

# Legal Writing Guide

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## Overview:

There are a number of basic rules about legal writing. They might not be very different from non-legal writing, but always remember that accurate and clear communication is essential for a lawyer.

## The importance of grammar:

Use proper grammar. Failure to do so:

- Will make you appear unprofessional and sloppy
- May change or obscure the meaning of what you are trying to communicate
- Will irritate at least some of your readers – and that won't help you in persuading them

Proper grammar includes accurate spelling – especially when it comes to using words that sound similar, but have different meanings.

Learn the legal “language” in the sense of the technical or specialist legal names for things. Use these names appropriately to give an accurate and clear expression to the matter being discussed.

- Legal language includes the proper use of legal terms, such as the correct name of a court, and the correct usage of words like “equity”, “negligence”, “foreseeability”, or “action”. Legal language doesn't include words or expression such as “aforementioned” or lines of Latin phrases, which can often amount to nothing more than jargon.

Students in the Law School should ensure all their writing complies with the approved Style Guide, which is set out in the *Australian Guide to Legal Citation* (Melbourne University Law Review Association, 3<sup>rd</sup> ed, 2010). This publication is available in the law library, can be downloaded in PDF format directly from <http://law.unimelb.edu.au/mulr#aglc>, or can be ordered in hard copy from the same website. Copies are also available to use here in the Writing Centre.

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## Acknowledging Sources:

- One of the primary rules of referencing is that all sources must be acknowledged. It is not enough to do this in a bibliography/reference list. You must be familiar with academic conventions about referencing, as well as the University rules about plagiarism. There are serious consequences for plagiarism, both within and outside university life.
- Acknowledging sources has another dimension in the law, as legal argument often requires reliance on other legal authority through the doctrine of precedent. Authorities need to be cited, and properly. This will mean you need to use references, footnotes, and bibliographies for your written work.

## Basic Grammar Rules:

In addition to specific legal conventions of writing which you will learn from the Style Guide and as you proceed with your studies, there are basic grammatical issues of which you must take care. The use of English at an appropriate academic standard is expected. The library contains a number of publications which may be of assistance. *The Complete Plain Words* is an excellent reference book for questions of English usage, and the classic work is *Fowler's Modern English Usage*.

Conversational slang should not be used in formal written work, nor should abbreviations such as "et al" or "etc". Latin phrases should be in italics (*obiter dicta*) if you use them, which should be rare and only where the Latin phrase is a "term of art", such as *ratio decidendi* or *obiter dictum*.

Proper grammatical and linguistic constraints should be noted. Be careful with tenses and the use of apostrophes and punctuation (commas and full stops): if used inappropriately, the meaning of your sentence can be alarmingly changed! (Think about the change of meaning in the use of the apostrophe in the following example of a sign in a block of flats: *tenants refuse bins* vs. *tenants' refuse bins*. And of the comma in the following: *the panda eats shoots and leaves* vs. *the panda eats, shoots and leaves*.)

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## Apostrophes:

Note the use of apostrophes especially. A plural (two *dogs* ran home) does not need an apostrophe. A single possessive (*the dog's breakfast*, where there is only one dog) has an apostrophe before the "s" denoting the possessive. A plural possessive (*the dogs' breakfast*, where there is more than one dog), has the apostrophe after the "s" denoting the possessive. An apostrophe is also needed in more casual writing to connect two words: for example, *He doesn't need a paper*. (Here, the apostrophe shows that the words "does" and "not" have been conjoined). You should not use this kind of casual writing in formal legal writing, unless in a quoted piece.

Confusion sometimes arises with the use of "its". The need for an apostrophe depends on what the words means. The apostrophe is needed for the abbreviation of "it is" (*it's a lovely day*). However, if you are using the possessive *its* (belonging to it), there is no apostrophe (*the boat lost its sail*).

