

The Sanctity of the Single Legal Rule/Single Sentence Structure?

EDWIN TANNER*

Some lawyers still believe that the components of a legal rule have clearer semantic connections when expressed in a single sentence rather than in a series of sentences. This claim is evaluated in the light of some aspects of current linguistic knowledge. Provisions from three statutes have been selected and recast in multi-sentence structures. Both forms of two of these provisions have been analysed using one method of discourse analysis. A different form of discourse analysis is used for the two forms of the other provision. Semantic connections between the components of a legal rule are shown to be clearer when expressed in multi-sentence structures.

INTRODUCTION

In Australia there is still a tendency for legal rules to be expressed in single sentences.¹ The reason, according to Danet² and Maley,³ stems from the belief that the semantic connections between elements of a single sentence are likely to be clearer than those between two or more sentences. This belief was expressed in the Renton Committee Report in the following terms:

Shorter sentences are easier in themselves, and it would probably help overall to have them shorter, but of course you are then faced with having to find the relationship between that sentence and another sentence two sentences away which, if you have it all in one sentence, is really done for you by the draftsman.⁴

Protagonists for the single legal rule/single sentence structure admit that clarity may, at times, be sacrificed to construction. In other words, where the single sentence structure is adhered to, there is trade-off between comprehensibility and precision. This occurs because the single sentence structure usually requires the use of conflating devices. These include nominalisations, reduced clauses (especially relatives), excessive use of embedding and the repetition of nominals in the place of pronominals. The resultant structure may not

* BJuris, LLB (Mon), PhD (Law) (Melb), Grad Dip FamL, Grad Dip Ed, (Mon) MACE, Lecturer in Law, School of Law, Faculty of Business and Law, Victoria University, Barrister at Law (Vic and NSW).

¹ See eg *Domestic (Feral and Nuisance) Animals Act 1994* (Vic) ss 23(1), 34(2), 74(2), 77 and 80(1).

² Brenda Danet, 'Language in the Legal Process' (1980) 14(3) *Law and Society Review* 445, 479-80.

³ Yon Maley, 'The Language of Legislation' (1987) 16 *Language in Society* 25, 39.

⁴ Renton Committee (UK), *The Preparation of Legislation* (Cmd 6053, 1975) 64.

only be tightly woven and exceedingly dense, but clausally complex. Extensive research in such fields as psycholinguistics, cognitive psychology and instructional theory has demonstrated that the over-use of conflating devices impedes comprehensibility and consequently clouds clarity.

The single legal rule/single sentence structure needs investigation. Can the claims about 'semantic connections' be justified on linguistic grounds? Since 'the law is only a special department of language and language is all pervasive',⁵ some knowledge of linguistics should be within lawyers' expertise.⁶

THE ISSUE

The main issue is whether there are any gains to be made in preserving the semantic links between the components of a legal rule through the utilisation of the single sentence structure. If there are, do they outweigh the disadvantages of the loss of clarity? Some necessary technical terms and procedures are explained below.

The issue deserves attention because there are those, like Asprey⁷ and the Law Reform Commission of Victoria,⁸ who argue that there are no rules which mandate the expression of a legal rule in a single sentence structure.

THE OLD-NEW STRATEGY

Since the Renton Report in 1975, much linguistic research has been carried out into the information structure of sentences, and in particular into the processes which organise a random sequence of sentences into a coherent text. One branch of this research has identified the way in which sentences are semantically linked, and rests on the assumption that language is primarily used to impart new information.⁹ Communication of new information is achieved by establishing a base of actual or assumed common knowledge. The process has variously been called the Given (Old)-New Strategy, the Presupposition-Focus Strategy and the Known-New Strategy, and has been used to explain how utterances are structured and understood.¹⁰

A definition of 'guarantees' has been taken for analysis to explain how this strategy works. The definition reads:

⁵ Glanville Williams, 'Language and the Law — 1' (1945) 61 *The Law Quarterly Review* 71, 71.

