

# Getting the Structure Right: Process, Paradigm, and Persistence (Part 1)

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## The Need

We need more information about how to organise the information in documents. We have lots of information on language and a fair bit on design; but there isn't so much on structure. Also, what we do have on structure tends to be more about the hallmarks of a well-structured document rather than about how to create one — more about the goals themselves than how to score them.

## The Difficulty

The hardest part of making documents as clear as they can be is getting the structure right. It is for me anyway.

- Where to start?
- Which ideas to group together?
- What order to put them in?

It's the same whether I am writing an insurance policy, a prospectus, a letter of advice to a client, an essay for university, or an article for *Clarity*. Part of the problem is that — even with a clear idea of my audience and the purpose for writing — I'm not always sure just what I'm going to say, just where it is that I'm going. The struggle to remove that insecurity eases as soon as the structure comes good — although the structure may morph several times as other issues, and my thinking, become clearer.

## The Importance

Getting the structure right is vital if a document is going to be useful for its audience. As the Law Reform Commission of Victoria has said:

The success of a document in communicating depends greatly on the careful organisation of the material in it. The right facts must not only be selected, but must also be put in an order that shows the interconnections between the facts, that allows one fact to support or qualify the other. Incisive clarity of thinking, sensitive consideration of the audience, skilful choice of language, and thoughtful attention to all the other components in the writing process can all be undermined by slipshod organisation.<sup>1</sup>

Absolute rigour is essential. Poor structure often reflects muddled thinking. And muddled thinking causes communications to fail.

### **This Article**

Part 1 of this article sets the scene and considers three examples that reveal the problems of poor structure.

Part 2 will appear in the next issue, No. 43, of *Clarity*. Part 2:

- discusses a process and a paradigm for achieving the goals of good structure; and
- contains a detailed analysis of a before-and-after example.

I should say right at the outset that much of the material about the process and paradigm discussed in Part 2 is from others — notably Bryan A. Garner (from an article about a paradigm developed by Dr. Betty S. Flowers), Professor Joseph Kimble, and the Law Reform Commission of Victoria (the work being done by the Commission's chair, David Kelly). The

purpose of this article is to bring their ideas together, add some of my own, and perhaps encourage others to contribute their thoughts. If enough people share their ideas, we could effectively have a "Seminar in Print" dealing with structure.

### **The Guiding Principles**

Here then are the goals, the guiding principles:

- put the main message first;
- put closely related material together;
- put material in an order that makes the best sense to the reader;
- use headings liberally and rigorously;
- make sure that pieces of information with comparable heading levels have comparable weight, and comparable levels of importance; and
- use a numbering system which forces you to draft clearly — even if you don't use that numbering system when you print the document.

These principles are discussed in considerably more detail in Part 2 of this article. But for now, just keep them in mind as we review some documents.

### **The Problems**

Let's look at three examples that illustrate the problems created by poor structure. Those problems are many and varied. Usually they result from an utter failure to focus on things from the reader's point of view.

**Example 1: Voicemail Instructions**

This ugly little document was handed to me when I started work somewhere. It's for people to pin up near their phone to help them when they need to turn their voicemail on.

<b>5. CALL FORWARDING</b>		
You will need to instruct voice mail when you would like your phone answered. This can be done via 3 call forward options:		
<b>CANCEL EXISTING FORWARDING</b>		
<b>BUSY CALLS</b>	<b>NO ANSWER CALLS</b>	<b>ALL CALLS</b>
Press # 3	Press #6	Press #9
Hang Up	Hang Up	Hang Up
<b>SET FORWARDING TO VOICE MAIL</b>		
<b>BUSY CALLS</b>	<b>NO ANSWER CALLS</b>	<b>ALL CALLS</b>
Press # 3 76999	Press #6 76999	Press #9 76999
Hang Up	Hang Up	Hang Up

It's not a pretty sight! The language isn't too flash either. But what I want to focus on is the structure — the order in which the ideas are presented.

First, the results of some real-life research — my experiences as a user of the sheet. For my first few days in the organisation, I never got one voicemail message, even though several friends told me that when they rang me to see how I was doing in my new job, the phone rang out. I assumed I'd done something silly, and so I reset my phone to voicemail. Still no messages.

Clearly, something was wrong. I examined the sheet more carefully and realised that every time I'd tried to turn voicemail on, I'd actually turned it off.

Why? Because I didn't read the sheet very carefully, and I had assumed that the sheet dealt with things in what I thought was a logical order:

- first, how to turn voicemail on; and
- second, how to turn voicemail off.

I paid the penalty for not reading the sheet carefully.

But lots of readers don't read carefully. We need to create documents that people can't misread — even if they aren't really concentrating and don't read every word carefully. It's a tall order.

