

SEVENTEEN YEARS ON: IS VICTORIAN LEGISLATION LESS GRAMMATICALLY COMPLICATED?

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Has the work of the former Law Reform Commission of Victoria on drafting resulted in shorter and less grammatically complex sentences in Victorian legislation? A sample of recent Victorian legislative drafting has been analysed and the results compared with those from two earlier statutes. There has been some improvement, but problems still remain.

I INTRODUCTION

In 1990, the Law Reform Commission of Victoria (LRCV)² commented that many Victorian legislative provisions are 'stated, complete with their conditions and exceptions, in single sentences'.³ This practice, it suggested, can 'lead to highly complex sentence structures in which one clause is embedded in another, and both within a third'. Excessive embedding 'creates insuperable difficulties for most readers. Convolution does not clarify; it confuses'.⁴ This article investigates whether this comment remains valid today.

In 1986, the LRCV issued a Discussion Paper⁵ about the benefits of plain English in legislative drafting and followed this, in 1987, with a Report.⁶ In both publications the LRCV made suggestions about the purpose of drafting and the requirements of the intended audience. It also provided drafting guidelines that are still valid. The guidelines were concerned with the organisation of material, layout, print size, length of line, the amount of white space, lexical items and syntax. Both obsolescent words and words whose legal meanings are different from those in everyday usage were to be avoided. Suggestions were made about sentence length and grammatical structure.

The LRCV stated that 'the excessively long sentence is not suitable for any audience' and 'there is never any justification for a long sentence in a functional document'.⁷ It identified convoluted and awkward grammatical structure as a major hindrance to understanding.⁸ It was not the first to do this. Richard

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² The former Law Reform Commission of Victoria (a corporation) was abolished by the *Law Reform Commission (Repeal) Act 1992* (Vic).

³ 'Seventeen Years' in the title of the article dated from a Ministerial Statement by Attorney-General (Hon J H Kennan MLC) *Plain English Legislation*, Hansard, Legislative Council, 7 May 1985, 432.

⁴ Law Reform Commission of Victoria, *Access to the Law: The Structure and Format of Legislation*, Report No 33 (1990), 5.

⁵ Law Reform Commission of Victoria, *Legislation, Legal Rights and Plain English*, Discussion Paper No 1, (1986).

⁶ Law Reform Commission of Victoria, *Drafting Manual (Plain English and the Law)*, Report No 9 (1987). See Appendix 1.

⁷ Law Reform Commission of Victoria, above n 5, 19.

⁸ *Ibid* 10-11 and Law Reform Commission of Victoria, above n 4, [2.1.2], [5].

Wydick⁹, for example, did so in 1978. Wydick, a Plain English exponent, complained that sentences drafted in conventional legal English were too long and too syntactically complicated. He wrote: 'We lawyers [write sentences that] twist on, phrase within clause within clause, glazing the eyes and numbing the minds of our readers'.¹⁰ Implicit in his statement is the fact that the needs of the audience have been ignored. The LRCV sought to address this problem. It suggested two guidelines to deal with sentences which are very long and syntactically complicated. These guidelines state that:

- there should be an average of not more than 25 words per sentence, but there should be no limit on the number of words in any sentence;¹¹ and
- the essential components of a sentence should be kept together.¹²

Both of these guidelines strike at the heart of grammatical complexity and their careful application is likely to provide a solution to the problem identified by both Wydick and the LRCV.

These two guidelines have been applied to a purposive sample¹³ of some Victorian legislative drafting which the general public needs to be able to understand. The examples are:

- *Domestic (Feral and Nuisance) Animals Act 1994* (Vic),
- *Fair Trading Act 1999* (Vic),
- *First Home Owner Grant Act 2000* (Vic)
- *Subdivision (Body Corporate) Regulations 2001*(Vic).¹⁴

The mortgage sections of the *Credit Act 1984* (Vic) have also been analysed and provide an example of legislation drafted in conventional legal English. This statute was chosen because it was cited by the LRCV as a telling example of conventional legal English.¹⁵ Some of the results of linguist Gustafsson's¹⁶ analysis of the *Courts Act 1971* (UK) have also been included. Table C shows the results from all six analyses. The intended audience of the two pieces of conventional legal English drafting may be more restricted than those of the other examples. Nevertheless, it is possible to compare some of the characteristics of the types of language used in the six pieces of legislative drafting.

In conventional legal English the single sentence is used to express each sub-

⁹ Richard Wydick, 'Plain English for Lawyers', (1978), 66 *California Law Review* 727.

¹⁰ *Ibid.*

¹¹ Law Reform Commission of Victoria, above n 5, [51].

¹² *Ibid* [56].

¹³ A purposive sample is a form of non-probability sampling where statutes are judged as typical of some category of statutes of interest to the researcher. A purposive sample is not selected randomly. The four statutes were selected as examples of statutes that had to be read and understood by the general public. They are all Victorian statutes and all post-date the work of the Law Reform Commission of Victoria.

¹⁴ The whole of these regulations was analysed.

¹⁵ Law Reform Commission of Victoria, above n 5, [56] for example.

¹⁶ Maritan Gustafsson, *Some syntactic properties of English law language* (1975) 13-15.

section, or, if there are no sub-sections, then each section. In this article, for convenience, the term 'provision' is used to cover both these cases.

