



ANU COLLEGE OF LAW

COURSE OUTLINE

LEGISLATIVE DRAFTING & TECHNOLOGY LAWS2251

Semester 2, 2009

COURSE INFORMATION

Course Convenor / Lecturers

Name:	Wade Johanson (Convenor)	Name:	Fiona Guy
Room:	N/A	Room:	N/A
eMail address:	wade.johanson@oracle.com	eMail address:	fiona.guy@oracle.com
Consultation Times:	By appointment	Consultation Times:	By appointment

Name:	Nick Miller
Room:	N/A
eMail address:	nick.miller@oracle.com
Consultation Times:	By appointment

Note: All lecturers are based off campus, thus they have neither an office at the ANU nor fixed consulting times. They are contactable via email during business hours, Monday to Friday.

Lectures:

Day:	Wednesday
Time:	2-5pm
Room:	LAWSG17

Note: Classes include both the lecture and tutorial components. There are no additional tutorials for this course.

Course Objectives

The aim of this course is to give students an appreciation of issues involved in administering legislative rules and to teach students ways of preventing these issues during the legislative drafting phase. The course specifically explores how technology can be used throughout the legislative lifecycle.

Students will be introduced to a methodology and technologies which emphasise the importance of precise and structured legal expression and offer many options to analyse and represent the structure of complex legal material.

There are two parts to the course:

1. **Drafting.** The drafting component of this course will give students an awareness of legislative drafting styles and common drafting structures, practice in discerning the meaning of legislation and an understanding of both the importance and ingredients of good drafting technique.
2. **Legislation & Technology.** This part of the course will demonstrate how an increasing number of government agencies are using technology to interpret, analyse, and administer complex law and policy. Students will be guided through creating their own legislative rulebase to demonstrate these principles.

Throughout the course, students will be required to learn and apply new technology to the problems at hand. Students will be guided through this process, but it is helpful for students to

have some experience in Microsoft Word, basic computer literacy and an interest in learning new technology.

Method of Teaching

There will be a weekly three hour interactive session in Law G17. Each session will be a mix of theoretical and practical exercises conducted individually and as a group. The practical exercises are non-assessable and aimed at giving students practice and experience in conducting the tasks required to complete the assessment.

The tutorial component of the course is included in the three hour session.

Assessment

The approved means of assessment for this course will be available on the course website from the commencement of the semester. This means of assessment has been checked by the Undergraduate Studies Committee (USC) to ensure that it complies with the Policy on Assessment in Undergraduate Courses (available in the LLB & JD Handbook and on the College's website). A hard copy of this means of assessment will also be available from the Services Office at the commencement of the semester.

In accordance with the University's Principles for Determination of Systems of Assessment and for Consultation the course coordinator or lecturer will discuss with and explain to students the assessment system in classes during the first two weeks of the semester.

Text and Materials

There is no prescribed text for this unit. Reading materials will be provided.

Preliminary Reading

No preliminary reading is required for this course.

Further Information about the Course

Further information about this course may be gained from the course homepage: go to the College homepage <http://law.anu.edu.au> and follow the links.

Lecture Outline

Week	Date	Lecturer	Topic
Week 1	22 July	Fiona Guy	Overview and Administration. The Evolution of Legislative Drafting in Australia
Week 2	29 July	Fiona Guy	Identifying Structure and Meaning in Australian Legislation
Week 3	5 August	Fiona Guy	Basic Principles for Writing Clear Legislative Rules
Week 4	12 August	Fiona Guy	Identifying and Avoiding Common Errors in Legislative Drafting
Week 5	19 August	Fiona Guy	
Week 6	26 August	Fiona Guy	
Week 7	2 September	Wade Johanson	Administering Legislation: Introduction to Automating Legislation for Decision Support and Validation
Week 8	9 September	Wade Johanson	Creating a Legislative Rulebase: Basic Rules
Week 9	16 September	Wade Johanson	Creating a Legislative Rulebase: Basic Rules (cont'd) / Calculations
Week 10	23 September	Wade Johanson	Creating a Legislative Rulebase: Calculations (cont'd)
<i>2 week break (28 Sept – 9 Oct 2009)</i>			
Week 11	14 October	Nick Miller	Creating a Legislative Rulebase: Testing
Week 12	21 October	Nick Miller	Completion of Legislative Rulebase Projects
Week 13	28 October	Fiona Guy	Re-Cap. Legislative Drafting and Tomorrow's Technology

Academic dishonesty (including plagiarism)

In work that is submitted for assessment, all use of the work of others, whether an actual quotation, a summary or a paraphrase, must be acknowledged. The acknowledgement must identify author and publication, and the particular page or paragraph where relevant. Where web sites are the source, that should be clearly acknowledged. Quotations must be both acknowledged and put either in quotation marks or, for longer passages, indented as a separate paragraph. Words omitted from the passage should be represented by an ellipsis (a series of three periods). Words added should be put in square brackets.