Let's look at the voicemail instruction sheet again:

- “Cancel existing forwarding”, which means “Turning your voicemail off”

is dealt with *before*

- “Set forwarding to voicemail”, which means “Turning your voicemail on”.

Surely, that order is counter-intuitive. Surely, a new user of any machine (or a new user of a machine's — dare I say it — “functionality”) wants to know how to turn it on before they want to know how to turn it off. Not only that, but they expect to be told the information in that order.

By the way, you can turn voicemail on even if the phone is already set to some other call forwarding. You don't have to turn off the call forwarding first — I checked.

**Example 2: Australian Securities and Investments Commission, Class Order 94/1289**

The Australian law regulating the structure and activities of companies is called the Corporations Law. It is administered by the Australian Securities and Investments Commission. The Commission has the power to issue “Class Orders” to modify the law as it applies to certain persons or classes of persons.<sup>2</sup>

The example we are going to look at is Class Order 94/1289. It runs for a little less than five pages. It deals with Employee Share Schemes — that is, offers of shares that a company makes to its employees and directors. The offer is made separately from any general offers to the public or to institutional investors. The Class Order exempts employee share schemes (that satisfy

various criteria set out in the Class Order) from complying with several divisions of the Corporations Law. The exemption makes producing an employee prospectus a much simpler and cheaper task than producing a prospectus for a public offer.

This Class Order has a number of structural problems. I want to look at just a few of them.

- *What is the class order about?* Employee share schemes — we are told that in the heading. But after the heading, the first time that the phrase “employee share scheme” is used (or even hinted at!) is two-thirds of the way down the second page in section 4(b), under a heading “Further requirements”. This information should be in the opening paragraph. After all, for the exemption to apply, it’s crucial that the scheme be an employee share scheme. There are many other important requirements, but they are all subordinate to that one.
- *What sort of employee share schemes are covered?* Well, there are all sorts of restrictions. But a key restriction is this one — from 4(b), which you’ll remember is the first time the phrase “employee share scheme” is used:

The offer or invitation must be made pursuant to an employee share scheme *extended only to* persons who at the time of the offer or invitation are full or part-time employees or directors of the issuer or of associated bodies corporate of the issuer. [My italics.]

That makes sense. And it should have been explained early on in the order — if not in the opening paragraph.

- *But wait, there’s more!* There’s a qualification of the meaning of the phrase “extended only to” (the phrase I put in italics in the last quotation). The qualification has a big impact. And it is located two pages later in the section headed “6 Interpretation”:

A scheme shall not be regarded as *extended to a person, other than an employee or director of the issuer or an associated body corporate of the issuer*, merely because such an employee or director may renounce an offer of shares made to him or her under the scheme in favour of his or her nominee. [My italics.]

That qualification is important. It means that if you have a friendly director, friendly employee, or friendly body corporate (or one that’s prepared to accept your price), they can renounce the shares in your favour. In those cases, the qualification effectively negates the requirement about the persons to whom the scheme can be extended. This qualification should be with the information it qualifies — that is, the information about to whom the scheme can be extended.

The only possible reason for separating the message from the qualification could be to save space. If the main message about “extended only to” is used so many times that to repeat the qualification each time would be a burden, waste words and paper, etc, then it might be worth separating the ideas. But, lo and behold, the phrase “extended only to” is not used anywhere else in the whole Class Order.

The decision to separate the qualification from the main message reflects confused logic and the (ill-founded and rarely acknowledged) desire to create concepts, name them, define them, and place the definition somewhere far away from the main message. That desire must be repressed, suppressed, oppressed, and destroyed.

### **Example 3: Clause 231 of the Corporations Amendment Bill 1991**

This clause was proposed as part of a wide-ranging attempt to prevent company directors from gaining improper benefits from their position. It is a long clause. It runs for 25 subclauses on four full pages. There is only one heading for all that information, and it is right at the start.

Here is my summary of the information in each subclause. The *italicized text* in [square brackets] is my commentary on the structure.

### Disclosure of interests by directors

- Subclause 1 Definition of “transaction”
- Subclause 2 Definition of “a matter with which a company is concerned”
- Subclause 3 Definition of “interest”
- Subclause 4 Definition of “minor interest”
- Subclause 5 Definition of (or, strictly, an assumption about) “the nominal value of shares”

*[We are 5 subclauses into the clause, nearly a whole page, and we haven't got one main message yet. Nothing of substance. Nothing that tells us the story.]*

- Subclause 6 A director with an interest must give written notice to the company of the prescribed particulars

*[At last, some substance! Somebody has to do something. A director has to give notice of an interest. But what are the “prescribed particulars”?]*