II THE TWO GUIDELINES

A Sentences Should Average No More Than 25 Words

Some preliminary discussion of the two guidelines is necessary. Sentence length is often an indication of grammatical complexity, but is not a necessary determiner of comprehensibility.¹⁷ No matter how long a sentence is, comprehension is unlikely to be impeded by material set down in parallel structure. This type of structure involves the use of a set of items which are essentially identical in syntax and which have a common referent. As an example of parallel structure, consider s 29(2) *Domestic (Feral and Nuisance) Animals Act 1994* (Vic). The provision reads:

s 29(2) *Domestic (Feral and Nuisance) Animals Act 1994* (Vic)

Sub-section (1) does not apply if, [sic]¹⁸ the incident occurred -

- (a) because the dog was being teased, abused or assaulted; or
- (b) because another person was trespassing on the premises on which the dog was kept; or
- (c) because another animal was on the premises on which the dog was kept; or
- (d) because another person known to the dog was being attacked in front of the dog; or
- (e) as part of a hunt in which the dog was taking part and which was conducted in accordance with the *Prevention of Cruelty to Animals Act 1986*.

¹⁷ Alexander Wearing, 'The recall of sentences of varying length', (1973) 25(2) *Australian Journal of Psychology* 155-161.

¹⁸ The comma after 'if' is misplaced or unnecessary.

In Table A, s 29(2) has been analysed into clauses and their functions identified.

Table A: Clausal Analysis of s 29(2) Domestic (Feral and Nuisance) Animals Act 1994 (Vic)

Clause type	Clause
Main	Sub-section (1) does not apply
Adverbial	because the dog was being teased
Adverbial	(because the dog was being) abused; or
Adverbial	(because the dog was being) assaulted; or
Adverbial	because another person was trespassing on the premises
Relative	on which the dog was kept; or
Adverbial	because another animal was on the premises
Relative	on which the dog was kept
Adverbial	because another person known to the dog was being attacked in front of the dog; or
Conditional	if the incident occurred
adverbial	as part of a hunt
Relative	in which the dog was taking part and
Relative	which was conducted in accordance with the <i>Prevention of Cruelty to Animals Act 1986</i> .

The clausal structure of this provision can be expressed as:

S 29(2)

M(C)

- (a) (A)(A)(A);
- (b) (A<R>);
- (c) (A<R>);
- (d) (A)
- (e) a(R)(R)

Where:

M = Main
C = Conditional
R= Relative
A = Adverbial clause
a = adverbial phrase

Section 29(2) has been laid out in paragraphs and is an example of parallel structure. This is because all the paragraphs, s 29(2)(a), s 29(2)(b), s 29(2)(c), s 29(2)(d) and s 29(2)(e), are of the same basic structure. They are all adverbials, even though the first four consist of adverbial clauses of reason and the last (ie s 29(2)(e)) is an adverbial phrase of time or manner. Conditional clauses are also adverbials, but the conditional in this sub-section is not laid down in parallel with the other adverbials. It is not parallel to them. Its scope extends over them. The relative clauses which qualify nouns in the adverbials do not compromise the

parallel structure of s 29(2). The relative clauses are subordinate to the adverbials.

Section 29(2) could be revised to read as:

Revised s 29(2) *Domestic (Feral and Nuisance) Animals Act 1994* (Vic)

Sub-section (1) does not apply if the incident occurred -

- (a) because the dog was being teased, abused or assaulted; or
- (b) because another person was trespassing on the premises on which the dog was kept; or
- (c) because another animal was on the premises on which the dog was kept; or
- (d) because another person known to the dog was being attacked in front of the dog; or
- (e) because the dog was taking part in a hunt which was conducted in accordance with the *Prevention of Cruelty to Animals Act 1986*.

The formula for the revision is:

M(C)

- (a) (A)(A)(A);
- (b) (A<R>);
- (c) (A<R>);
- (d) (A);
- (e) (A<R>).

Where:

M= Main
C= Complement
R= Relative
A = Adverbial

In this form the parallel structure becomes more obvious because the paragraphs are all based on adverbial clauses of reason. However, in this form, it is arguable that paragraph s 29(2)(e) has a broader application than (presumably) intended by the drafter of the legislation.

Assuming that paragraph s 29(2)(e) could be expressed as an adverbial clause of reason, s 29(2) might be compared to a staircase with its parallel treads connected and supported by stringers. The attaching of the parallel treads to the stringers at fixed distances facilitates usage. The structure of s 29(2) is similar to that of the stairs. The stringer is the syntactic structure. The adverbials represent the horizontal treads¹⁹ and the fixed distance between the treads on the stringers is represented by their identical function. Just as uniformity facilitates ease of use of a staircase, so the repetitive nature of the structure of this sub-section aids understanding.

¹⁹ The 'parallel identical treads' may consist of all types of clauses and phrases.

As s 29(2) appears in the Act it is not difficult to understand. Sentence length alone does not necessarily cause comprehension problems. However, a combination of sentence length and syntactic complexity is likely to do so.

The practice of expressing each sub-section, or if there are no sub-sections, then each section in a single sentence is a feature of conventional legal English. This practice arose because lawyers held the erroneous belief that the semantic connections between the elements of a single sentence are clearer than those between two or more sentences.²⁰

To achieve the single provision/single sentence structure a number of conflating devices are employed. 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 only be tightly woven 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 comprehension and clouds clarity. Two of these devices (embedding and reduced clauses) are of particular interest here.

Centre-embedding, that is, embedding 'clause within clause' or 'phrase within clause' usually disrupts the nexus between essential sentence components. This practice may hinder comprehension, as was confirmed by Otto Behagel, whose 2nd Law states: 'That which belongs together cognitively [should be] placed close together'.²¹ This law has been supported by research²² which has shown that the short-term memory can hold approximately seven unrelated units of information at any one time. Comprehension difficulties may arise because material which disrupts a nexus must be held in the short-term memory until the relationship between essential sentence components can be established. If the insertion consists of more than seven unrelated units the short-term memory is likely to fail and cause 'glazing of the eyes' and 'numbing of the minds' of readers. Lawyers appear to have an ability to hold more than seven unrelated units in the short-term memory. This is probably because they are practised at retaining lengthy groups of words.

