Judgment writing guide.

This guide provides suggestions on writing reasons for judgment. And they are just that, suggestions. Judgment writing is not a topic on which hard and fast rules can be laid down for unwavering application. There will inevitably be times in which what follows will not apply to your writing and it will be perfectly acceptable to write in the way best suited to developing reasons in the circumstances of the specific case.

The essentials.

Experts tend to agree that the following principles are applicable to all good judgment writing.

1. Structure is vital. Think about what you *need* to say and order it logically: plan your beginning, middle, and end.
2. Your first page is centre stage, use it to showcase what's coming.
3. Use plain English. Avoid legal jargon and acronyms, write simply and clearly.
4. Be brief, avoid excessive and needless detail; keep your narrative clean and focussed.
5. Write for the parties, not to be clever or avoid scrutiny.
6. State the law clearly and affirmatively.
7. Provide reasons.
8. Good writing is rewriting.
9. Be prepared.

1. Structure is vital. Think about what you *need* to say and order it logically: plan your beginning, middle, and end.[1]

Reasons for judgment are the story of the case and as with a well-written play or novel, well-structured reasons for judgment require a beginning, middle, and end. This approach helps ensure the issues are clearly stated, the relevant facts and law are analysed, and that the conclusion reveals your reasoning. The reasons should flow logically from beginning to end.[2] *Memento* is a great film but its non-linear structure should generally not be imitated in reasons for judgment.

One classic structure is to state the:

- **F**acts
- **L**aw (or rule)
- **A**pplication (of the law to the facts, a.k.a., the analysis), and
- **C**onclusion.[3]

Another classic formulation is to state the:

- Issue, with facts intertwined
- Rule (of law)
- Application (of law to the facts, a.k.a., the analysis), and
- Conclusion.

[1] See, eg, Dr James C Raymond, 'The Architecture of Argument', (2004) 7 *The Judicial Review: Journal of the Judicial Commission of New South Wales* 39 ('Architecture of Argument'); Bryan Garner, *Legal Writing in Plain English: A Text with Exercises*, (University of Chicago Press, 2nd ed, 2013) ss 1, 3, 21. ('Legal').
[2] Justice A S Bell, 'Delivering Reasons in the Tribunal Context' (Speech, NCAT Members Training Day, Sydney, 21 October 2019) [31] ('Delivering Reasons'), quoting Justice Michelle Gordon, 'Applying Reasons to Reasons – Start, Middle and the End' (Speech, Australian Government Solicitor Administrative Law Forum, 2016) 6. ('Gordon').
[3] See Justice Roslyn Atkinson, 'Judgment Writing' (Speech, AIJA Conference, Brisbane, 13 September 2002) 3–5. ('Atkinson').

These basic approaches, modified when circumstances require, can help ensure that a writer orders their thoughts to best reach a just and logical conclusion.

Some tips for each section follow.

Facts.

Facts are usually stated in three parts of reasons for judgment: in a high-level overview, as a general narrative early in the reasons to establish chronology and context, or when deciding issues of fact or making determinations as to credibility.

But regardless of where they appear, only necessary facts should be included in the reasons.[4] Necessary facts are those that are relevant to the issues to be decided or that are required to provide context. One short rule is that if nothing turns upon a fact, do not include it. Not every piece of evidence or submission made needs to be included.[5]

Factual findings as to a witness's credibility are an important part of a judgment. These findings can either be set out early when credit is integral to major areas of dispute, or when it arises if credit is relevant to some facts but not others.

Complex facts can be difficult to handle concisely, but again only necessary facts should be included.

For more on stating the facts see section 4 of this guide.

Issue/Law/Rule.

The issues – there is usually more than one – may be questions of fact, questions of law, or both. The issues, what the litigants are arguing about, identify what needs to be said in the reasons for judgment.[6]

Big issues, like whether one person owes another a duty of care or if a defendant is guilty of an offence, generally turn on constituent issues, such as whether an existing relationship gave rise to a duty or whether all of the elements of the offence have been proved. Again, the points of dispute between the parties, whether in a civil or criminal proceeding, are generally the issues. These points of contention can then be productively used as headings or sub-headings to guide the reader through the analysis and to the conclusion. Headings also help the writer organise their thoughts and deal with the evidence logically and thoroughly.[7]

Sometimes issues are independent and can be addressed in any order, other times they are interdependent and certain of them – threshold issues – have to be resolved first.[8]

Once the issues have been identified they should (where possible) be stated in the form of a simple question. This is because questions have energy, they require the reader to engage in order to find the answer, and they tend to be clearer and more understandable than other forms. Clear questions will both frame the judgment and lead naturally to a statement of the law that is necessary to their determination.

