

A field guide to the

FLOWERS OF LEGAL WRITING





Flowers v Legal Writing (An unusual case)

This won't be like any field guide you've read before.

Unless, that is, you've happened upon A Field Guide to the Birds of Plain English (the original Goldfinch tomfoolery and a general introduction to the principles of clear writing).

You might be wondering what it's all about. Are we really going to draw some kind of link between flowers and legal writing?

Yes. Yes, we are.

There's a tonne of writing advice swirling around in the ether. But it can be hard to grab hold of and put into practice.

This guide will scatter a few seeds in the hope that they take root and blossom into new ways of thinking about – and writing – legal content.

A key to our symbols

- W** Wording
- S** Structure
- D** Design

A quick bit of fine print

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The flowers of legal writing

Here's what you'll find in our guide – some old favourites and some less obvious friends:



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We work on the unceded lands of the Darkinjung and Guringai peoples. We pay our deep respects to their Elders, and we pay the rent.

We'll start with (arguably) the world's most loved flowers:

Roses

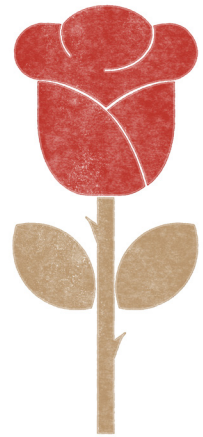
Genus: *Rosa*

Shakespeare's Juliet once famously asked, "What's in a name? That which we call a rose by any other name would smell as sweet."

With this observation, a lovestruck heroine provides our first link between flowers and the law.

Tradition has dictated that legal documents be drafted in a highly complex, formal and wordy style – with an abundance of "hereunders" and "including but not limited to's". But Juliet reminds us that legal concepts – our roses – will carry the same meaning even if we express them in simpler language.

It's a thorny issue for some, because precision is vital in the legal realm. But is precision truly served when documents are bewildering to all but a learned few? And who's to say that simple wording cannot be precise?



Family

Plain English wording



Key feature

Sweet-scented simplicity

Distribution

Adorning text that has a point to prove

Common pests

Traditional legalese and "purple prose" that is overly ornate

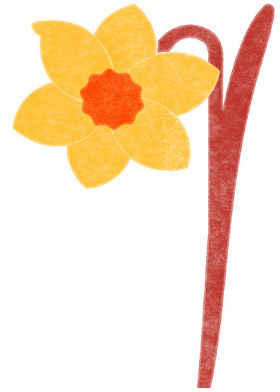
What can we learn from roses?

To craft sentences that are simple and precise, remembering that meaning is paramount.

How do we do that?

- Where a complex word or phrase has a version that will be more familiar to readers, use it.
- Move away from the "kitchen sink" approach to drafting. Don't graft clause after clause after clause together in the same sentence.
- Split any sentence that is more than 35 words.
- Prune doublets and triplets that are pure synonyms: "null, void and of no effect" (void).

Next to some yearly visitors immortalised by everyone from William Wordsworth to Alicia Keys:



Daffodils

Genus: *Narcissus*

Daffodils are the messengers of Spring. They rise early from the frost-nipped ground and announce the imminent arrival of warm, heady days.

For those of us with a Romantic disposition, they also form a “jocund company” that brings great pleasure.

We can draw from all these elements when it comes to structuring legal texts. No matter the document, readers need a clear message and notice of what is to come. Ideally, they also need to know that their reading experience will bring, if not pleasure, then at least no real pain.

The quickest way to inflict pain on everyday readers is to open with a baffling heading: a contract with RECITALS, a will with a REVOCATION or an advice letter with CONTEXT (namely, all legal amendments since the dawn of time).

Family

Plain English structure



Key feature

Memorable messaging

Distribution

Clumped in the opening pages but appearing throughout

Common pests

Lacklustre summaries, headings like “Background”

What can we learn from daffodils?

To welcome readers into our writing with a clear message.

How do we do that?

- Prioritise your readers instead of yourself (unlike the original Narcissus!)
- Summarise what lies ahead, even if it’s only a (hyperlinked) list of sections. Don’t just leap in.
- Build focused content around a main message.
- Avoid headings and other structural devices that are based in tradition but unlikely to meet the needs of readers today.

Let's move from the egotistical sublime to something a little more feline:

Catnip

Genus: Nepeta

Catnip is so called because of the reactions it causes in many cats. The interesting thing is that cats will react differently depending on whether they breathe it in or eat it. Catnip can be either a stimulant or a sedative.

Here, we turn our minds to visual design because the way we lay out legal content can inspire similarly divergent reactions. And snoozing readers is definitely not the outcome we're after.

One way to keep readers engaged is to limit how much we squeeze onto each page. A very dense layout, with long paragraphs and minimal free space, will create a wall of words – and the potential for tired, strained eyes.

It's best to opt instead for generous spacing that lets the text breathe. And we should embrace colour and other elements that allow our words to bloom.



Family

Plain English design



Key feature

Sensory stimulation

Distribution

Providing a herbaceous border to the content

Common pests

Uninterrupted tracts of text, squashed margins, fixed digital layouts

What can we learn from catnip?