⁶ *Ibid.*

⁷ Michele Asprey, *Plain Language for Lawyers* (1991) 165.

⁸ Law Reform Commission of Victoria, *Plain English and the Law*, Report 9 (1987) Appendix 1: 'Drafting Manual', para 46.

⁹ Susan Haviland and Herbert Clark, 'What's New? Acquiring New Information as a Process in Comprehension' (1974) 13 *Journal of Verbal Learning and Verbal Behavior* 512, 513.

¹⁰ Ellen Prince, 'Toward a Taxonomy of Given-New Information' in Peter Cole (ed) *Radical Pragmatics* (1981) 223, 225. See also Michael Halliday, 'Notes on Transitivity and Theme in English. Part 2', (1967) 3 *Journal of Linguistics* 199; Haviland and Clark, above n 9.

Guarantees. A guarantee is an accessory contract. It presupposes a primary contract between a creditor and principal debtor under which the principal debtor has obligations owed to the creditor, be they the payment of money or the performance of some act. Under the accessory contract of guarantee which is concluded between a third party (the guarantor) and the creditor, the guarantor assumes that he will be answerable to the creditor for the debt, default or liability of the debtor. He promises that he will perform the principal debtor's obligation under the primary contract if the debtor does not. Accordingly he is under no liability on the guarantee unless or until the principal debtor defaults.¹¹

The title of the definition, 'Guarantees', establishes a basis of shared knowledge on which new information can be built. In the first sentence '[a] guarantee' is, therefore, old information and the new information is 'accessory contract'. The new information 'accessory contract' becomes old information in the second sentence as '[i]t'. The new information in sentence two establishes the existence of a 'primary contract'. This item, as 'which', becomes old information, while the terms 'creditor' and 'principal debtor' are introduced as new information. In sentence three, 'accessory contract of guarantee' from sentence one is old information. The new information introduces the item 'third party (the guarantor)' which is taken up as old information as 'he'. The new information tells the reader about the particular type of accessory contract involved in guarantees. The old information in sentence four is 'he', the anaphoric referent¹² of 'guarantor', while the new information is the content of the promise. In the final sentence, new information spells out the conditions under which the guarantor becomes liable under the contract of guarantee. The two anaphors '[a]ccordingly' and 'he' constitute old information. The referent of 'he' is 'the guarantor' and '[a]ccordingly' points to the conditions under which the guarantee comes into force.

THE 'OLD-NEW' STRATEGY APPLIED

Crimes Act 1958 (Vic) s 6(1) and *Bail Act 1977* (Vic) s 7 have been analysed in order to establish whether the semantic links are better preserved within single sentence structures. Similar analyses are carried out on each provision after it has been recast into shorter sentences. In each case the semantic linkages of the redraft are checked against that of the original. This is done by tracing the 'old-new' sequence.¹³ In recasting each provision the only changes that have been made are to sentence structure and order of information (ie the changes involve grammatical reconstruction only). No attempt has been made

¹¹ David Allan, Mary Hiscock, Leigh Masel and Derek Roebuck, *Credit and Security in Australia: The Legal Problems of Development Finance* (1977) 13.

¹² The use of a word or phrase which refers back to another word or phrase which was used earlier in a text or conversation is called an anaphora. Eg in 'George was a guarantor. He knew what he was doing', '[h]e' refers back to the antecedent 'George'.

¹³ Victoria Fromkin, Robert Rodman, Peter Collins and David Blair, *An Introduction to Language* (1984) 223-4.

to utilise any other plain English guideline. Furthermore, this type of linguistic analysis should be seen as a process distinct from legal interpretation.

Crimes Act 1958 (Vic) s 6(1)

Section 6(1) reads:

Offence of infanticide

- (1) Where a woman by any wilful act or omission causes the death of her child, being a child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child, or by reason of the effect of lactation consequent upon the birth of the child, then, notwithstanding that the circumstances were such that but for this section the offence would have amounted to murder, she shall be guilty of the indictable offence of infanticide and be liable to level 6 imprisonment (5 years maximum).