- Subclause 7 Notice is to be given to the secretary

*[Surely, that tiny piece of information could be included in subclause (6).]*

- Subclause 8 Company must keep a register of interests
- Subclause 9 Company must keep the register of interests open for inspection
- Subclause 10 Company must give a copy of information from the register to someone who asks for it
- Subclause 11 Company must produce the register at the Annual General Meeting

*[That is fairly good structure. All the information about the register is together and is in a sensible order.]*

*Mind you, it could probably be dealt with all in one subclause — with a main paragraph and three subheadings. After all, subclauses (9), (10), and (11) — about access to the register — are really subsidiary messages of subclause (8), the obligation to keep the register. The existing structure places each idea on the same level in the hierarchy: they are all subclauses. This wastes the opportunity to use structure and layout to give the reader a message about the comparative weight of the pieces of information and their interrelationship. The message is one that — as long as the structure and layout are right — the reader can gather without even having to read the text.]*

- Subclause 12 When the secretary receives a notice about an interest, the secretary must send a copy to every other director

*[Whoops, we're back to the notice again.]*

- Subclause 13 The directors must record the details of a notice in the minutes of the next meeting

- Subclause 14 The prescribed particulars that must be in the notice are . . . .

*[Can you believe it? It's a definition of “prescribed particulars”. So why isn't it with the other definitions at the start of the clause? That would make sense, I suppose. But wouldn't it be better if it was with the requirement to give the notice? That's way back in subclause (6)! Couldn't the very first subclause say something like:*

*“A Director with an interest must give written notice to the Secretary of the following details about the interest:*

- *[with a dot-point list of each of the “prescribed particulars”]*

*Not only would that bring the two ideas from (6) and (14) together (and the idea from (7) that the notice had to be given to the Secretary), but it would also avoid the artificial and unnecessary concept of “prescribed particulars”. We could define “interest” either in the opening sentence, or straight after the dot-point list.]*

Subclause 15 Minor notices can be dealt with in a simpler way

Subclause 16 Notice given under section 236 is adequate notice for this clause

Subclause 17 Notice about an office held in another company must be given once every 12 months

*[These last three subclauses are about situations in which a director either doesn't have to give the notice or can give a different sort of notice. Shouldn't they come immediately after the requirement to give the notice?]*

Subclause 18 Qualification of subclause 17

Subclause 19 Qualification of subclause 18

*[The information in (18) and (19) is subordinate in importance to the information in (17). It is merely a qualification of (17). Indeed, (19) is doubly subordinate: it qualifies (18), which in turn qualifies (17). Yet each of them is given the same prominence in the hierarchy. That is, each point is dealt with in a subclause. But (18) and (19) should be in a “sub-subclause”. That way the reader would notice their weight simply by looking at them. As the document stands (and remember, there are no sub-headings) a reader has to read each of the subordinate messages to find out what they are about. The structure (and design) of the document should save the reader that effort. The reader should be able to tell — at a glance — that if they are not interested in (17), then it is unlikely that (18) and (19) are interesting either. Also, a reader interested in (17) should know — again, at a glance —*

*that they had better read the qualifying messages in (18) and (19) to make sure they get the full story. All that can be made clear by structure and layout.]*

Subclause 20 Directors can call for more information about a notice

Subclause 21 A director who receives a request for more information must comply with it

*[Shouldn't 20 and 21 be together? Shouldn't this information go either:*

- with what has to be in the notice — much earlier in the rewrite of (6) and (14), which should be at the very beginning; or*
- immediately after the requirement for the secretary to give a copy of the notice to the directors?]*

Subclause 22 A director's voting rights are restricted in relation to an interest which she has given notice of

*[This is the most important thing of all.*

*Who cares if I have to give a notice and all that stuff? But boy, I care if my voting rights are limited. Yet the rule is buried in subclause 22. And the only heading for the whole clause talks about disclosure of interests. It doesn't mention voting rights.]*

Subclause 23 What the minutes must record about the directors' decision to allow a director with an interest to vote

Subclause 24 Rule about a quorum for a decision of the type mentioned in subclause (23)

*[Again, the message in (24) is part of the message in the previous subclause. It should be in there, or in a sub-subclause of it.]*

Subclause 25 This clause — or a breach of it — does not invalidate an act of the company

The material in Clause 231 is a shemozzle!  
There are about five main ideas. They are neither grouped together logically nor ordered logically.

The truth of that statement is proved by the Explanatory Memorandum produced with the Bill. When writing the Explanatory Memorandum, the drafter is concerned to explain things clearly. This is the order in which the information appears in the Explanatory

Memorandum. Are you ready? (6), (3), (2), (14), (6 again!), (7), 12(a), (8), and (12)(b). Bizarre.

(To be fair, legislative drafting in Australia has moved on since 1991 when this section was produced. See the box below.)