An awareness of a 25 word average limitation on sentence length is likely to limit the inclusion of non-essential information in a sentence. It is also likely to minimise syntactic complexity and militate against disrupting the nexus between essential sentence components.

B Keeping Essential Sentence Components Together

The components of a sentence are subject (S), verb (V), either object (O) or complement (C) and adverbial (A). The essential components are subject and

²⁰ For a discussion which argues that the belief is erroneous see, eg, Edwin Tanner 'The Sanctity of the Single Legal Rule/Single Sentence Structure?' (2000) 26(1) *Monash University Law Review* 203, 203-215.

²¹ Otto Behagel, *Deutsche Syntax Volume 4* (1923) 4.

²² George Miller, 'The Magical Number Seven, Plus or Minus Two: Some Limits on Our Capacity of Processing Information' (1956) 63 *Psychological Review* 81.

verb and, if present, either the object or the complement. The essential components have fixed positions in a sentence. The typical word order of the essential components is S, V, O/C. Because the function of a component is determined by its position in a sentence, English is classified as a word-order language.²³ If you change the order of the words, you change the meaning. Note the difference between 'The dog bit Bill' and 'Bill bit the dog'.

The adverbial is not an essential sentence component and its position in a sentence is not so rigidly fixed. An adverbial may be placed at the beginning, at the end, or in any other place in a sentence where it does not disrupt the nexus between essential sentence components. There is no difference in meaning between 'Yesterday the dog bit Bill' and 'The dog bit Bill yesterday'. The adverb 'yesterday' could just possibly be inserted between the subject 'the dog' and the verb 'bit'. This gives the sentence 'The dog yesterday bit Bill', where the positioning of the adverb emphasises that it was 'yesterday' and not any other day when the dog bit Bill. However, 'yesterday' does not sit happily between the verb 'bit' and the object 'Bill', as can be seen in the sentence 'The dog bit yesterday Bill'.

The essential components of a sentence are the subject and the verb. A sentence may also contain either an object or a complement and/or an adverbial. There is a very strong and essential connection between the subject and the verb. This connection is so strong that the one without the other does not make sense. For example, 'Tom Bill yesterday' has no verb and 'Bit Bill yesterday' has no subject. Neither makes sense.

The subject consists of a noun or a noun equivalent and the verb consists of one or more parts. For example, in s 29(2)(a), the subject is 'the dog', and the verb is 'was being teased'. Where a verb consists of more than one part there is a very strong connection between the parts, that is the auxiliaries, and the verb. In some sentences objects/complements are essential components²⁴ and the nexus between them and the verb is strong. The adverbial is not an essential component, and the nexus between it and the verb is quite weak.

An example of the disruption of the nexus between the subject and the verb occurs in s 29(4) *Domestic (Feral and Nuisance Act) 1994* (Vic). Section 29(4) reads:

s 29(4) *Domestic (Feral and Nuisance Act) 1994* (Vic)

In any proceeding under sub-section (1) or (3) evidence that the dog was apparently under the control of a person immediately before the dog conducted itself in the manner which is the subject of the proceedings is evidence and, in the absence of evidence to the contrary, is proof that that person is the owner of the dog.

²³ Kate Burridge and Jean Mulder, *English in Australia and New Zealand* (1998) 253-256.

²⁴ Compare: 'Bill tore', with 'Bill tore his pants'. The sentence does not make sense without an object, ie 'pants'.

In Table B, s 29(4) has been analysed into clauses and their functions identified.

Table B: Clausal Analysis of S 29(4) Domestic (Feral and Nuisance) Animals Act 1994 (Vic)

Clause type	Clause
Main	In any proceedings under sub-section (1) or (3) evidence is evidence
Complement	that the dog was apparently under the control of a person
Adverbial	immediately before the dog conducted itself in the manner
Relative	which is the subject of the proceedings
Main	and, in the absence of evidence to the contrary [evidence] is proof
Complement	that that person is the owner of the dog

The essential components of the first main clause are:

Subject: 'evidence' [line 2],

Verb: 'is' [line 5],

Complement: 'evidence' [line 5].

In the second main clause the components are:

Subject: 'evidence' [line 2],

Verb: 'is' [line 6],

Complement: 'proof' [line 6].

In the first main clause, the nexus between the subject and the verb has been broken by a relative clause,²⁵ which is subordinate to an adverbial clause,²⁶ which is subordinate to a complement clause.²⁷ Before the verb is reached, the subject has to be held in the short-term memory while the 27 word insertion is processed. In the second main clause, the nexus between the subject and the verb is broken by those same 27 words, plus a further 11 in three prepositional phrases.²⁸ Thus, the subject has to be held in the short-term memory while a 38 word insertion is processed. The essential sentence components have not been kept together in either case.

In s 29(2) *Domestic (Feral and Nuisance) Animals Act 1994 (Vic)* there are two examples of disrupted nexus. In s 29(2)(d) the nexus between the subject 'person' and the verb 'was being attacked' has been interrupted by the words 'known to the dog'. This group of words is a reduced relative clause formed from the relative clause 'who was known to the dog'. This example shows the tension between two competing 'rules'. These are that 'relative clauses should be placed immediately after their referents' and that 'the nexus between essential sentence components should be preserved'. When the referent is the subject of a sentence, the relative clause (or the reduced relative clause) disrupts the nexus between the subject and

²⁵ ie 'which is the subject of the proceedings'.