The clausal structure of this section is:

[[{C}(C)(Cond <Comp>)]{M}{M}].

Where:

M	=	Main
Rel	=	Relative
Cond	=	Conditional
Comp	=	Complement
C	=	Case

The title, 'Offence of infanticide', establishes a basis of knowledge. The new information in line 1 'causes the death of ... child' expresses the non-legal meaning of infanticide. The new information 'by any wilful act or omission' is based on the old information 'offence' (in the heading) and begins the legal definition of an offence. At this point that offence would be classified as murder — see line 7 'the offence ... amounted to murder'. Based on the old information 'woman' new information is given; that the child is her child and therefore she has given birth to it (lines 1 and 2); and that the balance of the woman's mind was disturbed from the effect of giving birth to that child (line 3); or from lactation following that birth (line 5). The old information 'child' gives rise to the new information; that it is under the age of 12 months (line 2). The new information thus given about the woman, and about the child, becomes old information and is used as the basis for changing the offence of murder to that of the indictable offence of infanticide.

As can be seen from the analysis, the old-new pattern in this provision is not linear. Rather, it is multi-layered, and within each layer the old-new sequence may be inverted. One string of information starts from 'woman'; another starts from 'child'; another starts from the birth connection between 'woman' and 'child'; and another starts from 'offence', namely 'wilful act or omission ... death ... amounts to murder'; and combined they culminate in the indictable offence of infanticide. The inversion of old-new to new-old is clearest in the presentation of 'amounts to murder' in line 7, while the new information

'wilful act or omission ... death' is given in line 1. It follows that since the old-new patterning is distorted in the single sentence form, as presented in s 6(1), comprehension is likely to be impeded and clarity clouded.

Referential cohesion within s 6(1) is maintained by the use of the determinative 'her' — 'her child', 'her mind', 'her not having fully recovered' — and the pronoun 'she'. '[H]er' and 'she' can only refer back to a noun of feminine gender and singular number, so that 'woman' is the only noun that fits. The use of the definite article in the phrase 'giving birth to the child' identifies the child as the one whose death had been caused by the woman.

Another major disadvantage of the single sentence construction is that the focus of the sentence is often dislocated because the structure dictates the location of the 'topic' rather than the 'topic' dictating the structure. This deviation from the typical order of an English sentence is another cause of comprehension problems, particularly for lay persons, and is present in s 6(1). In this section the significant propositions are expressed in the two main clauses: 'she shall be guilty of the indictable offence of infanticide' and '[she shall] be liable to level 6 imprisonment'. These two clauses are preceded by 91 words which form four clauses — two case clauses and a complement clause embedded within a conditional clause. The two case clauses,¹⁴ between them, have three more propositions expressed in them but not in finite clausal form.¹⁵ In total, there are seven pieces of information in the form of clauses or clausal equivalents which have to be stored in the short term memory before the focal point of the provision is reached. Each clause, or clausal component, is itself composed of many units of information. It follows that by the time the true focal point of the sentence has been reached the short term memories¹⁶ of those without legal training are likely to have failed.

Allan and Burrige analysed s 27(12) from the *Companies (Acquisition of Shares) (Victoria) Code* and found that it was the constant interruption of the significant propositions expressed in the main clause which made it hard for the reader to extract information. They considered that 'the constant shifting of topics blurs the main focus of the discourse, with the consequence that the whole point of the passage gets lost'.¹⁷ What impedes comprehension in s 6(1), and consequently clouds its clarity, is the constant shifting of focus from proposition to proposition in a search for the main focus of the passage.

¹⁴ (1) 'where a woman ... 12 months' and (2) '[where] at the time of the act or omission ... birth of the child'.

¹⁵ The propositions are: (1) 'being a child under the age of 12 months'; (2) 'by reason of not having fully recovered from the effects of giving birth to the child', and; (3) 'by reason of the effect of lactation consequent upon the birth of the child'.