The subsequent statement of the law should also be simple and declarative. It should synthesise or paraphrase the controlling authorities into a concrete statement. There may be times when legislation or cases should be

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[4] Bell [31]; Gordon 5.
[5] Gordon 5. See also Edward Berry, *Writing Reasons: A Handbook for Judges*, (LexisNexis Canada, 5th ed, 2020) 33. ('Berry').
[6] Architecture of Argument 43.
[7] Magistrate Teresa Anderson in Ginger Briggs (ed), *Judicial Decisions: Crafting Clear Reasons* (National Judicial College of Australia 2008) 6 ('Anderson'); Berry 31–32; Magistrate Michael Baumann in Ginger Briggs (ed), *Judicial Decisions: Crafting Clear Reasons* (National Judicial College of Australia 2008) 14–15 ('Baumann'); Justice David Bleby in Ginger Briggs (ed), *Judicial Decisions: Crafting Clear Reasons* (National Judicial College of Australia 2008) 16 ('Bleby'); Justice Alan Blow OAM in Ginger Briggs (ed), *Judicial Decisions: Crafting Clear Reasons* (National Judicial College of Australia 2008) 23 ('Blow'); Garner s 27; Gordon 6; Justice Catherine Holmes in Ginger Briggs (ed), *Judicial Decisions: Crafting Clear Reasons* (National Judicial College of Australia 2008) 54 ('Holmes'); Chief Justice Wayne Martin in Ginger Briggs (ed), *Judicial Decisions: Crafting Clear Reasons* (National Judicial College of Australia 2008) 71 ('Martin'); Architecture of Argument 47–48.
[8] Architecture of Argument 46–47.

quoted directly, such as when the court is being asked to make a decision about how they operate. But in most instances, the best way to show an understanding of the law (or an argument) is to summarise it in the writer's own words. As Justice Hayne has said, 'Can you make the point in your own words? If not, would a shorter quotation make the same point?'[9]

A judgment writer should trust their own ability to do this and should not routinely cut and paste large extracts of legislative text, paragraphs of judgments, or the parties' submissions.[10] This just tends to disengage the reader and lengthen a judgment without necessarily demonstrating understanding. However, the use of *short* quotations within a sentence can be very effective by combining the authority of the source material with the clarity of the writer's summary and voice.[11]

If a simple statement of the law is not possible, then state this clearly and identify, for example, why contradictory streams of authority make it impossible to provide a concrete statement.

Application.

Clearly applying the law to the facts is important because it allows readers to see that the decision has been objectively reached.

Professor Jim Raymond recommends a LOPP/FLOPP method to analyse (i.e., to apply the law to the facts) each issue in the case.[12] The LOPP is the Losing Party's Position, and the FLOPP is the Flaw in Losing Party's Position. Professor Raymond suggests an analysis might look like this:

- LOPP: Respondent contends that he had not been informed of the penalty clause in the contract.
- FLOPP: The evidence shows that both the respondent and his attorney received the contract thirty days before signing it.
- CONCLUSION: Therefore respondent's contention that he was unaware of the penalty clause has no merit.

He considers that this pattern will help a judgment writer think clearly about how they apply the law to the facts.[13]

Justice Max Barrett of the High Court of Ireland has noted that another "A", "Argument", is arguably absent from the FLAC or IRAC structure since many judges consider it appropriate to first outline the parties' legal arguments before proceeding to discussion and analysis. Thus, the structure might more accurately be stated as FLAAC. His Honour cautions, however, against including lengthy statements of the parties' contentions or simply adopting the winning party's submissions as the reasons for judgment.[14]

Conclusion.

Applying the law to the facts of the case leads to the conclusion, inevitably so, in the view of Justice Roslyn Atkinson of the Supreme Court of Queensland.[15] However, a conclusion is also a decision, so it should be determinative and decisive. It is 'not unimportant. What is it that you are doing?'[16] State it clearly and precisely.