²⁶ ie 'immediately before the dog conducted itself in the manner'.

²⁷ ie 'that the dog was apparently under the control of a person'.

²⁸ ie 'in the absence', 'of evidence' and 'to the contrary'.

its verb. Moving the relative to another position alters meaning. Compare, for example, 'Bill, who had a broken arm, punched Tom' with 'Bill punched Tom, who had a broken arm'. One method of resolving the tension is to recast the sentence so that the relative clause is no longer embedded between the subject and the verb. For example, 'Bill, who had a broken arm, punched Tom' could be rewritten as 'Tom was punched by Bill, who had a broken arm'. In this form, the nexus has been preserved and the relative follows immediately after its referent. However, by recasting the sentence in this way a third 'rule' has been broken. This 'rule' states that the active is to be preferred to the passive. It does not state that the use of the active is mandatory. There will be situations in which the passive is preferable or necessary.²⁹ Whenever there is tension between the 'rules', the objective must be to enhance comprehensibility, without forfeiting precision.

The second disruption of a nexus in s 29(2) is between the verb 'occurred', in the conditional clause 'if the incident occurred', and its adverbial modification 'as part of a hunt' in s 29(2)(e). The nexus between the verb in a sentence and an adverbial is not at all strong. Even though the disruption between the verb and the adverbial is 55 words in length, any comprehension problems caused by it are minimal.

Now consider s 39 *Domestic (Feral and Nuisance) Animals Act 1994* (Vic). This section reads:

s 39 *Domestic (Feral and Nuisance) Animals Act 1994* (Vic)

The owner of a dangerous dog must display warning signs which comply with the regulations at all entrances to the premises where the dog is kept warning people that a dangerous dog is kept on the premises.

The clausal structure of this section can be expressed as:

[M{R}{R}{rr(Comp)}]

Where:

M = Main
Comp = Complement
R= Relative
rr = reduced relative

This section has been written as a single sentence. The drafter has packed seven propositions into a single sentence, expressing not only the central idea, but qualifications and related information. The seven propositions are:

- An owner of a dangerous dog must display warning signs.
- The owner owns a dangerous dog.
- The owner keeps the dangerous dog on premises.

²⁹ eg if the agent is obvious, unknown or unimportant the passive can be used. It is only when the passive is used to conceal the identity of the agent for questionable purposes that it should be avoided.

The owner must display warning signs.

The signs must warn people about the dangerous dog.

The signs must be placed at all entrances to the premises.

The signs must comply with the regulations.

In s 39, the 'rule' about relative clauses and their referents has been partly observed. In order to preserve meaning, the relative clause 'which comply with the regulations' has been placed immediately after its referent 'signs'. The relative clause 'where the dog is kept'³⁰ has been placed immediately after its referent 'the premises'. If either of the relative clauses were to be moved from their position, the meaning of the section would have been either altered or destroyed.

However, the 'rule' has not been observed with the reduced relative clause 'warning people.' In reduced relative clauses, the relative is omitted. When the verb consists of an auxiliary and a past participle, the auxiliary is omitted. When the present participle fronts the reduced clause, either the auxiliary has been omitted or the full verb has been replaced by the present participle. Even when the relative is omitted, the 'rule' still holds. A reduced relative clause must be placed immediately after its antecedent. In s 39, the reduced clause has been based on 'warning', the present participle of the verb 'warn'. When the relative pronoun is replaced, the clause becomes 'which warns . . .'.

In s 39, another hindrance to comprehension has been caused by the insertion of an adverbial of 16 words between the antecedent 'signs' and the reduced clause (ie 'warning signs'). These words must be held in the short-term memory whilst the relationship between 'warning signs' and 'warning' is established. Since an adverbial has no fixed position in a sentence it may be possible to relocate the adverbial. Recast in this way s 39 would read:

s 39 *Domestic (Feral and Nuisance) Animals Act 1994 (Vic)*

At all entrances to the premises where a dangerous dog is kept the owner of the dog must display warning signs which comply with the regulations and which warn people that a dangerous dog is kept on the premises.

The section could also be recast in two sentences as:

Revised s 39 *Domestic (Feral and Nuisance) Animals Act 1994 (Vic)*

The owner of a dangerous dog must display signs warning that a dangerous dog is kept on the premises. The warning signs must be placed at all entrances to the premises where the dog is kept and must comply with the regulations.

The semantic links between the sentences have been preserved by the repetition of the words 'signs' and 'warning'. In the first sentence, 'signs' is the object of the verb 'must display' and is qualified by the reduced relative clause 'warning . . .'. Both 'warning' and 'signs' are repeated in the second sentence as 'old'

³⁰ 'where the dog is kept' is not an adverbial clause. It is a relative clause because it qualifies the noun 'premises'. In this case 'where' means 'in which'.

information³¹ from the first sentence. Together they form the subject of the verb 'must comply' in the coordinating main clause of the second sentence. The pronominal 'they' has not been used to replace 'warning signs' in the coordinating main clause because the plural noun 'entrances' is closer to the subject position of the final clause than the plural noun 'warning signs' to which 'they' should refer. The semantic link between the sentences is also preserved by the use of the word 'dog' as 'new' information in the first sentence and then as 'old' information in the next sentence.

It is also possible to break the nexus between the auxiliary and the verb, or the verb and the object/complement. This often occurs when large quantities of information are incorporated into the single provision/single sentence structure. Consider s 94 *Fair Trading Act 1999* (Vic) where the nexus between an auxiliary and a verb, and the nexus between a verb and an object, have been broken.

