

Reconciling the need for legal accuracy with a commitment to plain language

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What I'll cover

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- Plain language versus legal accuracy?
- Challenge of explaining the law to the community
- Why use reference groups?
- Setting up reference groups
- Working with reference groups
- Using reference group feedback
- Summary

Plain language versus legal accuracy?



Plain language versus legal accuracy?

- Plain language and legal accuracy – a conflict?
- Some lawyers' criticisms of plain language:
 - over-simplifies
 - generalises
 - underestimates the need for technical language
 - fails in court
 - takes the charm out of legal language

See Benson and Kimble for rebuttals.

Challenge of explaining the law to the community



Plain-language writer as translator

... translating legalese – like translating a foreign language – is no easy matter.

(Joseph Kimble)

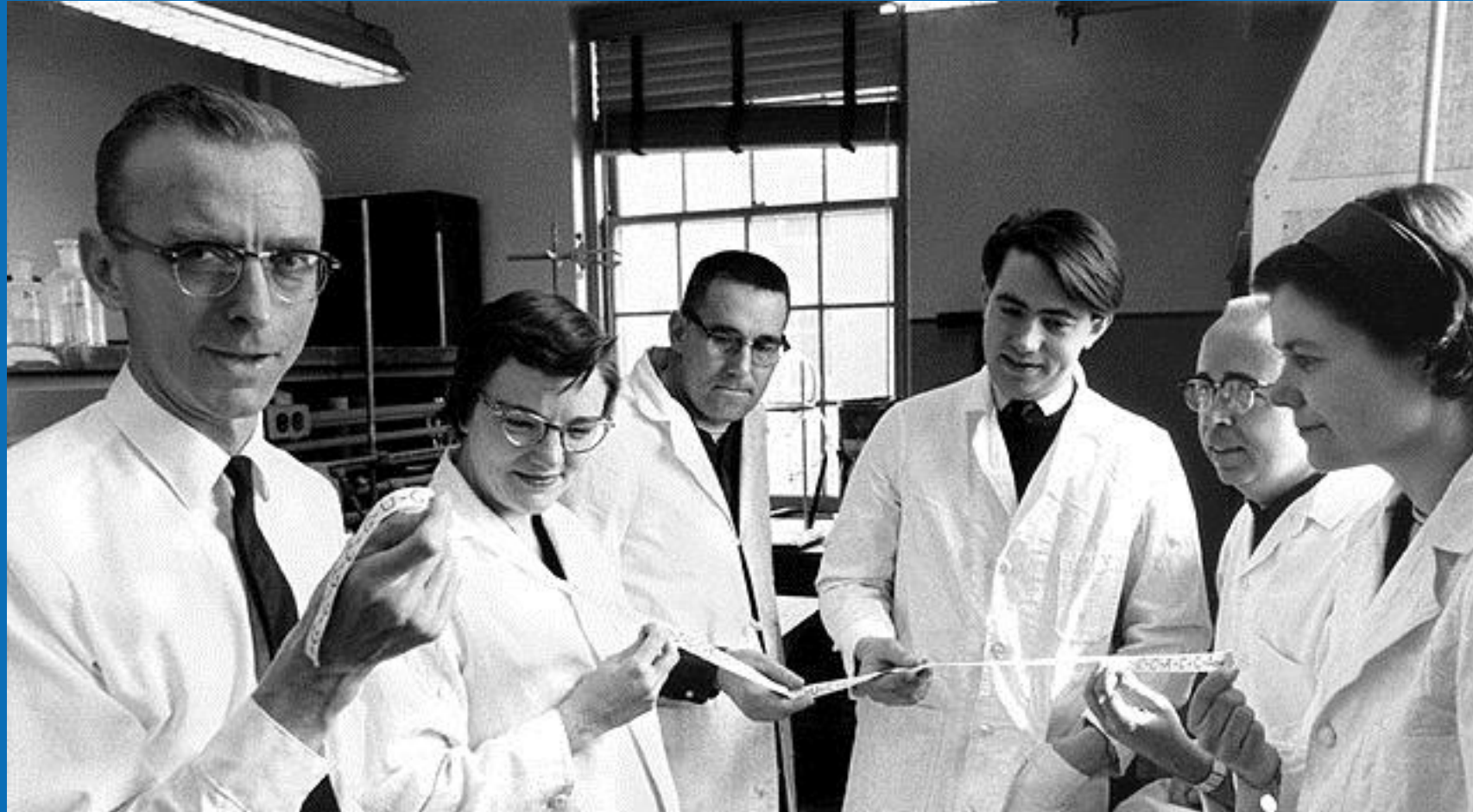
Do you yourself always know just what you mean? Even when you know what you mean, and say it in a way that is clear to you, will it always be equally clear to your reader?

(Sir Ernest Gowers)

Sir Ernest Gower's 'guiding principles'

- 'use the simplest language'
- 'avoid technical terms'
- 'employ the second person freely'
- 'state the essentials'
- tell readers 'where they can find fuller information and further advice'

Why use reference groups?



