The comment was made that this check list system should assist architects in the establishment and implementation of risk management.

The RAIA is now working on the second CHECKIT publication. This second check list based publication will deal with the on-site aspects of contract administration.

Further details will be provided when CHECKIT 2 is available.

-JT

PLAIN ENGLISH IN LAW IS AN ECONOMIC NECESSITY

- Professor Robert Eagleson, English Department, University of Sydney

This brief article by Professor Eagleson on the use of plain English is relevant to construction industry contracts, specifications and correspondence. It was first presented by Professor Eagleson in Canada and has been published in a Canadian legal journal.

There are several examples of plain English contracts in the industry. Perhaps, the best example is the ACEA's terms of engagement for engineering consultants. ACEA expressly instructed its lawyers to prepare a plain English contract and the end result is a model of simplicity and clarity. As a matter of committee policy, General Conditions of Contract AS2124-1986 were prepared in plain English. An argument could also be mounted that the JCC Contracts employ relatively simple and straight forward expression.

However, there are older contracts in common use in the industry which contain provisions expressed in a most complicated and cumbersome fashion; some of which defy logic and reason. One particular provision is a clause which covers the best part of a page of print in one sentence. Readers have commented that, by the time they have reached the end of it, they are not sure which country they are in, what century it is or what it was they were trying to do at the time that everything became confused. This provision requires a detailed phrase by (qualifying) phrase analysis, and even then readers have difficulty.

Engineers who enjoy a smug feeling at the expense of lawyers whilst reading the article should examine their own work. There are engineers who use English in a clear and precise manner. However, the written expression of many engineers leaves much to be desired. In correspondence and in reports, clear expression may not be critical but, in specifications and in contractual provisions, the consequences of unclear expression can be disasterous.

Some special conditions of contract, prepared by engineers, which were submitted to the SAA's AS2124 committee for consideration, on analysis, were found by lawyers on the committee to have the opposite meaning from that apparently intended by the draftsman. Another example: An head contractor failed in its attempts to rely upon a special condition dealing with industrial relations in a subcontract, as it was found to be meaningless. The intended obligation was expressed in the passive voice and unassigned to either party. Furthermore, the third sentence of this three sentence provision totally contradicted the first sentence.

I'm an English teacher, not a lawyer, and I approach you as one who wishes to work with you in the area of plain language. No only plain legal language, but plain bureaucratic language as well. Let's look at a passage from a letter from one firm of lawyers in Sydney to another firm of lawyers in Sydney:

> "We act for the Vendors herein and are informed by the relevant Agent in the sale that you act for the Purchasers.
>
> "Accordingly, we furnish herewith Duplicate Agreement for Sale of Land for your perusal and upon approval, signature duly by your clients as Purchasers ancillary to your appointing in mutuality with us exchange of such Agreement for conforming original part of the instant Agreement, signed duly by our clients, the Vendors ...."

Let me draw attention to the fact that this letter was written in February 1987. Not 1787. This is only a couple of years ago; it was written by a fairly large suburban legal firm to an even larger city one. I'm glad that it began "Dear Sir" and ended "Yours faithfully" because at least I can understand four words in it.

We need then to start thinking about the advantages and the values of plain language. As part of our exercise for the Victorian Law Reform Commission, which looked at whether or not legislation could be written in plain language, we rewrote the Takeovers Code.

It was reputed to be a very complicated piece of legislation. We subjected it to a test of 15 top takeovers experts in the country, and they all found that it was more accurate and easier to read than the original. There were three ambiguities in the original which had not been revealed because of the convoluted language.

We reduced the original from 80 pages down to 50 without leaving out any content and without affecting the accuracy. The people who had prepared the original have now looked at this plain language version very carefully and haven't been able to find a mistake in it.

What's interesting about this exercise is that lawyers who were involved in checking this material stated that it took them half as long to read the plain English version as it did to read the original.

Just think of all the time that would be saved in legal offices if we had documents prepared in a way that could be read easily. And then there are all the savings that happen for the public if legal firms could be more efficient in this way and if people could read the documents them-

selves and save time.

