993, s 17, 124

*Insurance Contracts Act* 1984, s 22(1), 124

*Members of Parliament (Life Gold Pass) Act* 2002, s 3, 199–200

*Native Title Act* 1993, 189

s 203AA(5), 194, 196

*Social Security Act*, 115

*Trade Marks Act* 1995, 214

*Trade Practices Act* 1974

s 51AB, 124

s 51AC, 124

## New South Wales

*Consumer Credit (NSW) Code*, s 162, 123

*Contracts Review Act* 1980

s 7 125

s 9, 125

*Conveyancing Act* 1919, 99, 100, 182, 183

s 23B, 216

s 53, 218

s 78, 13

s 181, 209, 227

*Fisheries Management Act* 1994, s 5, 155

*Legal Profession Act* 2004, s 315(1), 123

*Local Government Act* 1993, 97, 109

*Real Property Act* 1900, 220

s 133D, 203

*Residential Tenancies Act* 1987, ss 25, 26, 49

*Retirement Villages Act* 1999, 175, 185

s 83, 203

## Queensland

*Industrial Relations Act* 1999, s 333, 124

*Land Title Act* 1994, 97

## Victoria

*Crimes Act* 1958, s 464, 155

*Road Traffic Regulations* 1991, 194

*Wills Act* 1997, s 36, 70

## Canada

### Federal

*Uniform Interpretation Act* 1967–68, c 7, ss 10, 28, 201

Alberta

*Financial Consumers Act* 1990, 108

*Financial Consumers Act*, R.S.A. 2000, 108

*Municipal Government Act* (Draft), 98, 108–9

British Columbia

*Interpretation Act* (RSBC, 1996, Chapter 238), s 29, 201

Ontario

*Tobacco Tax Act* 1990, 211

Hong Kong

*Basic Law*, article 160, 132, 133

India

*Indian Evidence Act* 1872, 198

*Indian Penal Code*, 77

New Zealand

*Income Tax Act* 2004, 98

United States of America

New York

*Plain English Law (Sullivan Act)*, 101, 102

## TABLE OF CASES

- Acorn Consolidated Pty Ltd v Hawkslade Investments Pty Ltd* (1999) 21 WAR 425, 69
- Adamastos Shipping Co. Ltd v Anglo-Saxon Petroleum Co. Ltd* [1959] AC 133, 63
- AG Securities v Vaughan* [1990] 1 AC 417, 51
- Akeroyd's Settlement, Re* [1893] 3 Ch 363, 135
- Alan Wiberley Building Ltd v Insley* [1999] 1 WLR 894, 193
- Alexion Hope, The* [1988] 1 Lloyd's Rep 311, 41
- Alghussein Establishment v Eton College* [1988] 1 WLR 587, 40
- Al-Kandari v J.R. Brown & Co.* [1988] QB 665, 16
- Alley, Re* [1965] SASR 22, 70
- Amax International Ltd v Custodian Holdings Ltd* [1986] 2 EGLR 111, 60
- American General Insurance Co. v Webster* 118 SW 2d 1084, 214
- Anderson v Anderson* [1895] 1 QB 749 at 753, 55
- Andrews v Strugnell* [1977] Qd R 284, 58
- Annefield, The* [1971] P 168, 72
- Antaios, The* [1985] AC 191, 63
- Appleton v Aspin* [1988] 1 WLR 410, 50
- Ashcroft v Mersey Health Authority* [1983] 2 All ER 245, 16
- Aspden v Seddon* (1874) 10 Ch App 394, 39, 73
- Associated Artists Ltd v Inland Revenue Commissioners* [1956] 1 WLR 752, 212
- Atari Corporation (UK) Ltd v Electronic Boutique Stores (UK) Ltd* [1998] QB 539, 64
- Attorney General for New Zealand v Brown* [1917] AC 393, 212
- Attorney General v Prince Ernest Augustus of Hanover* [1957] AC 436 at 463, 51