Section 94 reads:

s 94 *Fair Trading Act 1999* (Vic)

The Director may, with the approval of the Minister, and must if the Minister so directs, prepare for submission to the Minister a draft code of practice for fair trading -

- (a) between a particular class of suppliers and any purchasers; or
- (b) by a particular class of persons and a particular class of purchasers; or
- (c) in the relation to the supply of a particular kind of goods or services.

This section consists of two main clauses. The essential components of the first main clause are:

Subject: 'The Director',
 Auxiliary: 'may',
 Verb: 'prepare',
 Object: 'a draft code'.

In the second main clause the components are:

Subject: 'The Director',
 Auxiliary: 'must',
 Verb: 'prepare',
 Object: 'a draft code'.

In the first main clause, the nexus between the auxiliary 'may' and the verb 'prepare' has been broken by the insertion of the 13 words 'with the approval of the Minister, and must if the Minister so directs'. In the second main clause the nexus between the auxiliary 'must' and the verb 'prepare' has been interrupted by the conditional clause 'if the Minister so directs'. The nexus between both the verbs 'may prepare' and 'must prepare' and their object 'a draft code', is disrupted by the adverbial phrase 'for submission to the Minister'.

³¹ For a discussion of the 'old' and 'new' information discourse analysis see 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.

Drafters of legislation need to appreciate that a rigid adherence to the single provision/single sentence structure may lead to sentences that 'glaze the eyes and numb the minds' of their readers. When a piece of legislation is of particular interest to the general public, drafters should attempt to express an otherwise lengthy provision in more than one sentence when parallel structure is not possible.

III THE EXAMPLES OF LEGISLATIVE DRAFTING

The grammatical structure of the examples of Victorian legislative drafting was analysed and the results set out in Table C. Other characteristics were also included. They include average sentence length, the number of clauses per sentence, and the number of interruptions of the nexus.

Table C: Comparison of the grammatical structure of legislative drafting

	Courts Act 1971 (UK)	The mortgage sections of the Credit Act 1984 (Vic)	Domestic (Feral & Nuisance Animals Act 1994 (Vic)	Fair Trading Act 1999 (Vic)	First Home Owner Grant Act 2000 (Vic)	Subdivision (Body Corp) Regulations 2001 (Vic)
Number of words.	15895	7057	10308	23727	6329	6167
Number of provisions.	289	91	220	479	143	164
Number of sentences. ³²	289	91	220	479	144	164
Range of sentence length.	10-240	16-269	6-471	7-1189	6-508	6-261
Average number of words per sentence.	55	77.5	46.8	49.5	45.4	37.6
Number of sentences with 25 words or less.	-	10 (10.1%)	39 (18.6%)	83 (17.5%)	46 (31.9%)	59 (42.0%)
Number of clauses. ³³	827	436	714	1530	450	353
Average number of clauses per sentence.	2.86	4.8	3.2	3.2	3.1	2.2
Number of sentences with one clause only.	58 (20%)	5 (5.5%)	51 (23.2%)	64 (13.3%)	38 (26.4%)	73 (44.6%)
Number of sentences with less than 3 clauses.	235 (82%)	18 (19.8%)	91 (41.8%)	156 (22.4%)	73 (50.7%)	119 (72.5%)
Number of sentences with 3 or more clauses.	54 (18%)	73 (80.2%)	129 (58.2%)	323 (67.6%)	71 (49.3%)	45 (27.4%)
Number of sentences with 6 or more clauses.	20 (6%)	48 (52.7%)	26 (11.8%)	165 (34.4%)	12 (8.3%)	6 (3.6%)
Disruption of nexus between subject and verb.	9.9%	63 (14.4%)	43 (6.0%)	80 (5.2%)	27 (6%)	28 (7.9%)
Disruption of nexus between auxiliary and verb.	20.1%	74 (16.9%)	20 (2.8%)	78 (5.1%)	14 (3.1%)	8 (2.3%)

³² Each definition section is taken as a single sentence of coordinating main clauses eg s 3 *Domestic (Feral and Nuisance) Animals Act 1994* (Vic) has 17 coordinating main clauses and s 3 *The Fair Trading Act 1999* (Vic) has 37 coordinating main clauses.

³³ These are finite clauses only; that is, clauses with verbs with tense and person fully specified. No reduced clauses have been included.

IV ANALYSIS OF THE FOUR MOST RECENT PIECES OF LEGISLATIVE DRAFTING

A number of observations can be made from the data in Table C. They are:

- all but one³⁴ of the provisions are written as single sentences;
- the average sentence length is almost double that recommended by the LRCV;
- the percentage number of sentences with 25 words or less has risen over time;
- the percentage number of disruptions to the nexus is less in the four later pieces of legislation than those in the benchmark statutes³⁵; and
- the number of sentences with six or more clauses is particularly high in the *Fair Trading Act 1999* (Vic).

It can be concluded that neither of the guidelines has been closely and systematically followed in the four later pieces of legislation. However, there has been some improvement when compared with the benchmark statutes.³⁶

The data in Table C indicate the presence of some long and syntactically complicated sentences. Even if these sentences are accurate and grammatical, they are condemned by every authority on legislative drafting.³⁷ Table C, however, does not indicate where long sentences have been set out in parallel structure.

Table C shows that all but one³⁸ of the provisions are written as single sentences. Does rigid adherence to this type of structure necessarily generate long and syntactically complicated sentences? The Table shows that the percentage number of sentences of less than three clauses has increased over time, compared with the mortgage sections of the *Credit Act 1984* (Vic). These sentences are not likely to be syntactically complicated or very long. When the number of clauses per sentence is limited in this way, rigid adherence to the single provision/single sentence structure does not necessarily result in complicated syntax. However, apart from the *Subdivision (Body Corporate) Regulations 2001* (Vic), more than half the sections in the Acts have more than three clauses and a surprisingly large number of sentences have six or more clauses. The presence of some long and syntactically complicated sentences is indicated both by the percentage number of sentences with more than three clauses and by the percentage number of nexus disruptions. An overview of the four most recent pieces of legislative drafting will show that much of the syntax is complicated.