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[9] Justice Kenneth Hayne AC, in Ginger Briggs (ed), *Judicial Decisions: Crafting Clear Reasons* (National Judicial College of Australia 2008) 53 ('Hayne'). See also Dr James C Raymond, 'Plain English' (2002) 4(14) *Philippine Judicial Academy Judicial Journal* 152, 167–69 ('Plain English').
[10] Bleby 18–19; Justice Kevin Duggan AMRFD in Ginger Briggs (ed), *Judicial Decisions: Crafting Clear Reasons* (National Judicial College of Australia 2008) 46–47; Judge Brian Gilchrist in Ginger Briggs (ed), *Judicial Decisions: Crafting Clear Reasons* (National Judicial College of Australia 2008) 50–51 ('Gilchrist'). See also Hon Debbie Mortimer, 'Some Thoughts on Writing Judgments in, and for, Contemporary Australia', (2018) 42(1) *Melbourne University Law Review* 274, 287–88, 291 ('Mortimer'); Plain English 165.
[11] Berry 50; Plain English 165.
[12] Architecture of Argument 44–46.
[13] Ibid 46.
[14] Justice Max Barrett, *The Art and Craft of Judgment Writing: A Primer for Common Law Judges*, (Globe Law and Business Ltd, 2022) 87.
[15] Atkinson 4.
[16] Gordon 7.

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The conclusion should not be broadly worded, tentative, qualified, or ambiguous (although this may depend on what is actually being decided).

A conclusion written as a summation can also be a particularly effective review of your analysis if it is stated succinctly and briefly and does not repeat the analysis itself.[17]

2. Your first page is centre stage, use it to showcase what's coming.

Always begin by providing a good, high-level overview of the case (a.k.a., an executive summary or "helicopter" view).[18] It should do three things:

- tell who allegedly did what to whom or who is arguing about what
- identify the issues to be decided (in the order they are to be decided), and
- provide some factual context but omit details that have nothing to do with the issues.[19]

The point of this is to get the reader's attention and make them want to read on.[20] This overview provides a roadmap and flags the destination for the reader (which enhances their concentration), it provides context.[21]

As noted, a key purpose of this summary is to catch the reader's interest. The story of the case is what is interesting. The circumstances should be humanised without being sensationalised. Avoid a mechanistic beginning like:

> This is an application pursuant to s XYZ of the *Miscellaneous Authorising Act 1542* (Vic) asking that the court make orders directing the defendants….[22]

Write this summary simply. Use short sentences. After stating who did what to whom, how this led to the dispute, and the issues that have been raised, then summarise the reasoning, and state the conclusion reached. There is no reason to bury the conclusion at the end of the reasons. Tell the reader the result – briefly – before they begin reading.[23]

Lastly, in telling the reader who did what to whom, etc, summarise the facts and issues in no more than 2–3 paragraphs.

3. Use plain English. Avoid legalese, write simply and clearly.

'Legal language is not clear if no one understands it'. [24]

Use plain English, not legal jargon, and use it in an ordinary way.[25] "Said", "same", and "such" do not, despite their reputation to the contrary, add precision.[26] This is distancing and exclusionary terminology that does not encourage an ordinary reader to understand what is being said.[27]

So too are Latin and technical phrases, which should also be avoided.[28] There are some that have become everyday terms and these can be used safely, including *subpoena* and *affidavit*. But there are many others that

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[17] Architecture 54–55.
[18] Bleby 23; Magistrate Wendy Cull in Ginger Briggs (ed), *Judicial Decisions: Crafting Clear Reasons* (National Judicial College of Australia 2008) 28 ('Cull'); Garner s 22; Vickie Waye, 'Who Are Judges Writing For?', (2009) 34(2) *University of Western Australia Law Review* 274, 298 ('Waye').
[19] Architecture of Argument 50.
[20] Ibid 53.
[21] Berry 2.
[22] Ibid 14; Architecture of Argument 49; Gilchrist 48.
[23] Baumann 15; Berry 12; Blow 23.
[24] Plain English 155.
[25] Ibid 157; Garner s 12; Gordon 8–9; Hayne 53.
[26] Garner s 12.
[27] Dr James C Raymond, 'Why Can't Lawyers Write Like Katherine Mansfield' (1997) 3 *The Judicial Review: Journal of the Judicial Commission of New South Wales* 153, 156.
[28] Berry 80–82; Martin 71.

have not, such as *viva voce, inter alia,* and *nunc pro tunc*. These could, and should, be easily stated in plain English as *oral, among others,* and *as from [date].*[29]

It is sometimes argued that technical or Latin phrases like these are necessary terms of art. That is incorrect. A term of art is a short statement that expresses a complex concept.[30] For example, *res ipsa loquitor* is a term of art. In a negligence action the elements of a claim are duty, breach, cause, and harm. *Res ipsa loquitor* means it may be inferred that the first three elements of negligence have been proved merely by the type of injury (the harm) received. This is because the “thing speaks for itself” and injuries of the relevant type do not usually occur in the absence of a breach of the duty which caused the harm. Any Latin or legalistic term that does not express a complex concept such as this is not a term of art, it is a relic.