- Attorney-General (New South Wales) v Dickson* [1904] AC 273, 29
- Attorney-General for New South Wales v Metcalfe* (1904) 1 CLR 421, 55
- Attorney-General of the Bahamas v Royal Trust Co* [1986] 1 WLR 1001, 212
- Attorney-General of the Commonwealth v Oates* (1999) 198 CLR 162, 168
- Attorney-General v Brown* [1920] 1 KB 773, 53
- Australian Competition and Consumer Commission v Henry Kaye* [2004] FCA 1363, 175
- Australian Competition and Consumer Commission v Maritime Union of Australia* [2002] ATPR 41–849, 208
- Australian Competition and Consumer Commission v McCaskey* (2000) 104 FCR 8, 207
- Award Simplification Decision, Re* (1997) 75 IR 272, 124
- Ayling v Wade* [1961] 2 QB 228, 27
- Bahr v Nicolay (No. 2)* (1988) 164 CLR 604, 50
- Bain v Brand* (1876) 1 App Cas 762, 165, 166
- Balabel v Mehmet* [1990] 1 EGLR 220, 202
- Ballard v North British Railway Co.* (1923) SC (HL) 43, 60
- Baryl, Re* (1994) 75 A Crim R 575, 202
- Bank of Credit and Commerce International SA v Ali* [2002] 1 AC 251, 69
- Bankstown Airport Ltd v Noor Al Houda Islamic College Pty Ltd* (2003) NSW ConvR 56–038, 152
- Barbour, Re* [1967] Qd R 10, 193
- Barclays Bank Ltd v Inland Revenue Commissioner* [1961] AC 509, 155
- Barclays Bank Plc v Weeks Legg & Dean* [1999] QB 309, 66
- Barclays Bank Trust Co. Ltd v McDougall* (2000) *Law Society's Gazette*, 3 August 39; [2001] WTLR 23, 164
- Barracrough v Cooper* [1908] 2 Ch 121n, 134
- Bartlett & Partners Ltd v Meller* [1961] 1 Lloyd's Rep 487, 60
- Barton v Fincham* [1921] 2 KB 291, 50
- Barton v Reed* [1932] 1 Ch 362, 169
- Basingstoke and Deane Borough Council v Host Group Ltd* [1988] 1 All ER 824, 63
- Bass Holdings Ltd v Morton Music Ltd* [1988] Ch 493, 27
- Bateman's Will Trusts* [1970] 3 All ER 817, 134
- Baumgartner v Baumgartner* (1987) 164 CLR 137, 50

- Bava Holdings Pty Ltd v Pando Holdings Pty Ltd* (1998) NSW ConvR 55–862, 64
- Bensley v Burdon* (1830) 8 LJ (OS) Ch 85, 217
- Best, Re* [1904] 2 Ch 354, 211
- Big River Timbers Pty Ltd v Stewart* (1999) 9 BPR 1, 605, 215
- Birchall, Re* [1940] 1 All ER 545, 134
- Bishop v Bonham* [1988] 1 WLR 742, 50
- Blue Metal Industries Ltd v Dilley* [1970] AC 827, 159
- Blunn v Cleaver* (1993) 119 ALR 65, 115
- Boat Park Ltd v Hutchinson* [1999] 2 NZLR 74, 66
- Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582, 16
- Bonitto v Fuerst Bros & Co. Ltd* [1944] AC 75, 214
- Bontex Knitting Works Ltd v St John's Garage* (1943) 60 TLR 44, (1943) 60 TLR 44 253, 141
- Booth's Will Trusts, Re* (1940) 163 LT 77, 134
- Bower v Bantam Investments Ltd* [1972] 3 All ER 349, 140
- Boyes v Cook* (1880) 14 Ch D 53, 69
- BP Australia Pty Ltd v Nyran Pty Ltd* (2003) 189 ALR 442, 69
- BP Refinery (Westernport) Pty Ltd v Shire of Hastings* (1977) 180 CLR 266, 50
- Bridge Wholesale Acceptance (Australia) Ltd v GVS Associates Pty Ltd* [1991] ASC 57, 116, 125
- Bridgewater's Settlement, Re* [1910] 2 Ch 342, 217
- British Gas Corporation v Universities Superannuation Scheme Ltd* [1986] 1 WLR 398, 63
- Bromarin AB v IMD Investments Ltd* [1999] STC 301, 66
- Brough v Whitmore* (1791) 4 Term Rep 206; 100 ER 976, 41
- Brown v Davies* [1958] 1 QB 117, 164
- Brown, Re* [1917] 2 Ch 232, 134
- Bruce v Cole* (1998) 45 NSWLR 163, 57
- Bruton v London & Quadrant Housing Trust* [2000] 1 AC 406, 51
- Brygel v Stewart-Thornton* [1992] 2 VR 387, 202
- Budget Stationery Supplies Pty Ltd v National Australia Bank Ltd* (1996) 7 BPR 14, 891, 59
- Burrell & Kinnaird v Attorney General* [1937] AC 286, 154
- Burton v English* (1883) 12 QBD 218, 60