Where students have doubts as to how to deal with or acknowledge source materials in essays and assignments, they should consult their lecturer.

The University has a *Code of Practice for Student Academic Integrity*. The code can be found at: http://policies.anu.edu.au/policies/code_of_practice_for_student_academic_integrity/policy

It provides in section 3 that:

It is the responsibility of each individual student to ensure that:

- they are familiar with the expectations for academic honesty both in general, and in the specific context of particular disciplines or courses
- work submitted for assessment is genuine and original
- appropriate acknowledgement and citation is given to the work of others
- they declare their understanding of and compliance with the principles of academic honesty on appropriate *proformas* and cover sheets as required by the academic area, or by a statement prefacing or attached to a thesis

- they do not knowingly assist other students in academically dishonest practice.

The Code defines "academic integrity" in section 2 as "the principle that students' work is genuine and original, completed only with the assistance allowed according to the rules, policies and guidelines of the University. In particular, the words, ideas, scholarship and intellectual property of others used in the work must be appropriately acknowledged."

Plagiarism is one type of practice covered by the Code, and is defined in the Code as "copying, paraphrasing or summarising, without appropriate acknowledgement, the words, ideas, scholarship and intellectual property of another person. This remains plagiarism whether or not it is with the knowledge or consent of that other person. Plagiarism has also taken place when direct use of others' words is not indicated, for example by inverted commas or indentation, in addition to appropriate citation of the source."

Other practices covered by the Code are "collusion, the fabrication or deliberate misrepresentation of data, and failure to adhere to the rules regarding examinations in such a way as to gain unfair academic advantage."

The Code also applies to recycling, that is, "the submission for assessment of work which, wholly or in large part, has been previously presented by the same student for another assessment, either at the Australian National University or elsewhere. In some cases, lecturers will specifically allow this practice. If no specific provision to the contrary is made, submission of work for assessment a second or subsequent time constitutes a breach of this Code."

The Code describes the process for dealing with these practices. This can lead to a finding that a student has engaged in academic misconduct which can, in turn, lead to action under the University's *Discipline Rules* (available on the web at <http://www.anu.edu.au/cabs/rules/DisciplineRules.pdf>).

A finding of academic misconduct may also jeopardise a student's admission to legal practice.

Students may be asked to submit work electronically so that it can be checked for plagiarism. Students should ensure that they keep an electronic copy of their work which can be readily accessed.

Information about the College's Rules and Policies

The LLB & JD Handbook is available in hard copy from the Law School Office or online at <http://law.anu.edu.au> and contains College policies relevant to students. The ANU Handbook for students can be found at <http://students.anu.edu.au/>

Library Timetable

Information about the law library can be found at <http://anulib.anu.edu.au/subjects/law/collection/building.html>

Opening hours for the Law Library can be accessed at <http://anulib.anu.edu.au/about/open/>

Contact Details to Student Support Services

Academic and Personal Support

Students experiencing academic or personal problems are welcome to discuss these with any member of the academic staff, the Sub Dean (make an appointment at the Law School Office), or to utilise the ANU's student support services links to which can be found at <http://students.anu.edu.au/> (including the Academic Skills and Learning Centre at <http://www.anu.edu.au/academicskills/>, the Counselling Centre at <http://www.anu.edu.au/counsel/> and the Disability Services Unit at <http://www.anu.edu.au/disabilities/>).

WEEK 1 – FIONA GUY - OVERVIEW AND ADMINISTRATION AND THE EVOLUTION OF LEGISLATIVE DRAFTING IN AUSTRALIA

Outline of Class

This week will provide an overview of the course material and explore general approaches to drafting and administering the law (including automation), the administrative costs of poorly formulated legislation and policy and how legislative drafting has evolved to date.

Administrative details will be confirmed, including means of assessment.