4. Be brief, avoid repetition and needless detail; keep your narrative clean and focussed.

Brevity is the goal in writing reasons for judgment because overwriting can produce reasons that are unclear and confusing.[31] It is also inefficient.

The over particularising of facts should be avoided. Avoid writing sentences like:

> Against that, Mr Smith conceded under cross-examination by Ms Jones, who was led by Mr Green for Ms Yellow, that Mr Blue did not on 14 January 2023 seek to leave the residence he shared with his partner Ms Rose at 35 Smith Street, Melton for Adelaide, in preference to Port Douglas, by the start of April 2023.

This defeats the purpose of engaging the reader, most of whom will simply skip such sentences. Moreover, by specifying dates and locations you lead the reader to believe they are significant. When they discover this is not the case you will frustrate them, and again they will skip ahead. If you do this repeatedly you risk losing them entirely.[32] Further, if you identify someone by name who is of only tangential interest to the proceeding and state their address you have arguably violated that person’s privacy and perhaps even endangered them.[33]

Many reasons for judgment also begin with a procedural history of the litigation, including a scrupulous recitation of the submissions and filing details of various parties. Most people don’t read this because it usually doesn’t matter. Any discussion of the course of the litigation and reiteration of the parties’ positions should be pared back only to what is necessary.

If a party is identified – *because they must be, not because they appear in the supporting cast* – use their name.[34] Their role, e.g., plaintiff, etc, can be identified on first use, but subsequent identification by role should be limited only to when strictly necessary (such as when identifying where the burden of proof lies). In general, using names furthers the narrative and increases comprehension. It is also a simple courtesy.

Give careful thought to both paragraph and sentence structure and composition. Be direct. Generally, try to keep all sentences short at two or fewer lines.[35] Shorter sentences make prose tighter, more forceful and more persuasive, and hold the reader’s attention.[36] When a long sentence cannot be avoided, it should be preceded and followed by a short sentence. This variety in composition helps keep the reader’s interest and facilitates the flow of the judgment.[37]

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[29] Garner s 12.
[30] Berry 83–84.
[31] Bell [28], [31]; Gordon 9.
[32] Garners 23; Plain English 170–71.
[33] Bleby 20–21.
[34] Ibid 20; Berry 13, 85; Magistrate Hugh Dillon in Ginger Briggs (ed), *Judicial Decisions: Crafting Clear Reasons* (National Judicial College of Australia 2008) 36–37 (‘Dillon’); Garner s 17; Martin 68, 70.
[35] Garner s 6; Plain English 171–73.
[36] Bleby 20.
[37] Garner s 6.

You can make sentences shorter by cutting down on wordy phrases and useless verbiage.[38] For example, say the police *went* or *arrived* somewhere, not that they *attended at* that place. Similarly, vendors *sign* a contract, they do not *append their signature* to one. And if something goes without saying, then don't say it.[39] If something is necessary to say, then say it, but do so without a "throat clearing" preface such as it being *trite to note*.[40]

It often helps to begin and end paragraphs with transitional sentences that provide a link to the preceding and following paragraphs.[41]

Quotations from authorities should be done selectively. Only give so much of it as is needed to express the controlling proposition. A couple of lines will usually suffice. Avoid a block quotation that people will not read and which will only lengthen the reasons and muddy the narrative flow. Further, keep the number of citations down to what is controlling and necessary.[42]

5. Write for the parties, not to be clever or avoid scrutiny.

There are many possible readers of reasons for judgment: the litigants and their lawyers, judicial officers across different jurisdictions, the Bar, the legislature, higher courts, the media, the academy, and the public. Therefore, it is important to have proper written reasons for judgment so that any of these readers can understand the rationale for the findings of fact and the analysis of the law.[43]

A wide readership should be assumed, but a judgment should not be written for all potential readers or some theoretical combination of them. It should be written for a person of average intelligence and education.[44]

Since the purpose of the judgment is to explain what the case is about and why it has been decided as it has, the primary audience is usually the parties, especially the losing party.[45] This is particularly so in the tribunal context where the core function is quick and direct resolution between the individuals or entities affected.[46]

Decisions should be reached honestly and decisively without being concerned by what a higher court or tribunal might decide.[47]

Nor should judgments be written for academics. Extra-judicial writings are a far better vehicle for a treatise on the law or opportunity to demonstrate erudition on a favourite topic.