¹⁶ The limitations of short-term memory were determined by Miller, who established that humans have an immediate memory span of approximately seven unrelated units. See George Miller, 'The Magical Number Seven, Plus or Minus Two: Some Limits on Our Capacity of Processing Information' (1956) 63 *Psychological Review* 81.

¹⁷ Keith Allan and Kate Burrige, *Euphemism and Dysphemism: Language Used as a Shield and Weapon* (1991) 200.

Section 6(1) grammatically reconstructed

The single sentence structure of *Crimes Act 1958 (Vic)* s 6(1) has been recast into three sentences to test whether the semantic connections have been altered.

Offence of infanticide

- s 6 (1) A woman who by any wilful act or omission causes the death of 1
her child shall be guilty of the indictable offence of infanticide, not 2
murder, if the following conditions are fulfilled. 3
 (a) The balance of her mind was disturbed by the effect of giving 4
birth to the child, or by the effect of lactation following that birth. 5
 (b) The child was under the age of twelve months. 6
 (2) A woman convicted of the indictable offence of infanticide is liable 7
 to level 6 imprisonment (5 years maximum). 8

The rephrasing of this provision has simplified the clausal structure to:

(1) [M(Rel){Cond}].

(a) [M].

(b) [M].

(2) [M (Reduced rel)].

Where:

M	=	Main
Rel	=	Relative
Cond	=	Conditional

The sequence of old-new patterning in the original s 6(1) has been altered so that 'shall be guilty of an indictable offence of infanticide' (not murder) has been inserted into line 2 and not line 7. In terms of the limits of short-term memory this alteration should enhance comprehensibility.

The sentences in the revised s 6(1) are linked in an information chain in several ways. '[H]er' (sentence 1/line 2), in 'her mind' (sentence 2/line 4), 'giving birth' (sentence 2/line 4) and 'lactation' (sentence 2/line 5) are all linked to the word 'woman' (sentence 1/line 1). The link between 'child' and 'woman' established by 'her' in the phrase 'her child' (line 1) is continued by the definite article '[t]he' in sentence 2 (line 4) and indirectly by the references to the results of giving birth (sentence 2/lines 4 and 5). Sentence 3 is linked to the two previous sentences by the word 'child' (line 6) and sentence 4 is connected through the word 'woman' (line 7) and the phrase 'the indictable offence of infanticide' (line 7). In addition, sentences 3 and 4 are also connected through the more amorphous link between 'wilful act', 'omission', 'death' (all line 1), 'infanticide' (line 2), 'murder' (line 3) and 'convicted' (line 7).

This analysis demonstrates that recasting s 6(1) into several sentences has not interfered with the semantic information links. Rather, referential cohesion is maintained and strengthened because the focus occurs in the first sentence. Further, the recasting into several sentences has reinforced the patterning of old-new information. The patterning is linear and, therefore, more transparent. The Renton Committee Report warned of the difficulty of finding the relationship between one sentence 'and another sentence two sentences

away'.¹⁸ This concern seems to be without foundation provided referential cohesion is maintained between sentences. Consequently, on the basis of this example there would seem to be no advantages or gains available as a result of the drafter using the single legal rule/single sentence structure. Rather, there are only losses.

Bail Act 1977 (Vic) s 7(1)

The same type of linguistic analysis is carried out on the *Bail Act 1977 (Vic) s 7(1)*, which reads:

7. Opposing bail

- | | | |
|-----|---------------------------------------------------------------------------|----|
| (1) | Where the informant or prosecutor or any person appearing on behalf | 1 |
| | of the Crown intends to oppose the grant of bail to any person he shall | 2 |
| | so state to the court and the court may, before or at any time during the | 3 |
| | course of the application for bail, make an order directing that evidence | 4 |
| | be taken, the information given, and the representations made and the | 5 |
| | reasons (if any) given or to be given by the court shall not be published | 6 |
| | by any means — | 7 |
| (a) | if a preliminary inquiry is held-before the accused person in | 8 |
| | respect of whom the application is made is discharged; or | 9 |
| (b) | if the accused person in respect of whom the application is made | 10 |
| | is tried or committed for trial-before the trial is ended. | 11 |

The clausal structure of this 127 word provision is:

[(Case)M][M{Comp (Adv<Rel>)(Cond)(Adv)(Cond<Rel>)(Cond)}].