Recommended Reading

- Review the websites of Australia's legislative drafting offices;
 - Office of Parliamentary Counsel (Cth):
<http://www.opc.gov.au/>
 - Office of Legislative Drafting and Publishing (Cth):
http://www.ag.gov.au/www/agd/agd.nsf/Page/Legislative_drafting
 - Plus the various drafting offices in the States and Territories

Further Reading

- Tanner, George QC "Drafting the law – A boring job? The role of the Parliamentary Counsel Office", Wellington District Law Society Seminar Parliament Buildings, Legislation Advisory Committee, Wellington, 3 April 2006. Available from the NZ Ministry of Justice website:
<http://justice.org.nz/lac/pubs/2006/drafting-the-law.html>
- Quiggin, Peter "Notes on the information technology system (IT) used in the Australian Commonwealth Office of Parliamentary Counsel", The Loophole, March 2005. Available from OPC's website:
<http://www.opc.gov.au/calc/papers.htm>
- Macpherson, Don "Instant Bills: The impact of information technology (IT) on legislative drafting in Canada", paper presented in Montego Bay on 13 July 2003 at the 2nd Annual Caribbean Legislative Drafting Forum, published in The Loophole, March 2005. Available from OPC's website:
<http://www.opc.gov.au/calc/papers.htm>

Issues for Consideration

- Who drafts Australian legislation? Does it vary depending on the type of legislation or jurisdiction?
- What technology exists to support legislative drafters?
- What technology is used to draft Australian legislation?

WEEK 2 - FIONA GUY - IDENTIFYING STRUCTURE AND MEANING IN AUSTRALIAN LEGISLATION

Outline of Lecture

This class will provide a basic overview of legislative interpretation including identifying and understanding the various components, structures and patterns in Australian law. Students will have the opportunity to apply the materials in a series of in-class exercises.

Recommended Reading

- Materials will be made available on the course homepage (<http://law.anu.edu.au>) prior to this class.
- Students should refresh their understanding of the Acts Interpretation Act 1901 available from various websites, including ComLaw:
<http://www.comlaw.gov.au>

Further Reading

- The Office of Parliamentary Counsel's Drafting Manual provides a good introduction to the structure and language used in Australian legislation and is available from OPC's website:
http://www.opc.gov.au/about/draft_manuals.htm

Issues for Consideration

- What structures form part of a piece of legislation?
- What is the minimum information an Act can contain?
- Who decides what structures should be used in legislation?
- What does the *Acts Interpretation Act 1901* do, and which instruments does it apply to?

WEEK 3 - FIONA GUY - BASIC PRINCIPLES FOR WRITING CLEAR LEGISLATIVE RULES

Outline of Lecture

Students will be introduced to principles for better rule authoring. The aim of this section of the course is to give students understanding of, and practical experience in, structuring language (particularly related to legislation and policy) in a way that avoids many of the common errors discussed above.

Recommended Reading

- Materials will be made available on the course homepage (<http://law.anu.edu.au>) prior to this class.

Further Reading

- The Office of Parliamentary Counsel's Plain English Manual provides an overview of the concepts employed by Commonwealth drafters. Available from OPC's website:
http://www.opc.gov.au/about/draft_manuals.htm
- Cambell, Lisbeth "Legal Drafting Styles: Fuzzy or Fussy?", Murdoch University Electronic Journal of Law, Volume 3, Number 2 (July 1996). Available from:
<http://www.murdoch.edu.au/elaw/issues/v3n2/campbell.html>
- Pinder, Greg, "The coherent principles approach to tax law design", Economic Roundup: Autumn 2005. Available from the Australian Treasury's website:
http://www.treasury.gov.au/documents/987/PDF/07_coherent_principles.pdf
- Turnbull, Ian M L "Clear Legislative Drafting: New Approaches In Australia", Statute Law Review, Volume 11, No. 3, Winter 1990. Available from OPC's website:
http://www.opc.gov.au/plain/pdf/clear_legislative_drafting.pdf

Issues for Consideration

- What structures are commonly found in legislation?
- In what order is information addressed in legislation?
- What makes some legislation difficult to understand?

WEEKS 4 TO 6 - FIONA GUY - IDENTIFYING AND AVOIDING COMMON ERRORS IN LEGISLATIVE DRAFTING

Outline of Lecture

These classes will discuss and apply techniques for identifying common errors in legislative drafting using practical exercises supplied in class. A number of examples and case studies will be used.

