

Analytical Content Court Procedure Works: March 2021 Updates

Ritchie's Uniform Civil Procedure NSW

- Since November 2020, over 60 annotations have been made across the Civil Procedure Act 2005, Uniform Civil Procedure Rules 2005, Other Legislation, Supreme Court, Local Court and Local Court Practice Guide guidecards.
- In addition to the regular legislative updates, the service has been updated to include a complete re-write of sections in the Local Court Act guidecard, case examples have been updated in the notes dealing with summary applications and there has been a major review and update of the Trans-Tasman proceedings information in the Civil Procedure Act guidecard.
- These updates were partially delivered in hardcopy Service 126 (December 2020) with the remainder to appear in Service 127 (April 2021).
- There has also been a significant update to the annotations to the Commercial Arbitration Act 2010 with an estimated online date of end of March 2021.

Criminal Practice and Procedure NSW

- In the four month period between November 2020 and March 2021 Justice Johnson (of the Supreme Court of NSW) and Rod Howie QC (formerly a Justice of the Supreme Court of NSW) wrote 80 annotation updates within which over 70 recent cases (ie, from 2020) were discussed, thus ensuring that authored content in CPPN is premium, in terms of both currency and volume
- Legislation that was annotated include the Crimes Act 1900, Criminal Procedure Act 1986, Evidence Act 1995, Crimes (Appeal and Review) Act 2001, Crimes (Sentencing Procedure) Act 1999, Crimes Act 1914 (Cth), Criminal Code Act 1995 (Cth), and Criminal Appeal Act 1912
- The most important of the cases discussed in their annotations was *R v Abdirahman-Khalif* [2020] HCA 36 wherein the High Court affirmed a woman's conviction of an offence of being a member of a terrorist organisation (having intentionally taken steps to become a member of Islamic State) and found that the evidence adduced by the Crown (contents of the woman's electronic devices, listening device intercepts and her embrace of Salafist ideology) was capable of sustaining a conviction.
- These updates were delivered across hardcopy Services 174 (January 2021) and 175 (March 2021).

Civil Procedure Victoria

- From November 2020 to February 2021, authors David Bailey and John Arthur have updated over 50 annotations covering the Supreme Court and County Court Civil Procedure Rules, VCAT Act, Wrongs Act and Magistrates Court Act.

- An updated annotation to s 37 of the Supreme Court Act references the recent case of *Rowson v Dept of Justice and Community Safety* [2020] VSC 236 which examined and affirmed the Court's wide power to grant injunctions.
- These commentary updates, along with legislation amendments and updates to practice materials, were partially delivered in hardcopy Service 320 (January 2021) with the remainder to be delivered in Service 321 (printed March 2021, delivery expected April 2021).

Bourke's Criminal Law Victoria

- In the 6 month period between September 2020 and February 2021 the authors of CLV wrote over 150 annotation updates covering the Crimes Act, Criminal Procedure Act, Evidence Act, Jury Directions Act, Charter of Human Rights and Responsibilities Act, Sex Work Act, Children, Youth and Families Act, Firearms Act, Sentencing Act and Crimes (Mental Impairment and Unfitness to be Tried) Act.
- The authors who sent through updates include Judge Georgiou of the County Court of Victoria, Gerry Nash QC, David Grace QC, Paul Holdenson QC, Felicity Gerry QC and barristers Jack O'Connor and Ffiona Livingston Clark.
- These updates were partially delivered in hardcopy Service 187 (December 2020) and Service 188 will reach customers in April 2021 with the remainder.

Civil Procedure Queensland

- In the four month period between November 2020 and March 2021, 50+ annotations to the UCPR Chapters 6 (Pleadings), 9 (Ending Proceedings Early), 10 (Court Supervision), 11 (Evidence), 13 (Trials and other hearings), 17 (Security for costs), 17A (Costs), 18 (Appellate Proceedings) and 22 (Documents, Registry and Solicitors) were updated by the new CPQ UCPR Author team led by Justice Bond.
- We are working with the new author team to progressively update and modernise the annotations to the UCPR to ensure they are more logical, relevant and user friendly.
- There have also been over 30 annotations to the Evidence Act 1977 added or updated by barrister Darlene Skennar and former District Court Judge John McGill has also provided updates to the annotations to the District Court of Queensland Act 1967. These updates were all included in hardcopy Service 107 (March 2021).

Carter's Criminal Law of Queensland

- In the four month period between November 2020 and March 2021, annotations for the following Acts were updated: Criminal Code, Drugs Misuse Act 1986, Jury Act 1995, Dangerous Prisoners (Sexual Offenders) Act 2003, Penalties and Sentences Act 1992, Criminal Proceeds Confiscation Act 2002, Forensic Disability Act 2011, Mental Health Act 2016 and Weapons Act 1990.
- Contributors to these annotations included Justice Ryan, Judge Rafter, Judge Moynihan and Acting Magistrate Costanzo. The Mental Health Court Practice Directions were also reviewed and updated. Hardcopy services were published in December 2020 (Service 200) and February 2021 (Service 201) containing all of the above updates.