Where:

M	Main
Adv	Adverbial
Rel	Relative
Comp	Complement
Cond	Conditional

The discourse analysis process applied to s 7(1) reveals the sequencing of old-new information. Old information given in the heading 'Opposing bail' appears in line 2 as 'oppose the grant of bail to ... any person' (lines 1 and 2). The new information '[t]he informant or prosecutor or any person appearing on behalf of the Crown ... intends' appears in lines 1 and 2. The new information becomes old as 'he' (line 2), and is followed by the new information 'shall so state to the court' (lines 1 and 3). The word 'court' (line 3) becomes old information, and is followed by the new information 'make an order directing that' (line 4). '[E]vidence taken, the information given, and the representations made [to it] and the reasons given' (lines 4 and 5) is old information because it refers to the content of the order, and 'court shall not publish' (line 7) is new information. Following this, the old-new patterning is interrupted and resumes with the new information 'if a preliminary inquiry is held' (line 8).

¹⁸ Renton Committee (UK), above n 4, 64.

This is followed by old information; ‘accused person ... application ... made’ (lines 8 and 9). The new information is ‘discharged’ (line 9). This is followed by old information; ‘accused person ... application ... made’ (line 10). ‘[I]s tried or committed for trial’ (line 11) is new information. This is followed by old information; ‘trial’ (line 11) and new information; ‘before ... ended’ (line 11).

While s 7(1) is relatively linear, in terms of information flow, in contrast to *Crimes Act* 1958 (Vic) s 6(1) as enacted, the old-new sequence is nevertheless interrupted in lines 1, 2 and 8. Again the focus of the provision is blurred. There are 24 words in a case clause which precedes the first main clause and there are 13 words between the auxiliary ‘may’ and the main verb ‘make’ in the second main clause ‘the court may ... make an order’. The blurring of focus is accentuated by that fact that the subject of the complement clause¹⁹ has 13 words in four heads (ie ‘evidence’, ‘information’, ‘representations’ and ‘reasons’).

The interruption in the old-new sequence in s 7(1) seems to result from the drafter’s efforts to conform to differing drafting practices. In line 1, and in a more minor way lines 8 and 10, the drafter appears to follow Coode’s²⁰ edict about fronting case and conditional clauses. In lines 8 to 11 the drafter appears to have tried to enhance comprehensibility by attempting parallel structuring.

Section 7(1) grammatically reconstructed

The recast of s 7(1) appears as:

7. Opposing bail

- | | |
|---------------------------------------------------------------------------------|----|
| (1) The informant, the prosecutor, or any person appearing on behalf | 1 |
| of the Crown may <u>oppose the grant of bail</u> . Intention to <u>oppose</u> | 2 |
| <u>bail</u> must be stated to the <u>court</u> . Before or during the course of | 3 |
| the <u>application for bail</u> the <u>court</u> may forbid, by order, the | 4 |
| publication of the information given, evidence taken, representations | 5 |
| made to it, and its reasons for refusing <u>bail</u> . In the case of a | 6 |
| preliminary enquiry <u>publication shall not take place</u> until after | 7 |
| the discharge of the <u>accused person in respect of whom the</u> | 8 |
| <u>application for bail has been made</u> . If the <u>accused person in</u> | 9 |
| respect of whom the application for bail has been made is | 10 |
| committed for trial, or tried, <u>publication shall not take place</u> | 11 |
| before the trial has ended. | 12 |

The clausal structure of this redrafted 124 word provision is:

[M].

[M].

[M].

[M(Rel)].

[(Cond)(Cond)M(Adv)].

¹⁹ The complement clause is: ‘that evidence be taken ... by the court’.

²⁰ George Coode, ‘Coode on Legislative Expression or the Language of the Written Law’ in Stanley Robinson, *Drafting: Its Application to Conveyancing and Commercial Documents* (1973) 335, Appendix A.