While lawyers will be keenly interested in reasons for judgment, there is no need to tailor writing to them.

Writing principally for a person of average intelligence and education will help you avoid needless extraneous material, such as:

- overly detailed recitation of the submissions, evidence, and facts
- extensive duplication of case law or legislation
- irrelevant discussion of non-controlling academic texts/articles/law reform material, and
- elaborate factual findings and reasoning.

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[38] Justice John Dowsett in Ginger Briggs (ed), *Judicial Decisions: Crafting Clear Reasons* (National Judicial College of Australia 2008) 40; Garner s 5; Plain English 163.
[39] Plain English 165–67.
[40] Architecture of Argument 50.
[41] Garner s 25.
[42] Berry 49–50; Garner s 29; Sir Harry Gibbs GCMG, AC, KBE, 'Judgment Writing', (1993) 67 *The Australian Law Journal* 494, 499; Hayne 53; Justice David Lloyd in Ginger Briggs (ed), *Judicial Decisions: Crafting Clear Reasons* (National Judicial College of Australia 2008) 62–63 ('Lloyd'); Martin 71; Justice Geoffrey Miller in Ginger Briggs (ed), *Judicial Decisions: Crafting Clear Reasons* (National Judicial College of Australia 2008) 82 ('Miller'); Mortimer 287–88; Plain English 167–68.
[43] Hayne 52; Mortimer 296.
[44] Garner s 31.
[45] Martin 66.
[46] Bell [14].
[47] Atkinson 1–2; Bell [22].

Including unnecessary material transforms reasons into an overlong 'treatise speaking to an informed elite'[48] rather than an explanation of why the outcome was reached in a way that demonstrates that the exercise of the decision making power was not arbitrary.

6. State the law clearly and affirmatively.

There are two parts to stating the law clearly and affirmatively: first, identify and set out the legal principles that apply to the decision; and second, orders must be put so that the parties understand their obligations and the order can be carried out by those responsible for its execution.

With respect to the first, as noted in section 1 of this Guide, there is usually no need for a lengthy exposition of the law in a judgment: it is sufficient to briefly refer to the relevant legal principles, summarise what they require, and then provide citations to the controlling authorities in footnotes.[49]

With respect to the second, orders for a civil matter should include:

- whether relief is granted and in what terms
- any quantum, and
- costs.

For criminal matters, the orders must comply with all requirements of the relevant bail and/or sentencing legislation.

An order should be clearly and unambiguously stated. It should indicate exactly what each party must do or it should state precisely what punishment is being imposed. In both instances, it must also specify how the order is to be carried out.

7. Provide reasons.

Revealing your reasoning — summary.

It is important that your judgment reveals the reasons you made the decision in question.

Reasons may be brief, but nonetheless adequate, so long as they reveal the steps in the reasoning of the court by which it reached its decision. Conversely, reasons may be lengthy, and even prolix, without being adequate. And reasons can be beautifully written without being adequate.

A general pronouncement by a judge that they have considered all the relevant evidence and reached a conclusion based on that evidence is not an adequate statement of reasons. It is not generally sufficient to simply set out fact, fact, fact, followed by that magic word "therefore", and then "[X party] wins". Nor is it normally sufficient to set out the arguments of both sides and state simply that the contentions of one party are to be preferred to those of the other. Nor is it appropriate to set out the losing party's arguments, and then cut and paste the winning party's arguments as your reasons. It is also unwise to take one party's submissions as a 'first draft' of your reasons and make some minor amendments to them.

Reasons concerning facts and evidence.