Similar stories come from New Zealand, United States, Sweden and Finland. In Great Britain, the Department of Defence redesigned one of its forms. This was a form used internally - 750,000 of them.

It reduced the amount of time needed to fill in that form by 10 percent. Remember that it was an internal form. Ten per cent of 750,000 forms, you see, becomes a very important saving in money. It reduced the error rate by 15 per cent, the processing time by 10 per cent, so there were triple savings.

Our nations can't afford gobbledegook any more. Plain English has become an economic necessity, and we need always to remember this important point.

There's still a bit of opposition to plain language, but this is often because of mistaken views on the subject. There are rearguard actions because people are confused.

This was written by a judge in the Court of Appeal in Victoria:

> "Official publicity has been demanded for the notion that law-makers and practising lawyers should now strive to speak in so-called 'Plain English' ... To vaunt it as though previous generations have overlooked and neglected it, is to risk the mistake of substituting conceit for zeal. It is another mistake to suppose that clarity of expression can be an end in itself. Plain English alone achieves nothing. To be useful it must run in tandem with clear thought... A feeble or wandering idea will not become strong and precise merely because it is dressed in plain, homely language ..."

Notice the slip there from 'plain' to 'homely', which isn't the same as plain. Let's read on:

> "... it will remain simply a poor idea ... A bright idea, on the other hand, is likely to find its own expression and thereby make itself understood. Statutes, if I may say so, do not commonly contain many naturally bright ideas."

That's most unfair to legislative drafters; they have no control over the ideas. But it seems to me that if statutes don't have many bright ideas - if they have dull ideas - it would be preferable to have them in plain language so that we could see how ridiculous they were. Then maybe we would get better ideas ...

The argument is a false one and, as I say, purely a rearguard action, the writer not wanting to face the change. But happily there are developments. In Australia, one of the top three legal firms is now rewriting all its precedents in plain language. This is going to have a very important impact on the rest of the profession.

Another important legal company in Australia is now advertising that it offers plain language advice. The Commonwealth Government is now preparing to launch an extensive training programme for all public servants.

We've just written a training manual, and next year, all departments are going to have trainers trained and placed in each department to launch an extensive programme. Government and private industry have come to realize the savings, the advantages in plain language to them as well as to the general community.

We should then remember the value that plain language has for us as people. It shows that we're true professionals, that we can use language, that we're on top of our subject. It shows also that we're concerned and sensitive to the needs of others.

It shows, as well, that we really believe in a free society. We really believe in justice for all. And it's on this basis that we should strive towards plain language and collaborate with each other to produce our documents plainly.

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CORPORATISATION/PRIVATISATION - THE NEW ZEALAND EXPERIENCE

There has been an interesting public works experiment in New Zealand in the "corporatisation" of the New Zealand Ministry of Works and Development, as a preliminary step to full privatisation.

During 1988, an Australian public works executive, who had been carrying out research in Europe, UK, Canada and the USA on corporatisation and privatisation of public works departments found to his surprise that the New Zealand was further advanced in this direction than other parts of the world.

Set out below is a brief edited extract of a speech by the Chief Executive Officer of New Zealand Works, Mr Keith Grantham, delivered at an International Public Works Federation Conference in Hawaii in 1989. Those interested in privatisation of public sector construction organisations will find Mr Grantham's description of the New Zealand experience of interest. This extract is included in the Newsletter due to the potential impact of corporatisation and privatisation on methods of procurement and contracting for public sector construction and on competition.

Keith Grantham:

The concept of privatisation had become the international flavour of the month, and in August 1986 [the New Zealand] Government announced that the Ministry of Works and Development would be divided internally into a policy/regulatory arm and a commercial division.

Nine months later, in April 1987, the Government established an Advisory Board to monitor the restructuring - and two months later in June announced that the commercial arm would become a State Owned Enterprise on the 1st April 1988.

This corporatisation in the form of a commercially orientated business wholly owned by the Government is [the Government's] first step in the transition of the Ministry to private ownership.

So, on the 31st March 1988 the Ministry of Works