³⁴ ie s 33(2) of the *First Home Owner Grant Act 2000* (Vic) is written in two sentences.

³⁵ ie the *Court Acts 1971* (UK) and the mortgage sections of the *Credit Act 1984* (Vic).

³⁶ ie *Ibid*.

³⁷ Law Reform Commission of Victoria, above n 6, [70].

³⁸ ie s 33(2) of the *First Home Owner Grant Act 2000* (Vic) is written in two sentences.

V IS COMPLICATED SYNTAX PRESENT IN RECENT LEGISLATIVE DRAFTING?

The compression of too much information into a single sentence structure often results in complicated syntax³⁹ caused by the use of conflating devices. Consider again, s 29(4) Domestic (Feral and Nuisance Act) 1994 (Vic), where most of the information has been inserted between the subject 'evidence' and the verb 'is'.

Section 29(4) reads:

s 29(4) *Domestic (Feral and Nuisance Act) 1994* (Vic)

In any proceeding under sub-section (1) or (3) evidence that the dog was apparently under the control of a person immediately before the dog conducted itself in the manner which is the subject of the proceedings is evidence and, in the absence of evidence to the contrary, is proof that that person is the owner of the dog.

The extent of the embedding of clauses in s 29(4) is indicated in the formula below but it does not reveal where the nexus between essential sentence components has been broken.

[M{Comp(A<R>)}][M{Comp}]

Where:

M = Main Comp = Complement R = Relative A = Adverbial

Wydict's complaint about 'phrase within clause within clause' is typified by this sub-section. In order to understand it, the 14 units of information contained in s 29(1) and s 29(3) must be retained in the short-term memory.⁴⁰ The meaning of s 29(4) must then be unpacked and the concepts of 'proceedings', 'evidence', 'contrary evidence', 'ownership', 'conduct', and 'control', along with the meaning of 'apparently' and 'immediately' must be understood. There are more than 20 units of information in s 29(4) so the short-term memory is likely to fail well before the full meaning of the provision has been extracted.

Now consider s 15(2) *First Home Owners Grant Act 2000* (Vic). This sub-section is expressed in 44 words and provides another useful example of

³⁹ Law Reform Commission of Victoria, above n 6, [71].

⁴⁰ The items that have to be retained in the short-term memory include: 'rushes at', 'attacks', 'bites', 'worries', 'chases', 'any person', 'animal', 'owner', 'guilty', 'offence', 'liable', 'upon conviction', 'liable for any damage' and 'conduct of dog'. Members of the general public are not familiar with the rules of statutory interpretation. They do not know whether a given list of items is finite or whether the rule of *ejusdem generis* is to be applied. They find the list of words confusing. A generic term is to be preferred and it should be defined in the definition section.

complicated syntax resulting from an attempt to include a great deal of information in a single sentence. Section 15(2) reads:

s 15(2), *First Home Owners Grant Act 2000* (Vic),

An interested person is a person who was, or will be, on completion of the eligible transaction to which the application relates, an owner of the relevant home except such a person who is excluded from the application of this section under the regulations.

In Table D, s 15(2) has been analysed into clauses and their functions identified.

Table D: Clausal structure of s 15(2) *First Home Owners Grant Act 2000* (Vic)

Clause type	Clause
Main	An interested person is a person except such a person
Relative	who was an owner of the relevant home or
Relative	who will be, on completion of the eligible transaction an owner of the relevant home
Relative	to which the application relates
Relative	who is excluded from the application of this section under the regulations.

The extent of embedding of clauses in s15(2) is indicated in the formula below.

$[M\{(RR)\langle R \rangle\}R]$

Where:

M = Main
R = Relative

This sub-section consists of a main clause with four dependent relative clauses. The referent for the first two dependent relative clauses is the complement of the main clause (ie 'person'). The nexus between the two verbs and their complement 'owner' is broken by 11 words, five of which form the third relative which refers to 'transaction' in the second relative. The fourth relative refers to 'such a person' in the main clause.

Section 15(2) *First Home Owners Grant Act 2000* (Vic) twists on 'phrase within clause within clause'. To unpack its meaning it is necessary to understand terms such as 'application',⁴¹ 'interested person',⁴² 'owner',⁴³ 'home',⁴⁴ and 'eligible transaction',⁴⁵ and to be aware of the contents of 'the regulations'. It is then necessary to unravel the syntax and trace the relationships between the various clauses. In the process of unravelling, it becomes clear that two meanings of the term 'application' have been used. The first refers to the application for a First

⁴¹ See s 14.

⁴² See s 15(2).

⁴³ See s 5(1).

⁴⁴ See s 4.

⁴⁵ See s 13(1)(a) to (c).

Home Owner Grant, and the second refers to the administration of the section. There are at least nine pieces of information which have meanings specific to the statute and which have to be held in the short-term memory as the syntax is being unravelled.

Section 29(1) *Fair Trading Act 1999* (Vic) also twists on 'phrase within clause within clause'. Section 29(1) reads:

s 29(1) *Fair Trading Act 1999* (Vic)

(1) A person who-

- (a) publishes a document, statement or advertisement or causes a document or statement or advertisement to be published; or
- (b) gives a document, statement or advertisement to any person or causes a document, statement or advertisement to be given to any person to whom goods or services are or may be supplied -

that

- (c) is intended or likely to promote the supply of goods or services; and
- (d) contains a reference to a means of contacting the person that does not include the name and the address of the place of business or residence of the person -

must include in the document, statement or advertisement -

- (e) the name of the person or the business; and
- (f) the full address (not being a post office box) of the place of business or residence of the person.