Why use reference groups?

- Can be close to the audience you are writing for
- Can help better target your publication:
 - what publications are already out there
 - what their strengths and weaknesses are
 - what gaps your publication could fill
- Legal and non-legal expertise: ensures accuracy, adds authority
- Useful for continuing review of the publication

Victorian Legal Assistance Forum

Online Legal Information Guidelines

Guideline 4:

... Reference groups made up of relevant experts should be used in the development of legal content to ensure that it is accurate and that an appropriate scope of material is covered.

Setting up reference groups



Setting up reference groups

- Scope your publication and do the basic research
- Invite key, representative experts and stakeholders
- Brief the group on:
 - your organisation and its plain-language commitment
 - your planned publication
 - their role
- Show them examples of your publications

Briefing on planned publication

- Who are the intended audience?
- What is its scope?
- What is its tone and style?
- What is the planned design?
- What is the planned format?

Working with reference groups



Plain-language writer as anthropologist

Not enough to know what you want to say, must be **able** to say it.

This requires knowledge of the law and its culture:

- its general and particular language, concepts, doctrines...
- why particular language has been used
- the circumstances it is trying to cover
- the difficulties it is trying to deal with.

Knowing the law can help

Knowing the law helps you work better with reference groups.

- So you can identify:
 - areas of the law that are unclear
 - what you do not know or are uncertain about
 - what questions you need to ask the reference group.
- Better understand the clarifying answers the group gives you
- Better understand and assess the feedback – is it correct?

Knowing the law and translation

In sum, understanding the law and legal culture enables you to:

- know what you and the reference group are talking about
- maintain your independence and commitment to plain language
- better translate legalese – or even just legal language

What translator can be effective without an adequate knowledge of the language they are going to translate?

Using reference group feedback



Overview

- Mutual understanding and respect
- Reiteration of plain-language principles throughout
- Some options when responding to feedback:
 - make correction, but in plain language
 - omit contentious material if complex, uncommon and not useful to the reader
- Negotiation, analysis, concession, resistance, in-house feedback and revision

Bike riding publication as an example

- Audience: keep focus on everyday bike riders
- Jurisdiction: Victoria, Australia
- Content: neutral account of the law, make clear what the law requires
- Tone: matter-of-fact, but still engaging
- Extent: compact, around 5000 words
- Format: print, PDF and online

Bike riding publication: technical terms

- Translating ‘impracticable’ in the road rules
Solution: use ‘not a practical option’ instead
- Translating ‘motorised mobility device’
Solution: use more familiar ‘mobility scooter’
- Translating ‘bicycle storage area’
Solution: use bike riders’ term: ‘bike box’
- ‘Overtaking’, ‘undertaking’, ‘passing’?
Solution: just use ‘overtaking’

Summary



Summary

- Plain language can be legally accurate
- Explaining the law to the community is challenging – but worth it
- Use reference groups for accuracy and authority
- Set up expert and representative reference groups
- Plain-language writers are translators and anthropologists
- Working with reference groups requires negotiation

References

References

- Robert W Benson, 'The end of legalese: the game is over' (1984–5) 13
NYU Rev of Law and Social Change 519
- Martin Cutts, 'Ten easy tactics for clear legal writing', PLAIN
Conference 2009, Sydney
- Ernest Gowers, *Plain words: a guide to the use of English* (Particular
Books, Penguin, 2014; originally published 1948)
- Stephen James, 'Plain language – the basics', presentation to the
State Revenue Office Victoria (2015)
- Joseph Kimble and JA Prokop Jr, 'Strike three for legalese' [May 1990]
Michigan Bar Journal 418
- Joseph Kimble, 'Plain English: a charter for clear writing' (1992) 9(1)
Thomas M Cooley Law Review 1

References

Joseph Kimble, 'The great myth that plain language is not precise' [1998–2000] *The Scribes Journal of Legal Writing* 109

Joseph Kimble, 'The elements of plain language' (2002)

<http://www.plainlanguage.gov/whatisPL/definitions/Kimble.cfm>

Joseph Kimble, *Writing for dollars, writing to please* (Carolina Academic Press, 2012)

Law Reform Commission of Victoria, *Legislation, legal rights and plain English*, Discussion Paper No 1 (1986)

Law Reform Commission of Victoria, *Plain English and the law*, Report No 9 (1987, reprinted 1990)

David Mellinkoff, *The language of the law* (Little, Brown & Company, 1963)

References

Plain Language Action and Information Network, US *Federal plain language guidelines* (May 2011)

Victoria Law Foundation, *Better information handbook* (Victoria Law Foundation, 2011)

Victorian Legal Assistance Forum, Online Legal Information Guidelines
<http://www.victorialawfoundation.org.au/vlaf-online-legal-information-guidelines>

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