As Nettle JA observed in *Hunter v Transport Accident Commission*,[50] a 'mere recitation of evidence followed by a statement of findings, without any commentary as to why the evidence is said to lead to the findings', is

[48] Waye 277.
[49] Justice Margaret Wilson in Ginger Briggs (ed), *Judicial Decisions: Crafting Clear Reasons* (National Judicial College of Australia 2008) 107.
[50] [2005] VSCA 1.

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inadequate.[51] Worse still, a recitation of the evidence without a statement of the judge's finding as to the facts is also inadequate.

Nettle JA also observed the importance of exposing the 'path of reasoning', saying that the reasons should:

(a) deal with the substantial points which have been raised;

(b) include findings on material questions of fact;

(c) refer to the evidence or other material upon which those findings are based;

(d) provide an intelligible explanation of the process of reasoning that has led the judge from the evidence to the findings and from the findings to the ultimate conclusion; and

(e) explain why certain evidence was rejected.[52]

Importantly, the requirement to refer to the evidence is not limited to the evidence that has been accepted and acted upon. If a party has relied on evidence or material which the judge has rejected, the judge should:

(a) refer to that evidence or material; and

(b) explain why that evidence or material has been rejected.[53]

This includes an obligation to give a rational and analytical explanation for preferring one witness's evidence over another's where there is a conflict of evidence.

When evaluating a witness's evidence, try to use — and to explain your use of — factors such as:

- contemporaneous documentary evidence;
- evidence that undermines a party's credibility;
- consistencies or inconsistencies in the evidence;
- whether one version of events is inherently more plausible than another;
- conformity to or deviation from normal human behaviour; and
- motives for telling the truth or for concealing it.

But avoid reliance on demeanour, which is now widely understood as being an unreliable indicator of credibility.[54]

Reasons concerning legal issues.

In some cases there will be a dispute about the legal principles. In such a case it will not be sufficient simply to set out the legislation and lots of passages from the case law. It will be necessary to articulate the legal rule you are applying, and why. And then to articulate how those principles apply in relation to the particular case.

Concluding points.

For the issues that need to be decided – whether they are issues of fact or law – it can be helpful to step back and ask yourself 'why'?

'Why have I decided that issue in that way?'

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[51] Ibid [28] (emphasis added).
[52] Ibid [21].
[53] Ibid.
[54] See, e.g., *CSR Ltd v Maddalena* (2006) 224 ALR 1, 14 [46]; *State Rail Authority of NSW v Earthline Constructions Pty Ltd (in liq)* (1999) 160 ALR 588, 617–18 [88(4)]; *Nationwide News Pty Ltd v Rush* (2020) 380 ALR 432, 454 [94]–[95], citing *Fox v Percy* (2003) 214 CLR 118, 128–29 [30]–[31]; *Nominal Defendant v Kostic* [2007] NSWCA 14, [44], citing *Goodrich Aerospace Pty Ltd v Arsic* [2006] NSWCA 187; *R v BBT* [2009] QCA 292. [29]; *R v Perre* [2022] SASC 63, [344] n19; *Moore v The King* [2023] VSCA 236, [184] n67; *R v White (No 1)* [2007] VSC 452, [7]; *Bakovic v Rosebridge Nominees Pty Ltd* [1999] WASCA 78, [21], citing *Government Employees Superannuation Board v Martin* (1997) WAR 224, 264.

Asking "why?" is an effective way to focus your thinking. And then, in your reasons, use the word '**because'**, or some equivalent.

8. Good writing is rewriting.

All good writing is difficult and this requires rewriting,[55] although editing oneself can be quite difficult. It is always good, time permitting, to have another set of eyes review any work,[56] and this does not impinge on the notion of judicial independence.[57] Editing ensures clarity, coherence, concision, and confirms reasoning by identifying any flaws.

Without intending to be exclusive, here is a list of desirable editing tasks:

- use a checklist of topics or issues to ensure that everything that must be addressed and decided has been
- get rid of unnecessary repetition
- omit irrelevant facts
- cut lengthy legal quotes, passages of transcript, or extracts from affidavits or other documents tendered unless essential to the decision
- remove and replace Latin terms, jargon, or outdated and exclusionary language
- eliminate explanations of the obvious
- use the active voice and avoid the passive, where possible[58]
- simplify lengthy and complex sentences, and use short sentences when possible
- check punctuation and grammar
- review the length and content of paragraphs, and
- repeat.

