

Clear as mud – how gobbledegook caused the GFC

Sam McKeith

George Orwell said it was normal to come across long passages in literary criticism almost completely lacking in meaning. He said nothing about financial contracts, dossiers, reports, statements and agreements.

Unclear, wishy-washy, ambiguous or just plain nonsense. Whatever you call them, obtusely worded financial products and services with names like “securitised debt collateral”, “net profit review deficiencies” and “floating note collateralised debt obligations” are now being blamed for global economic turmoil.

Plain English Foundation executive director Neil James, who headed the Plain Language

Association International conference in Sydney this month, says loan documents between banks are often so confounding even financial experts cannot understand them.

“When Opes Prime went under, Beconwood Securities, a stockbroking firm, attempted a court action on the basis that the financial documents it signed were so complex they didn’t really understand the shares were actually owned by Opes Prime,” James says.

“You stop and you think, if a sophisticated investor like Beconwood didn’t understand the documents at the level of something basic like who owned the shares they were buying, then you start to understand how the whole financial system could become uncertain.”

Mortgages laden with legalese add to the confusion.

“It all stems from bad mortgage documentation,” says Peter Butt, co-founder of the Centre for Plain Legal Language. “No one understands what they’re getting into when they sign these mortgages, not only house mortgages, but when they start to get rolled up and collateralised the collateral documents are equally inscrutable.”

Sweden, Mexico, the Netherlands and New Zealand have mandated plain language in all credit and financial agreements, and in the United States laws before Congress will make plain English compulsory in government communications.

Bill Lutz, professor of language and literature at Rutgers University, says clearer information is essential

in the wake of the upheaval in US financial markets. “Disclosure isn’t disclosure if it doesn’t communicate, and while the current system of disclosure is ‘top down’ the SEC [US Securities and Exchange Commission] will move to a ‘bottom up’ disclosure system.

“Companies will provide the data but then everybody will be able to take that data and do what they want with the information,” he says.

In Australia, the federal government has no plans to introduce measures to clean up written expression.

The Plain English Foundation’s James is not surprised. “We haven’t seen much concrete from the federal government, but then we have a prime minister who tends to speak anything but plainly.”