Where:

M	=	Main
Adv	=	Adverbial
Rel	=	Relative
Cond	=	Conditional

Again the recasting of a single sentence into a several sentences has resulted in a simpler clausal structure. It has also clarified the sequence of old-new information.

The relationship between the sentences in the recast provision is as follows. The words ‘oppose . . . bail’ in sentence 1 (line 2) repeat the heading and are, therefore, old information. They appear again in sentence 2 (lines 3 and 4). The connections between sentence 2 and sentence 3 are the words ‘court’ (line 4) and ‘bail’ (line 6). Sentence 4 is connected to sentence 3 by the word ‘publication’ (line 7) and by the phrase ‘application for bail’ (line 9). Sentence 5 is connected to sentence 4 by ‘accused person in respect of whom the application for bail has been made’ (lines 8 and 9) and by ‘publication shall not take place’ (line 11). The underlined items show the linkage between the sentences.

Recasting s 7(1) into several sentences has not caused any disturbance to the semantic information linkages. Rather, the links are more transparent than was the case in the original provision. Again, the concerns expressed in the Renton Committee Report seem to be without foundation.

A DIFFERENT TYPE OF ANALYSIS: PRINCE’S ‘ASSUMED FAMILIARITY’ METHOD.

The old-new strategy is one of several types of discourse analysis. Prince’s²¹ ‘assumed familiarity’ method is another. Prince offered a different way of looking at discourse to determine whether it consists of ‘a random sequence of sentences [or] something we would intuitively call a “text”’.²² She proposed that discourse be analysed on the basis of ‘assumed familiarity’. This entails the identification of each noun phrase on the reader’s scale of familiarity. As a result, instead of the old-new dichotomy, four degrees of familiarity are recognised. They are: *brand new*, *unused*, *inferable* and *evoked*.²³ Some of these concepts are subdivided. The reason for assigning a noun phrase to a particular category is explained when the process is applied to *Domestic (Feral and Nuisance) Animals Act 1994* (Vic) ss 25(1) and (2).

²¹ Prince, above n 10.

²² *Ibid* 233.

²³ *Ibid* 229.

Domestic (Feral and Nuisance) Animals Act 1994 (Vic)
ss 25(1) and (2)

The provisions of the *Domestic (Feral and Nuisance) Animals Act 1994* (Vic) read:

25. Cats found at large

- | | | |
|-----|---------------------------------------------------------------------|---|
| (1) | If a cat is found at large outside the premises of the owner or not | 1 |
| | securely confined to the owner's premises, in a municipal district | 2 |
| | in respect of which an order under this section has been made, | 3 |
| | during the hours specified in the order, the owner is guilty of | 4 |
| | an offence and liable, upon conviction, to a penalty of not more | 5 |
| | than 1 penalty unit for a first offence and 3 penalty units for a | 6 |
| | second and subsequent offence. | 7 |
| (2) | A Council may, by resolution, make an order, under this section. | 8 |

The clausal analysis of these sentences (of 79 and 11 words) is:

(1) [(<Cond> <Cond>Rel) {M} {M}].

(2) M.

Where:

M	=	Main
Cond	=	Conditional
Rel	=	Relative

In the heading of these provisions the word '[c]ats' is either *inferable* from the title to the statute or is unused, as information about 'cats' is likely to exist in the reader's information store. '[A] cat', in line 1, is classifiable as a *contained inferable* because it can be regarded as an element — 'a cat' — contained in the set of cats. '[P]remises' in the same line is unused. '[O]wner' (line 1) is either *unused* or *inferable* from 'premises', since premises have owners. '[T]he owner's [of] premises' (line 2) is *evoked* from 'owner' and 'premises' in line 1. In line 2, 'municipal district' is *inferable* from 'owner's premises', since 'premises' are in 'municipal districts'. In line 3, 'which' is *textually evoked* from 'municipal district' (line 2). '[A]n order' (line 3) is *brand new* information, as is 'the hours' in line 4. In the same line 'the order' is *evoked* from 'order' (line 3). '[O]ffence' (line 5) is *brand new* information. '[C]onviction' (line 5) is *inferable* from 'offence' (line 5). '[P]enalty' (line 5) is *evoked* from 'offence' (line 5). '[P]enalty unit' and 'penalty units' (line 6) are *brand new information*. '[O]ffence' (line 7) is *evoked* from 'offence' (line 6).