To stimulate the eyes with a fresh, clean and spacious layout.

How do we do that?

- Keep paragraphs to 4 or 5 lines and break up long sections with regular headings.
- Tone down the concentration of black type with some well-placed, accessible colour.
- Make sure the layout is responsive so it reflows across platforms (if relevant).
- Don't be tricked into thinking that legal documents must be sombre and severe.

Now – be warned – we’re going to get a little silly and engage in some wilful mispronunciation:

Milk thistles

Genus: *Silybum*

Milk thistles join our little posy of flowers not because of the characteristics of the plants themselves, but because of the Latin name given to their genus: *silybum*.

This name might elicit a chuckle from those of us with a slightly childish sense of humour. But it’s here to prompt us to think about the prominence of Latin in legal writing.

Latin phrases have featured in English contracts, pleadings and judgments for centuries. Some, such as “*bona fide*” (in good faith), pop up in daily life too. But others – “*mutatis mutandis*” (with the necessary changes) or “*lex scripta*” (written law) – would leave many readers scratching their heads.

So we have to consider each Latin phrase during drafting. Will it bring legal precision or will it make us sound a touch antiquated?



Family

Plain English wording



Key feature

Taut translation

Distribution

Sprouting at the first sign of a Latinate flourish

Common pests

Too many “*quid pro quos*” and “*in pari delictos*”, any concepts left unexplained

What can we learn from milk thistles?

To prefer English phrases to Latin ones, so we don’t sound like (ahem) *silybums*.

How do we do that?

- Don’t presume all readers are Latin scholars.
- Translate functional phrases like “*inter alia*” (among other things) for a quick win.
- Take the time to explain more complex doctrine-driven phrases, such as “*res ipsa loquitur*” (literally, the thing speaks for itself).
- Consult resources from Bryan A Garner and Peter Butt for recommended alternatives.

And on to the local beauties known rather unedifyingly as either toothbrushes or spiders:

Grevilleas

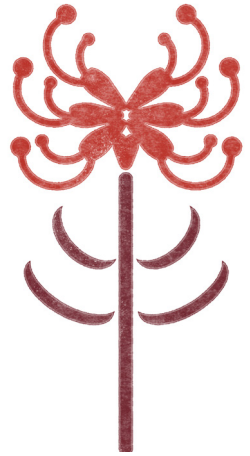
Genus: *Grevillea*

Grevilleas have fairly small flowers, but they make a bold statement by naturally grouping themselves in bright clusters or inflorescences.

So we find another clue for structuring legal documents – particularly contracts or agreements, which tend to consist of many, many small parts. These parts are the clauses capturing each party’s responsibilities.

If we took our lead from the grevillea, the clauses would be grouped in related clusters based on themes like topic, process or reader.

But too often they are just laid end to end and given a number (perhaps a heading, too). And the reader must wade through section after section, while pressure on their short-term or active memory grows.



Family

Plain English structure



Key feature

Close-knit clusters

Distribution

Planted at regular intervals for maximum cover

Common pests

Elongated hierarchies, tiny top-level sections, over-numbering

What can we learn from grevilleas?

To build a bright, bold structure where related clauses are clustered together.

How do we do that?

- Map out 7 or 8 top-level headings that all the content can fit beneath.
- Structure by topic (Dimensions; Fixtures), process (Starting work; Ending employment) or reader (Our obligations; Your obligations).
- Group leftovers like force majeure (the “Act of God” clause) and joint and several liability in a general section with a sensible heading.

We'll end with some flowers that come in an even larger variety of shapes – from pompoms to anemones:

Marigolds

Genus: *Tagetes*

Let's focus on the marigolds shaped like tufty little pompoms. Their blooms are compact and cohesive but display very distinct ruffled petals.

These cheerful flower heads provide our final link to legal writing – a neat set of principles for typography in a genre famous for its dastardly “fine print”.

Readers will benefit if legal text looks cohesive, with 1 or 2 smart, consistent typefaces. But each letter should be distinct and easy to make out. This means using a legible font size and keeping bold to a minimum. Ligatures (joined-up letters), italics and all caps are best avoided altogether.

And we must remember to make the text equally distinct for assistive technologies – for example, by tagging styles and not hiding text in images.



Family

Plain English design



Key feature

Deliberate definition

Distribution

Flourishing in easy-to-read paragraphs

Common pests

Closed-aperture typefaces, all caps, italics, other forms of emphasis

What can we learn from marigolds?

To give text visual definition, moving away from the fine print nobody can read.

How do we do that?

- Consider typefaces beyond Times New Roman, but keep your typography simple.
- Avoid using typography for emphasis. For example, never style a WHOLE CLAUSE LIKE THIS.
- Minimise the use of Initial Capitals, such as on defined terms in a contract.
- Format all text for accessibility.

A legal writing **field checklist**



Craft sentences that are simple and precise, remembering that meaning is paramount.



Welcome readers into your writing with a clear message.



Stimulate the eyes with a fresh, clean and spacious layout.



Prefer English phrases to Latin ones, so you don't sound like (ahem) a silybum.



Build a bright, bold structure where related clauses are clustered together.



Give text visual definition, moving away from the fine print nobody can read.





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