- Burwood Project Management Pty Ltd v Polar Technologies International Pty Ltd* (1999) 9 BPR 17, 355, 214
- Butt v McDonald* (1896) 7 QJL 68, 50
- C (a solicitor), Re* [1982] 1 NZLR 137, 205
- Cadogan Estates Ltd v McMahon* [2000] 3 WLR 1555, 209
- Campbell v Metway Leasing Ltd* [1998] ATPR 41–630, 207
- Campbells Cash and Carry Pty Ltd v National Union of Workers, New South Wales Branch (No 2)* (2001) 53 NSWLR 393, 199
- Carl Zeiss Stiftung v Herbert Smith & Co. (No. 2)* [1969] 2 Ch 276, 50
- Central Pacific (Campus) Pty Ltd v Staged Developments Australia Pty Ltd* (1998) V ConvR 54–575, 64
- Chacmol Holdings Pty Ltd v Handberg* [2005] FCAFC 40, 218
- Chandris v Isbrandtsen-Moller Co. Inc* [1951] 1 KB 240, 54
- Charter Reinsurance Ltd v Fagan* [1997] AC 313, 65
- Charter v Charter* (1874) LR 7 HL 364, 70
- Chew v The Queen* (1992) 173 CLR 626, 186
- Chichester Diocesan Fund and Board of Finance v Simpson* [1944] AC 341, 211
- Christopherson v Naylor* (1816) 1 Mer 320; 35 ER 693, 134
- Ciampa v NRMA Insurance Ltd* (unreported, Supreme Court of NSW, Bryson J, 23 October 1989), 119
- Clark v Maclellan* [1983] 1 All ER 416, 16
- Clarke v Bruce Lance & Co.* [1988] 1 WLR 881, 16
- Clay v Karlson (No. 2)* (1998) 19 WAR 287, 14
- Coca Cola Bottling Co. v Reeves* 486 So 2d 374, 128
- Cochrane v Florida East Coast Ry Co.* 145 So 217 at 218, 214
- Cockerill v William Cory & Son Ltd* [1959] 2 QB 194, 207
- Codelfa Construction Pty Ltd v State Rail Authority of New South Wales* (1982) 149 CLR 337 50, 69
- Cohn, Re* [1974] 3 All ER 928, 164
- Colquhoun v Brooks* (1888) 21 QBD 52, 57
- Commercial Bank of Australia Ltd v Amadio* (1983) 151 CLR 447, 125
- Commercial Union Midwest Insurance Co v Vorbec* 674 NW 2d 665, 115
- Commissioner of Stamp Duties v Atwill* [1973] AC 558, 165
- Commissioner of State Revenue v Pioneer Concrete (Vic.) Pty Ltd* (2002) 209 CLR 651, 29



- Committee of Direction of Fruit Marketing v Collins* (1925) 36 CLR 410, 186  
*Cooke v Anderson* [1945] 1 WWR 657, 63  
*Cooke v New River Co.* (1888) 38 Ch D 56, (1889) 14 App Cas 698, 136  
*Cooper v Stuart* (1889) 14 App Cas 286, 29  
*Coote v Borland* (1904) 35 SCR (Can) 282, 152  
*Cope, Re* [1908] 2 Ch 1, 134  
*Corbett v Hill* (1870) 9 LR Eq 671, 193  
*Cozens v Brutus* [1973] AC 854, 61  
*Creswell v Potter* [1978] 1 WLR 255, 125  
*Croft v Lumley* (1858) 4 HLC 672 27;  
*Crowley v Templeton* (1914) 17 CLR 457, 220
- Darlington Futures Ltd v Delco Australia Pty Ltd* (1986) 161 CLR 500, 59  
*Datastream International Ltd v Oakeep Ltd* [1986] 1 WLR 404, 63  
*Datt v Law Society of New South Wales* (1981) 35 ALR 523, 165  
*David v Heckler* 591 F Supp 1033 (1984), 42  
*Davies v Stephens* (1836) 7 C & P 570; 173 RR 251, 131  
*Dawes, ex parte* (1886) 17 QBD 275, 218  
*Dayrell, Re* [1904] 2 Ch 496, 47  
*De Kuyper v Crafter* [1942] SASR 238, 169  
*Dean v Wiesengrund* [1955] 2 QB 120, 57  
*Delamere's Settlement Trusts, Re* [1984] 1 All ER 584, 27  
*Delnorth Pty Ltd v State Bank of New South Wales* (1995) 17 ACSR 379, 142  
*Deputy Commissioner of Taxation v Clark* (2003) 45 ASCR 332, 54  
*Dickerson v St Aubyn* [1944] 1 All ER 370, 62  
*Diplock, Re* – see *Chichester Diocesan Fund and Board of Finance v Simpson*  
*Director of Housing v Pavletic* (2003) V ConvR 54–668, [2002] VSC 438,  
 216  
*Director of Investigation and Research v Newfoundland Telephone Company*  
 [1987] 2 SCR 466, 57  
*Discount & Finance Ltd v Gehrig's Wines Ltd* (1940) 57 WN (NSW) 226,  
 217  
*Dockside Holdings Pty Ltd v Rakio Pty Ltd* (2001) 79 SASR 374, 64  
*Doe d Willis v Martin* (1790) 4 TR 39; 100 ER 882, 184  
*Donald, Re* [1947] 1 All ER 764 39, 135  
*Donoghue v Stevenson* [1932] AC 562, 15  
*Dorset Yacht Co. Ltd v Home Office* [1970] AC 1004, 15