In s 25(2) '[a] Council' is *inferable* from 'municipal districts' (line 2) because Councils run municipal districts. '[R]esolution' (line 8) is *inferable* from 'Council' (line 8) because that is the way Councils conduct their business. '[A]n order' (line 8) is *evoked* from 'an order' in line 3. Finally, 'section' (line 8) is *unused* or *situationally evoked* information.

Of interest is that information branded *brand new* is found towards the end of the passage in the same position it would have been found if the old-new method of analysis had been used. As has been illustrated, all *evoked* information is textually based although it is possible for information to be

situationally evoked in some cases.²⁴ Those pieces of information that can logically be deduced from material already provided are *inferable*.²⁵

Sections 25(1) and (2) grammatically reconstructed

Sections 25(1) and (2) have been recast as s 25(1) into three sentences:

25. Cats found at large

- | | | |
|-----|------------------------------------------------------------------------------|---|
| (1) | Under this section a Council of a municipal district may make an order by | 1 |
| | resolution specifying the hours during which a cat must be securely confined | 2 |
| | to the owner's premises in that municipal district. An owner, whose cat | 3 |
| | violates the order, is guilty of an offence. Upon conviction, the owner is | 4 |
| | liable to a penalty of not more than one penalty unit for the first offence, | 5 |
| | and not more than 3 penalty units for a second or subsequent offence. | 6 |

The clausal structure of this redrafted 80 word provision, in which sentence length averages 27 words is:

[M(Rel)].

[M(Rel)].

[M].

Where:

M	=	Main
Rel	=	Relative

The discourse analysis process applied to the redrafted provision reveals the pattern of 'assumed familiarity'. 'Cats' (in the heading) is either *unused* or *inferable* from the title of the statute. '[S]ection' (line 1) is either *unused* or *situationally evoked*, as a section is a subdivision of a statute. 'Council' (line 1) is *unused* information and 'municipal district' (line 1) is *inferable* from 'Council'. '[O]rder' (line 1) is *brand new* information, as is 'the hours' (line 2). '[W]hich' (line 2) is *textually evoked* from 'hours' (line 2). '[A] cat' (line 2) is a *containing inferable*. '[O]wner's premises' (line 3) is *unused* information. '[M]unicipal district' (line 3) is evoked from 'municipal district' (line 1). '[A]n owner' (line 3) is *inferred* from 'cat' (line 2). '[W]hose' (line 3) is *textually evoked* from 'owner' (line 3). '[C]at' (line 3) is *evoked* from 'cat' (line 2). '[T]he order' (line 4) is *evoked* from 'an order' (line 1). '[O]ffence' (line 4) is *brand new* information. '[C]onviction' (line 4) is *inferable* from 'offence' (line 4). '[O]wner' (line 4) is *evoked* from 'an owner' (line 3). '[P]enalty' (line 5) is *inferable* from 'conviction' (line 4). '[P]enalty unit' (line 5) is *brand new* information. '[P]enalty units' (line 6) is *evoked* from 'penalty unit' (line 5). '[O]ffence' (line 5) is *evoked* from 'offence' (line 4). '[O]ffence' (line 6) is *evoked* from 'offence' (line 5) and 'offence' (line 4).

The recasting process has altered the relationships between some of the discourse entities. For example, the noun phrase 'Council', as it appears in s 25(2) of the Act, was classified as *inferable* from 'municipal district'. In the recast

²⁴ Ibid 236.

²⁵ Ibid.

provision it is classified as *unused* information and 'municipal district' is *inferable* from it. The restructure of s 25(2) into several sentences has not interfered with the semantic linkages. It has clarified the pattern of the information network. Consequently, the section should become more comprehensible, particularly to lay people.