In Table E, s 29(1) has been analysed into clauses and their functions have been identified.

Table E: Clausal Analysis of s 29(1) Fair Trading Act 1999 (Vic)

<i>Clause type</i>	<i>Clauses</i>
Main	A person must include in the document, statement or advertisement the name of the person or the business and the full address (not being a post office box) of the place of business or residence of the person.
Relative	who publishes a document, statement or advertisement or
Relative	(who) causes a document, statement or advertisement to be published or
Relative	(who) gives a document, statement or advertisement to any person or
Relative	(who) causes a document, statement or advertisement to be given to any person
Relative	to whom goods or services are to be supplied
Relative	(to whom goods or services) may be supplied
Relative	that is intended to promote the supply of goods or services or
Relative	(that is) likely to promote the supply of goods or services and
Relative	(that) contains a reference to a means of contacting the person
Relative	that does not include the name and the address of the place of business or residence of the person

The clausal structure of s 29(1) is represented by the formula below.

$$[M\{R\}\{R\}\{R\}\{R(R)(R)\}\{R(R)\{R(R)\}\}]$$

M = Main R = Relative

At first glance, it appears that s 29(1) has been set out in parallel structure. It consists of a main clause and 10 relative clauses. Parallel structure would appear to be appropriate because of the number of relative clauses. However, the relative clauses do not have a common referent and cannot, therefore, be set out in parallel structure. Section 29(1)(a) and (1)(b) have a common subject 'who' referring to 'person'. They could be set out in parallel structure. Section 29(1)(c) and s 29(1)(d) have a common subject 'that' which refers to 'document statement or advertisement'. They could be set out in parallel structure but since they do not have the same subject as s 29(1)(a) and s 29(1)(b), s 29(1)(c) and s 29(1)(d) are not parallel to s 29(1)(a) and s 29(1)(b). Section 29(1)(e) and s 29(1)(f) are set out in parallel structure, but they are not relative clauses. They are the parallel direct objects of the verb 'must include', and cannot be regarded as parallel to either s 29(1)(a) and s 29(1)(b) or s 29(1)(c) and s 29(1)(d). It is not enough to achieve the appearance of parallel structure. It must be that structure if comprehensibility is to be maximised.

Comprehension problems in s 29(1) occur because of the change of referent from 'person', to 'document, statement or advertisement'. That is, 'who' refers to 'person' and 'that' refers to 'document statement or advertisement'. A further difficulty is encountered because the relative pronoun 'that' is separated from its referent 'document, statement or advertisement' by 44 words in four relative clauses. Section 29(1) is long and syntactically complicated and difficult to understand.

Section 29(1) illustrates another cause of comprehension problems. The incorporation of large amounts of information into the single provision/single sentence structure often requires the use of linguistic devices for conflating meaning. The embedding of relative clauses is one of these devices. In the main clause, the nexus between the subject 'a person', and the verb 'must include', has been disrupted by 93 words in 10 relative clauses. These clauses interrupt the proposition expressed in the main clause, blur its focus, and make it difficult to understand. As Allen and Burrige⁴⁶ found, it is the interruption of the proposition that makes comprehension difficult.

Now consider reg 214 *Subdivision (Body Corporate) Regulations 2001* (Vic). This 200 word regulation is another example of a single provision/single sentence structure into which the drafter has attempted to include too much information. The resulting structure is so clausally complex that the drafter has failed to preserve the internal semantic linkages.

⁴⁶ Allen and Burrige, above n 23, 200.

Regulation 214 reads:

Regulation 214 Subdivision (Body Corporate) Regulations 2001 (Vic)

The reinstatement and replacement insurance required under regulation 212 is insurance for damage to property under which the body corporate insures for -

- (a) the cost necessary to replace, repair or rebuild the property to a condition substantially the same, but not better or more extensive than its condition when new; and
- (b) the payment of expenses necessarily and reasonably incurred in the removal of debris and the remuneration of architects and other persons whose services are necessary, being incidental to the replacement, repair or rebuilding of the damaged property and must ensure that the insurance includes -
 - (i) a provision that the interests of mortgagees are noted; and
 - (ii) a provision that a mortgagee whose interest is noted shall be given the notices that are required under section 59 of the Insurance Contracts Act 1984 of the Commonwealth at the same time that those notices are given to the insured; and
 - (iii) a provision that the insurer cannot avoid the whole contract for breach of a condition of the contract unless the breach is by the body corporate or all members, but the insurer has a right of indemnity against those members who breach the contract.

In Table F, reg 214 has been analysed into clauses and their functions have been identified.

Table F: Subdivision (Body Corporate) Regulations 2001 (Vic)

<i>Clause type</i>	<i>Clauses</i>
Main	The reinstatement and replacement insurance required under regulation 212 is insurance for damage to property under which the body corporate insures for the cost necessary to replace, repair or rebuild the property to a condition substantially the same, but not better or more extensive than its condition and the payment of expenses necessarily and reasonably incurred in the removal of debris and the remuneration of architects and other persons
Relative	when [the property was] new
Adverbial	Whose services, being incidental to the replacement, repair or rebuilding of the damaged property, are necessary
Relative	[under which the body corporate] must ensure
Complement	that the insurance includes a provision
Complement	that the interests of mortgagees are noted
Complement	[that the insurance includes] a provision
Complement	that a mortgagee shall be given notices
Relative	Whose interest is noted
Relative	that are required under section 59 of the Insurance Contracts Act 1984 of the Commonwealth at the same time

Clause type	Clauses
Relative	that those notices are given to the insured
Complement	[that the insurance includes] a provision
Complement	that the insurer cannot avoid the whole contract for breach of a condition of the contract
Adverbial	unless the breach is by the body corporate or all members
Complement	[but] [that] the insurer has a right of indemnity against those members
Relative	who breach the contract

The two identical complement clauses '[that the insurance includes] a provision', have been included in Table F because each has a complement clause depending on 'a provision'.

