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## ***Legislative drafting and the First Corporate Law Simplification Act 1995***

In recent years Parliamentary Counsel have introduced a number of new drafting devices. Their utility has varied. Some are primarily cosmetic, but have profound practical consequences. Anyone who has tried to research precedents for statutes that have been renumbered and relettered - eg, the *Social Security Act 1947* and the *Migration Act 1958 (Cth)*, which were respectively renumbered and relettered in 1987 and 1989 - has probably discovered not only a new level of frustration, but has also resorted to a new lexicon of abuse for those who created the torturous exercise. It may be questioned whether this detriment outweighs the temporary removal of complex section identifications which the *Income Tax Assessment Act 1936 (Cth)* has raised to nightmarish proportions with examples such as sections 159GZZZM and 221YHZLA.

Parliamentary Counsel in turn had to create a new lexicon to express the complex legislative framework for giving effect to the Alice Springs Agreement and for applying the Commonwealth's Corporations Law and associated statutes and regulations as uniform laws in all states and territories, or - as they are known in the language of the legislation - "jurisdictions".

Another interesting innovation is to incorporate in the statute examples as an aid to interpretation when dealing with complex provisions such as

the method for obtaining the "deductive (contemporary sales) value" of imported goods under section 161C of the *Customs Act 1901*.

These changes, however, are minor when compared with the changes in form and expression used in the *First Corporate Law Simplification Act 1995*, most of the provisions of which came into operation on 9 December 1995. The Simplification Act introduces some novel drafting approaches. They include devices to make the legislation more accessible, such as:

- a layout designed to make the statute easier to read;
- the use of plain English expression;
- the inclusion of notes at the end of subsections referring one to other relevant provisions; and
- the use of tables to state relevant provisions and to include the circumstances in which they apply.

The Simplification Task Force has issued a booklet, *Drafting issues designing the law*. It explains the attempt to make legislation more accessible through an improved layout. The design innovations in the Simplification Act are experimental and are part of a larger investigation on the layout of legislation being undertaken in the Commonwealth and New South Wales Parliamentary Counsel Offices, and in the Taxation Law Improvement Project.

Only those thoroughly seduced by the arcane dialect of English traditionally used in parliamentary drafting will mourn the supplanting of the labyrinthine complexity of provisions such as section 205 of the Corporations Law by the simplicity and clarity of, for example, section 206A introduced by the Simplification Act.

A radical step in the Simplification Act is the introduction of Part 1.5 of the Corporations Law, which is titled "Small business guide". It describes its function in the following words:

This guide summarises the main rules in the Corporations Law that apply to proprietary companies limited by shares - the most common type of company used in small business. The guide gives a general overview of the Corporations Law as it applies to those companies and directs readers to the operative provisions in the Law

In eighteen and a half pages of 12 point type with generous spacing between sections and with short lines, the guide explains the fundamentals of the Corporations Law. For example, under heading "Returns to shareholders" it says:

Shareholders can take money out of the company in a number of ways but only if the company complies with its articles, the Corporations Law and all other relevant laws. A director of a company that pays out money causing the company to be unable to pay its debts as they fall due may be liable:

- to pay compensation; and
- for criminal and civil penalties.

[sections 588G, 1317HA, 1317HB, 1317HD]

Possibly as a consequence of the clarity that Parliamentary Counsel believe they have achieved in drafting the Simplification Act, the quality and substance in the explanatory memorandum is less than with traditional drafted legislation. Whether this is an inevitable consequence of the new style of drafting or a particular instance will be determined only over time. If the present instance becomes a trend, however, the utility of the explanatory memorandum as an aid to the interpretation of a statute will be diminished.

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## **Queensland Legislation**

Legal researchers around Australia will welcome the release by Computer Law Services (Diskrom), in December 1995, of the Queensland legislation on CD-ROM. Until now, this Queensland material has not been available in an electronic form readily accessible to researchers outside Queensland.

The publishers (Computer Law Services, publishers of Diskrom) describe the release as containing "a selection of reprints of Queensland Legislation, including: 103 Acts and 54 Regulations and other subordinate legislation".

At the beginning of the text of each piece of legislation, the currency and last amendment details of that reprint can be found. It should be noted that amendments subsequent to each reprint are not included in this database in its present form.

One attractive feature is that you do not need the whole act on your screen to print it. It is possible to highlight the act name in the Table of Contents of the whole database, and print from there.

## **Australian Legislation on AustLII and Foundation Law**

There appears to be no expansion yet of the Australian legislation goods on offer through AustLII (and also through Foundation Law). Despite the tempting list of all jurisdictions, which appears initially, hinting at things to come, this source is still restricted to Acts and Regulations of the Commonwealth and New South Wales [at late February 1996]. However, these two databases are being actively maintained, with updates and modifications being added frequently.

## *Victorian Legislation on VicNet*

A very small selection of Victorian legislation can be found on VicNet, through a link provided from AustLII, (or go directly to <http://www.vicnet.net.au/vicnet/vicleg.html>).

In its present size (fewer than ten acts), this sample has very limited value at the moment. However, correspondence with VicNet administration indicated that it is about to happen. "All legislation is ready to go, however, due to some internal politics, Parliament haven't

released it yet. We are working on them and all we can say is that its coming soon".

## *Canadian Statutes*

The Canadian Department of Justice provide the full text of Canadian Legislation (along with bills, new statutes, press releases and other goodies) at a WWW site for free!

URL:

[http://canada.justice.gc.ca/index\\_en.html](http://canada.justice.gc.ca/index_en.html)

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Please use **upper and lower case on headings** and for indenting use the "TAB" function and not individual spaces. Please don't use underlining. Contributors should follow the format of the current journal and contact the Editorial Co-ordinator: (Tel: (08) 202 8414; Fax: (08) 202 8410 or Email: [bpcoat@camtech.com.au](mailto:bpcoat@camtech.com.au)) to obtain a copy of the **ALL** Style Guide.

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