Be sure punctuation and spelling are correct because a mistake, even a small one, can damage credibility out of all proportion to the error.[59] Such mistakes can also produce substantive error, particularly in contract or estate cases where meaning might turn on the placement of a semi-colon.[60] Keep a handbook, such as *The Elements of Style*,[61] nearby and use it when in doubt.[62]

9. Be prepared.

Set a timeline for delivery of judgment, announce it to the parties, and adhere to it.[63] The sooner you begin the easier it is to write and the less time it takes. 'So start now!',[64] as soon as possible after hearing a case while memory of the evidence and submissions are fresh.[65]

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[55] Hayne 53.
[56] Gordon 9; Holmes 57; Plain English 183.
[57] Anderson 7.
[58] Plain English 165; Atkinson 5–6; Garner s 9.
[59] Plain English 173–75.
[60] Ibid 173–74.
[61] William Strunk and EB White, *The Elements of Style* (Macmillan, 1959).
[62] Raymond, 'Plain English' (n 9) 174.
[63] Magistrate Guiseppe Cicchini in Ginger Briggs (ed), *Judicial Decisions: Crafting Clear Reasons* (National Judicial College of Australia 2008) 25 ('Cicchini'); Dillon 31; Magistrate Rolf Driver in Ginger Briggs (ed), *Judicial Decisions: Crafting Clear Reasons* (National Judicial College of Australia 2008) 41 ('Driver'); Miller 81; Justice Damian Murphy in Ginger Briggs (ed), *Judicial Decisions: Crafting Clear Reasons* (National Judicial College of Australia 2008) 87 ('Murphy').
[64] Hayne 52.
[65] Anderson 5; Bell [18]; Blow 23; Cicchini 25; Cull 28; Holmes 54; Justice Murray Kellam AO in Ginger Briggs (ed), *Judicial Decisions: Crafting Clear Reasons* (National Judicial College of Australia 2008) 59 ('Kellam'); Justice Peter McClellan in Ginger Briggs (ed), *Judicial Decisions: Crafting Clear Reasons* (National Judicial College of Australia 2008) 72–73 ('McClellan'); Miller 80; Justice Geoffrey Muecke in Ginger Briggs (ed), *Judicial Decisions: Crafting Clear Reasons* (National Judicial College of Australia 2008) 83. ('Muecke').

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Being organised, both in hearing and when writing, at the beginning, is important and makes writing at the end much easier. For example:

- Identify the factual and legal issues early.
  - Research before trial, read the papers, to know the elements of the claim or charge and what is in dispute.
  - Know what you're going to have to deal with in your judgment and plan how you will do so.
- Taking good notes is critical because you often won't have the transcript, so don't be afraid to slow down lawyers and witnesses.
  - Include impressions of witnesses and highlight important passages.
  - Good notes enhance the focus of your decision making and expedite the delivery of reasons.
- Note issues throughout the trial:
  - anything significant about a witness' evidence
  - conflicts between witness' evidence
  - issues arising
    - thoughts re these.[66]

Delivering reasons orally.

Give judgment and reasons orally and in court whenever possible,[67] and it should be possible where issues are straightforward and outcome is clear.[68] Some tips:

- Be familiar with all of the material before dealing with the case, read all important documents and submissions.[69]
- Take notes during the hearing.[70]
- Have a mental overview of the judgment before commencing.[71] Divide logically, start with intro then go to facts and issues, refer to the law, the parties' submissions and then deal with your reasoning and the disposition.[72]
- Take time at the end of the hearing to organise your thoughts before beginning the oral judgment.[73]
- Generally, it is not necessary to read extensive text from documents or transcript into the judgment.[74]

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[66] See Anderson 4–6; Baumann 13–14; Bell [44]–[45]; Bleby 17; Blow 22; Cull 28; Dillon 33; Holmes 56; Kellam 58; Magistrate Kym Millard in Ginger Briggs (ed), *Judicial Decisions: Crafting Clear Reasons* (National Judicial College of Australia 2008) 75–76 ('Millard'); Muecke 83; Murphy 86.
[67] Bleby 19; Cicchini 27; Dillon 31; Driver 41; Kellam 58; Lloyd 61; McClellan 73.
[68] Driver 41.
[69] Ibid 42.
[70] Ibid.
[71] Ibid. See also McClellan 73.
[72] Driver 42.
[73] Ibid 42. See also Millard 77.
[74] Driver 42.

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Feedback or suggestions for improvement are welcome and may be emailed to info@judicialcollege.vic.edu.au.

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