The clausal structure of reg 214 is represented by the formula below.

[M{R(A)RR(C<C>C<C>(RRR)C<C(A)C(R)>}]

Where:

M = Main
R= Relative
C= Complement
A= Adverbial

The LRCV noted that readers are forced into intricate syntactic analysis by long, meandering sentences, running on clause after clause and embedding clauses within clauses.⁴⁷ 'The longer the sentence rambles the greater the danger that a detail will be overlooked or a connection missed.'⁴⁸ However, it is the drafter who composes the long meandering sentence who is likely to overlook details and miss connections. It is the duty of the drafter to make legislative material intelligible to the intended audience.⁴⁹ On all counts the drafter of reg 214 has failed.

A number of criticisms can be made about reg 214. It includes a number of syntactic flaws. This regulation is long and meandering. It consists of 200 words comprising 14 clauses, two reduced relatives and a reduced adverbial. In Table F, the reduced clauses have been set out as full clauses. This gives 17 clauses.

The relative clause 'under which the body corporate insures . . . of the damaged property' is separated from its referent 'insurance' by the phrase 'for damage to property'. A relative clause should be placed immediately after its referent. Under this rule 'property' seems to be the referent of the relative clause. Since 'insurance' is the referent, comprehension is hindered while the correct semantic link with 'insurance' is established.

⁴⁷ Law Reform Commission of Victoria, above n 5, [51].

⁴⁸ Ibid

⁴⁹ Ibid [24]-[26].

Other difficulties in reg 214(b) include:

1. the difficulty of tracing the referent of the participial phrase 'being incidental to the replacement, repair or rebuilding of the damaged property'. Of the two possible referents 'expenses' and 'services', the latter seems the more likely. If 'being' were to be replaced by 'and', the problem would no longer exist.
2. the lack within reg 214(b) of a noun or noun equivalent which can function as the subject of the verb 'must ensure'. The subject of 'must ensure' is 'the body corporate', which is 68 words away in the first relative clause. The words 'must ensure that the insurance includes' do not belong in (b). The text of reg 214 should be reorganised.
3. the inappropriate organisation of material in reg 214(b)(i), (ii) and (iii). Regulation 214(b)(i) and reg 214(b)(ii) each contain one 'provision', but reg 214(b)(iii) contains two 'provisions' joined by the conjunction 'but'. This sub-regulation does not make sense. The meaning can be improved by making it clear that the clause 'the insurer has a right of indemnity against those members who breach the contract' is subordinate to the clause 'unless the breach is by the body corporate or all members'. This can be done by replacing 'but' with 'in which case'.
4. the drafter has used the single word 'insurance' to mean not only the business or legal concept of insurance, but the legal documentation of a contract of insurance.

The criticism that reg 214 'meanders' can be overcome by recasting it in parallel structure. The recast of reg 214 reads:

Revised reg 214 *Subdivision (Body Corporate) Regulations 2001 (Vic)*

The reinstatement and replacement insurance required under regulation 212 is insurance for damage to property under which the body corporate -

(a) insures for:

- (i) the cost necessary to replace, repair or rebuild the property to a condition substantially the same, but not better or more extensive than its condition when new; and
- (ii) the payment of expenses necessarily and reasonably incurred in the removal of debris; and
- (iii) the remuneration of architects and other persons whose services are necessary and incidental to the replacement, repair or rebuilding of the damaged property;

(b) and must ensure that the insurance includes a provision that:

- (i) the interests of mortgagees are noted; and
- (ii) a mortgagee whose interest is noted shall be given the notices that are required under section 59 of the Insurance Contracts Act 1984 of the Commonwealth at the same time that those notices are given to the insured; and
- (iii) an insurer cannot avoid the whole contract for breach of a condition of the contract unless the breach is by the body corporate or all members, but even when the breach is not so committed the insurer has a right of

indemnity against those members who breach the contract.

The clausal structure of recast reg 214 is represented by the formula below.

$[M\{R(R)\}\{R(C\langle C\rangle\langle C(R)\rangle\langle R\langle R(A)\rangle)C(A)(R\langle R\rangle)\}]$

M = Main
R= Relative
C= Complement
A= Adverbial

In recasting reg 214 no changes have been made to the original, other than reorganising and reordering the clauses. Further benefits to comprehensibility could be achieved by rewriting the regulation into plainer English and ensuring that the word 'insurance' is used in only one sense.

VI CONCLUSION

From the analysis it is clear that an effort has been made to simplify the syntax of the four most recent pieces of Victorian legislative drafting. However, provisions are still expressed in single sentences, and there remains a strong tendency to incorporate too much information into the single sentence structure. The net result is that many of the provisions are likely to be inaccessible to those who should be able to understand them. This is because the provisions 'twist on, phrase within clause within clause'.

Drafters should realise that 'longwindedness is exhausting.'⁵⁰ They should forsake the single provision/single sentence structure and concentrate on making legislation comprehensible to those persons who are of full capacity and who are likely to be affected by it.

⁵⁰ Law Reform Commission of Victoria, above n 4, [2.1.1].