The classes will also apply some of the tools available to support the analysis and understanding of legislation.

Recommended Reading

- Materials will be made available on the course homepage (<http://law.anu.edu.au>) prior to this class.

Further Reading

- Berry, Duncan "Techniques for evaluating draft legislation", The Loophole, March 1997. Available from OPC's website:
http://www.opc.gov.au/calc/docs/Article_Berry_TechniquesEvaluatingDrafts_1996.pdf
- Legislative errors that have made the news or other public forums will be available on the course homepage (<http://law.anu.edu.au>) prior to this class.

Issues for Consideration

- How do we as individuals experience legislation in Australia?
- What is the effect of legislative error?
- How can technology assist in the identification and correction of drafting errors?

WEEK 7 – WADE JOHANSON - ADMINISTERING LEGISLATION: INTRODUCTION TO AUTOMATING LEGISLATION FOR DECISION SUPPORT AND VALIDATION

Outline of Class

This class will discuss the application of technology such as expert or decision support systems to support the administration of legislation. This technology will be compared with more traditional approaches to delivering and administering legislation.

The class will also explore how administering technology in this way may influence the drafting and checking processes covered in weeks 2 to 6, drawing on some real examples and case studies.

Recommended Reading

- Materials will be made available on the course homepage (<http://law.anu.edu.au>) prior to this class.
Victorian Law Reform Commission Report "Information Technology & The Law", May 1999, Expert Systems pages 231 to 247.

Further Reading

- There are a number of sources online explaining the characteristics of an expert system and discussing the role of expert systems in the legal domain.
- Additional articles and case studies may be made available on the course homepage (<http://law.anu.edu.au>).

Issues for Consideration

- How can decision processes in government be automated?

WEEK 8 - WADE JOHANSON - CREATING A LEGISLATIVE RULEBASE: BASIC RULES

Outline of Class

This class will be the first in a series of ongoing training in rule representation using Oracle's natural language-based rule format. Students will learn how to execute the basic legislative rules and begin to test these rules for errors and completeness.

Recommended Reading

- Software documentation (available on G17 computers).

Further Reading

- None this week.

Issues for Consideration

- How does automating rules give you better understanding of their application?

WEEK 9 - WADE JOHANSON - CREATING A LEGISLATIVE RULEBASE: BASIC RULES (CONT'D) AND CALCULATIONS

Outline of Class

This class will extend the knowledge gained in the previous week of practical learning, moving on to the representation of mathematical calculations in Oracle's natural language-based rule format.

Recommended Reading

- Software documentation (available on G17 computers).

Further Reading

- None this week.

Issues for Consideration

- How can natural language rules be used to improve legislative articulation of calculation processes?

WEEK 10 - WADE JOHANSON - CREATING A LEGISLATIVE RULEBASE: CALCULATIONS

Outline of Class

This class will extend the knowledge gained in the previous week of practical learning.

Recommended Reading

Software documentation (available on G17 computers).

Further Reading

- None this week.

Issues for Consideration

- How can natural language rules be used to improve legislative articulation of calculation processes?

WEEK 11 - NICK MILLER - CREATING A LEGISLATIVE RULEBASE: TESTING

Outline of Class

This class will look at how real life scenarios can be used to understand and validate the legislation. Time will be available to recap material covered in previous weeks.

Recommended Reading

- Software documentation (available on G17 computers).

Further Reading

- None this week.

Issues for Consideration

- How can simulating the outcome of legislation assist the drafting process?

WEEK 12 - NICK MILLER - COMPLETION OF LEGISLATIVE RULEBASE PROJECTS

Outline of Class

Time will be available to recap material covered in previous weeks and to assist students completing their legislative rulebase projects.

Recommended Reading

- Software documentation (available on G17 computers).

Further Reading

- None this week.

Issues for Consideration

- Which areas of legislation are most suited to automation?

WEEK 13 - FIONA GUY - RE-CAP, LEGISLATIVE DRAFTING AND TOMORROW'S TECHNOLOGY

Outline of Class

This week will provide an opportunity to recap the previous weeks and to discuss how technology may influence legislative drafting in future.

Recommended Reading

- Materials may be made available on the course homepage (<http://law.anu.edu.au>) prior to this class.

Further Reading

- Refer to reading identified in weeks 1 and 7.

Issues for Consideration

- What role could technology play in the drafting and administration of legislation in future?