Prince's type of analysis involves no consideration of the syntactic structure of texts. It does not validate in any way the belief that it is necessary to draft in a single sentence. It does, however, reveal that it is not necessary to incorporate the legal rule into a single sentence structure to preserve the relationships between the various discourse entities. It follows that semantic linkages are not dependent on sentence structure. Rather, they are dependent on the ordering of ideas and on the connections between familiar and new information.

CONCLUSION

It would appear from the application of the 'old-new' strategy and Prince's 'assumed familiarity' discourse method that there are no gains to be made from incorporating the legal rule in a single sentence rather than in a series of shorter sentences. Not only can the semantic connections between sentences be maintained as strongly as those within the single sentence structure, but they can become more transparent and comprehensible. The anaphoric string in the single legal rule/single sentence structure is maintained by the continued repetition of noun and verb phrases and referencing items woven into a complex syntax by the use of the full range of conflationary devices. Whilst the semantic links within the long sentence may be preserved, the anaphoric string may be so tangled and twisted that it is often difficult (and sometimes impossible) to trace. The resultant structure is likely to hinder comprehension, particularly in lay persons.

Drafting in one sentence does not necessarily preserve relationships, as can be seen from the quotation from the Renton Committee Report previously stated.²⁶ In attempting to show that text material can be better expressed in a single sentence by using the single sentence structure, the author of the Report fails to make the anaphoric referent of 'which' completely unambiguous. The relative pronoun, 'which', may refer to 'two sentences', 'that sentence' or 'the relationship'. The usual rule of proximity would suggest that the word 'sentences' from 'two sentences' is the referent. But this is not the case, nor is the word 'relationship' the referent. What the 'which' actually refers to is 'find the relationship'.²⁷ This use of 'which' is called the 'linking relative' and is quite common in spoken language, but its use is inappropriate in Standard English. The sentence should have ended at 'away', and 'which' should have been replaced by 'this'. Alternatively, the sentence would have been less ambiguous if 'which' had been replaced by 'and this'.

²⁶ Renton Committee (UK), above n 4, 64.

²⁷ Kate Burrige and Jean Mulder, *English in Australia and New Zealand* (1998) 248.

One sentence is not necessarily better than two, especially if the drafter has paid more attention to the single sentence construction than to the network of relationships. A brief synopsis of a screen play illustrates this point.

An old man wants to bury his late wife's ashes, but first he must journey to his country cabin with his rock musician son and his groupie girlfriend.²⁸

Who has the groupie girlfriend? Is it the old man or the rock musician son? Arguments can be mounted for both views.

The argument for the single legal rule/single sentence structure cannot be progressed on the grounds of the strength of semantic linkages within the sentence. It is not that grammatical structure ensures clarity of meaning. Rather, it is careful attention to the network of meaning. The use of the single sentence structure often leads to the distortion of the semantic linkages. In order to incorporate all of the necessary information in the legal rule into a single sentence the focal point of the sentence is often sacrificed to the demands of syntax. It is the combination of complicated syntax and excessive sentence length which causes information overload and short term memory failure,²⁹ resulting in comprehension problems. Lawyers should give serious thought to abandoning their misplaced allegiance to the single legal rule/single sentence structure.

²⁸ 'SBS Movie Review: Spring of Joy', *The Age Green Guide* (Melbourne) 6 June 1996, 31.

²⁹ Fernanda Ferreira, 'Effects of Length and Syntactic Complexity on Initiation Times in Prepared Utterances' (1991) 30 *Journal of Memory and Language* 210; George Miller and Noam Chomsky, 'Finitary Models of Language Users' in R Luce, R Bush and E Galanter (eds) *Handbook of Mathematical Psychology* (1963) vol 2, 471; Jonathan King and Marcel Just, 'Individual Differences in Syntactic Processing: The Role of Working Memory' (1991) 30 *Journal of Memory and Language* 580.