Recent developments in the language, structure, and design of legislation in Australia (particularly, Commonwealth and New South Wales legislation) should delight all *Clarity* readers. Just have a look at the first six major headings in the Local Government Act 1993 (NSW). They fill the reader with confidence:

- Chapter 1 — Preliminary
- Chapter 2 — What are the purposes of this Act?
- Chapter 3 — What is a council's charter?
- Chapter 4 — How can the community influence what a council does?
- Chapter 5 — What are a council's functions?
- Chapter 6 — What are the service functions of a council?

Not only that, but each chapter has an introduction. Here's the last paragraph from the introduction to Chapter 2:

The Chapter also aims to give an overview of the major elements in the system of local government in this State. It contains a diagram showing the way in which these elements relate to one another.

It does too. A diagram, in legislation. Marvellous.

Here are three more pieces of good news from New South Wales:

1. In the Firearms Act 1996, subsection 8(1) has a subheading for each of six types of licences. Under each of those subheadings are these two sub-subheadings: "Firearms to which the licence applies" and "Authority conferred by the licence". Beautiful, rigorous structure that helps the reader find and follow information.
2. The Strata Schemes Management Act 1996 has many question headings — even in the schedules. Some subsections have their own headings. The structure is good too. The "Strata Schemes Commissioner" is set up in Chapter 6 after the information that will be of most interest to most readers. Traditionally, that sort of body is set up in the early part of the legislation, even though it's of interest to few readers. The Act also contains a table describing the types of orders that may be made and who may apply for them. The left-hand column is headed "To do what?" The middle column is headed "Who may apply?" And the right-hand column shows the relevant section number. How's that for a finding aid?
3. The Duties Act 1997 provides useful cross-references in notes. For example, at the end of Section 245, a note warns that it "would always be prudent to check the registered status of the insurer. This may be done by inspecting the register kept under section 252 by the Chief Commissioner".

All this is set out in the clear design established by the Parliamentary Counsel's Office and the (sadly, no longer with us) Centre for Plain Legal Language.<sup>†</sup> That design uses running heads on each page. They show the name, year, and number of the Act; the name and number of the chapter and part; and the number of the section.

Oh happy day!

<sup>†</sup> See *Review and Redesign of NSW Legislation*, a joint project of the Parliamentary Counsel's Office & the Centre for Plain Legal Language, June 1994. The proposals in the discussion paper were adopted in 1995. Consequently, a final report was not produced.

At the Law Reform Commission of Victoria, I was involved in producing a demonstration rewrite of Clause 231 to show how we thought the drafting could be improved. We structured our rewrite as follows (the references to subclause numbers are to where we got the information in the original):

### **Voting rights restricted for Directors with an “interest”**

#### **Overview**

Directors must give notice of certain interests. Having an interest restricts your voting rights in relation to matters involving the interest.

[We then set out a Table of Contents for the section.]

#### **Directors to disclose interest**

##### **1 Subclauses (6), (7), (14), and (15)**

###### **1.1 Subclauses (17) and (18)**

###### **1.2 Subclause (16)**

###### **1.3 Subclause (6)**

**Definitions used in 1 Subclauses (3), (1), (2), (4), (5), and (19)**

#### **A company must keep a register of declarations of interest**

##### **2 Subclause (8)**

###### **2.1 Subclauses (9) and (10)**

###### **2.2 Subclause (11)**

#### **What happens when a director gives notice**

##### **3 Subclauses (12) and (13)**

#### **Directors may ask for more information**

##### **4 Subclauses (20) and (21)**

#### **Effect of an interest on voting rights**

##### **5 Subclauses (22), (23) and (24)**

#### **This clause does not invalidate acts**

##### **6 Subclause (25)**

No doubt, more could be done to improve that rewrite. But at least the structure is helpful to the reader. The main points of the section — the obligation to give notice, and the restriction on voting rights — are drawn to the reader’s attention in the Overview. The Table of Contents tells the reader where to find the information they’re looking for. Then the information is set out in a chronological order.

So those are the types of problems. What is the solution?

### **The Solution**

The solution lies in a rigorous approach to sorting and ordering the information in the document. There are some useful ideas around to help us do that. The best of those ideas (from a range of sources) will be summarised in Part 2 of this article — in the next issue of *Clarity*. Those ideas establish a process and a paradigm to help readers to get the structure right. Of course, there are no guarantees. At the end of the day, like all aspects of the writing process, it comes down to persistence and a commitment to the reader.

### **Endnotes**

<sup>1</sup> Law Reform Commission of Victoria, *Plain English and the Law*, Appendix 1, Drafting Manual 1987, page 17.

<sup>2</sup> Section 1084(2) Corporations Law.



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