

mands legal intervention. Sometimes changes in social patterns stretch the resources of existing legal rules and practices. Mr Mason said that a third catalyst for change was more internal. Practitioners and academic lawyers involved in a specific area may perceive anomalies and inconsistencies in the theory underlying the field. There may be a rule of law, where the exceptions are so many and great that 'ultimately they gobble up the rule itself'. He said that a fourth catalyst was what he called 'the emperor with no clothes'. A particular rule of practice of longstanding 'may be followed sheepishly by the profession that is complacent or because it suits its self interest. To an outsider the rule — or at least its consequences — may be ludicrous or worse. Yet the outsider may be too cowed or inarticulate to speak up. Suddenly someone has the courage to shout: "But the emperor has no clothes on!"' Mr Mason said that he did not intend to exclude the personal factor as a catalyst for change: 'individuals like Denning and Kirby have a vast influence, despite the inevitable setbacks they strike'.

plain english again

'Let the words be sufficient without explanation', said Bill severely 'and as we haven't time to waste talkin' philosophy to a puddin', why into the bag he goes'.

Norman Lindsay, *The Magic Pudding*

The Hon Jim Kennan MLC, Attorney General for Victoria, has struck another blow in the cause of plain English legislative drafting. Giving his report to the Ministerial Council on Companies and Securities at the conclusion of his term as Chairman, Mr Kennan, among other remarks said:

'thirdly. I think we need to look at preparing a major Deregulation Bill for 1987 which will sweep away the unnecessary regulation in the Scheme. Can I emphasise at this point that I believe that the Commonwealth must give more attention to a plainer drafting style. The existing provisions in the various Codes are convoluted enough. However, some of the recent amendments have been almost indecipherable. The first draft of the Partial Takeovers Bill contained clauses which were simply incomprehensible. We must never accept the tyranny of some legal

experts and some Parliamentary Counsel that there is something legally more effective about a Bill which is drafted in clauses which average say 80—100 words per clause rather than a Bill which is drafted in short simple sentences of 20—30 words.

It must be remembered that all Companies and Securities legislation is drafted with a particular audience in mind — expert lawyers and accountants well versed in corporate law. The test of the effectiveness of such measures is not whether they can be easily understood but whether they will resist the attempts of 'creative misunderstanding' to which they will undoubtedly be subjected. If, in addition, they can be easily understood, so much the better.

The Federal Attorney-General, Mr Lionel Bowen, was quick to come to the defence of Commonwealth Parliamentary Counsel. In a press release issued on 7 April, Mr Bowen pointed out that it was absurd to expect that legislation dealing with complex matters could be drafted so as to be easily understood by the average citizen. He said the work of the talented young draftsman in the Office of Parliamentary Counsel who had prepared the Partial Takeovers legislation had recently been praised by the Chairman of the National Companies and Securities Commission, Mr Bosch, and that he fully supported Mr Bosch's remarks. Mr Bowen said that as Commonwealth Attorney-General, he was quite satisfied with the standard of Commonwealth drafting and that any difficulty in understanding legislation relating to Companies and Securities law was in the nature of the subject and not in difficult drafting techniques.

The question is not a simple one. Lawyers must be on guard against a tendency to use unnecessarily what non-lawyers would justly describe as jargon. On the other hand, in some areas of the law the use of what non-lawyers describe as jargon may be the only professionally competent way of drafting a provision that prevents escape by those to whom it is directed.