## Pronouns:

The use of pronouns is also one to be careful with—eg, "the judge in his / her reasons said ..." (the pronoun *his / her* is singular because there is only one judge); "the court in *its* reasons..." —the court is also a singular entity. So are corporations, (eg. Telstra charged in *its* account, not, "in *their* account); governments ("the government in *its* legislation" – not "in *their* legislation"), and other similar bodies.

Make sure you proofread your work before submitting it: your spell check alone will not pick up misuse of phonetically similar words (*precedent* and *precedence*, or *there* and *their*, for example) any of which can drastically change or conceal your meaning.

## Abbreviations:

Note the following general rules about using abbreviations:

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- A full stop concludes the sentence, and should not be used for any other purpose. Abbreviated titles such as Mr, Ms, and Dr, and abbreviations of country names (UK, USA) do not need full stops.
- Acknowledging sources has another dimension in the law, as legal argument often requires reliance on other legal authority through the doctrine of precedent. Authorities need to be cited, and properly. This will mean you need to use references, footnotes, and bibliographies for your written work.
- The abbreviation of the jurisdiction is used however when identifying and citing legislation: for examples, *The Acts of Interpretation Act 1901 (Cth)*.

Legal writing conventions include the use of abbreviations in some circumstances:

When referring to judicial officers, the appropriate title should be included. The legal convention is to refer to judges by an abbreviation of their judicial title behind the name: Kourakis CJ (for Chief Justice), Hinton J (for Justice). If you are referring to the judgment of Bell J, you should not use a phrase like “Bell said”, which does not contain the reference to her position (the appropriate reference would be “Bell J”). The same applies to the Chief Justice, who is Kiefel CJ. If you are referring to the reasons given by Kiefel CJ and Bell J, you cannot demote the Chief Justice by referring to them collectively as Kiefel and Bell JJ, but must refer to them as “Kiefel CJ and Bell J”.

- You will need to learn the appropriate abbreviations of other titles as you come across them (eg, Lord Denning MR, for Master of Rolls).
- It is preferable to use gender-neutral language. However, if you are considering using the pronouns “she” or “he”, or Her or His Honour, you are expected to know the judge’s gender.

## Legal terminology:

You must learn and use the proper legal terms relevant to your work: to describe judges and parties properly (as plaintiffs, defendants, appellants, respondents); a prosecution as opposed to an action, civil as opposed to criminal, and what the different courts are called. The document containing a judge’s reasons is known as a judgment, and should not be written as judgement.

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You do need to learn, recognise and use proper legal terms. However, you also need to be able to distinguish between those that are proper legal terms (like what parties, courts and judges are called and words like “tort” and “action”, and other legal expressions), and words and expressions that are just fillers and over-elaborate language that does not add anything to either the meaning or clarity or what you have written. Verbose and complicated expression will not assist in making your argument or example clear or persuasive. It is centrally important for lawyers to communicate both accurately (so the use of the appropriate legal term is needed), and with clarity, so the person receiving the information can understand it.

## The Power of Language:

The cultural and social power of language is another issue, but one also important to lawyers. The use of obfuscating and impenetrable language has been a weapon often used to make access to the law difficult and to exclude or at least marginalise non lawyers, including, of course, clients. Setting up a restrictive code of language is only open to interpretation by some privileged group. “Law” has no useful function unless the community can understand it. Sexist and racist language is used in and for exactly the same reasons, to marginalise other groups, and to exclude members of those groups. Lawyers need to think about this broader issue of language for at least two reasons: access to justice, and accuracy and clarity of argument or discussion.

There are also conventions for the presentation of written work submitted for assessment in the Adelaide Law School:

- Times New Roman, 12 font
- Double or 1.5 spacing
- Proper margins
- Breaks between paragraphs
- Footnotes at the bottom of the page, not endnotes

See also Chapters 19 and 20, *Laying Down the Law* (LexisNexis, 9<sup>th</sup> ed, 2014).

Kath McEvoy, updated by Cornelia Koch 2017.