Civil Procedure Western Australia

- Since October 2020, we have provided authored updates to annotations for the Rules of the Supreme Court 1971 (Orders 5, 6, 7, 21, 26A, 26, 66, 67B), District Court of Western Australia Act 1969 and District Court Rules 2005.
- All legislation and Practice Materials, including the Supreme Court Consolidated Practice Directions and Legal Costs Determinations, have also been updated.
- The authors have also annotated the Supreme Court (Arbitration) Rules 2016, which will be featured in the publication in the upcoming hardcopy service. Hardcopy services were printed in December 2020 (Service 188) and February 2021 (Service 189) and the next service is planned for April 2021 (Service 190).

Civil Procedure Western Australia: Magistrates Court

- Since October 2020, we have provided author updates to commentary for the Magistrates Court Act, State Administrative Tribunal Act 2004 and Magistrates Court (Civil Proceedings) Rules 2005.
- All legislation and Practice Materials, including the Legal Costs Determinations, have also been updated.
- In response to the amended Magistrates Court Civil Rules from June 2020, we have prioritised the insertion of commentary analysing the implications of the legislative changes. We are continuing to provide commentary on these new Rules.
- We have also inserted new forms and factsheets to reflect the different procedures for civil matters commenced prior to or after June 2020.
- Hardcopy services were printed in October 2020 (Service 114) and December 2020 (Service 115). The next service is planned for late March (Service 116).

Criminal Law Western Australia

- In the 6 month period between September 2020 and February 2021 the authors of CLWA wrote over 120 annotation updates to legislation including the Criminal Code 1913, Criminal Procedure Act 2004, Evidence Act 1906, Sentencing Act 1995, Bail Act 1982, and Criminal Appeals Act 2004, ensuring that authored content in CPPN is premium, in terms of both currency and volume.
- The authors who sent through updates include Justice Hall of the Supreme Court of WA, barristers Darren Renton, Nicholas van Hatterm and Edward Greaves, Lorraine Finlay (law lecturer, formerly a state prosecutor) and Aboriginal Legal Service's lawyer William Yoo.
- These updates were delivered in hardcopy Services 204 (October 2020), 205 (December 2020) and 206 (February 2021).

Civil Procedure South Australia

- This is the only publication in SA that covers civil procedure in our major courts and tribunals.
- The extensive coverage of the product should be a big selling point, especially since it contains the most comprehensive assessment of the South Australian Civil and Administrative Tribunal (SACAT).

- In the tradition of notable authorship, CPSA is now authored primarily by Peter Norman, OAM, LLB, Auxiliary Master of the Supreme and District Courts of South Australia and by Deane Jarvis (SACAT guidecard) a former Deputy President of the AAT.
- In mid-2020 the individual rules of the Supreme, District, and Magistrates Courts were subsumed into Uniform Civil Rules. *CPSA* now reflects in full the UCRs in print and online.
- There is now annotated commentary on the UCRs in the pipeline, and CPSA is doubly able to support litigation that was commenced prior to May 2020 and therefore still being conducted under the old rules of court.
- In designing the implementation of the placement of the new UCRs, we listened carefully to barrister and judicial input about the placement of the UCRs in volume 1 of CPSA since it was the volume most commonly taken to and used in courtrooms.
- The following enhancements have been made, or are about to be made:
 - UCRs fully published (2020) with all 4 legislative updates included (April 2021);
 - New commentary (30–35 new section annotations) on UCRs already prepared for publication;
 - A new comparative table (50 pages) that lists every provision in the UCRs and compares this with, where possible, the relevant old Supreme Court, District Court, or Magistrates Court rule. This is a huge value-add to *CPSA*, as it is the only complete comprehensive linkages of old and new rules known to be available. For *CPSA*, this is doubly important as we contain valuable potential precedent material that lawyers can unlock by using the table to decide its relative precedent value.
 - 13 Acts updated in the past 4 months
 - Added commentary to SACAT guidecard, the most comprehensive set of materials on this increasingly important one-stop-shop tribunal for South Australians

Criminal Law South Australia

- This extensive publication covers the full gamut of criminal law in SA which is a major area of practice for many South Australian barristers.
- CLSA offers subscribers significant legislative annotations and commentary built up over 30 years by respected authors.
- CLSA is currently authored by Peter Norman, OAM, LLB, Auxiliary Master of the Supreme and District Courts of South Australia and by Scott Henchcliffe QC of Edmund Barton Chambers. Importantly, the plan is to create Uniform Criminal Rules in SA this year, a development that will be anticipated and planned for by CLSA's authorship and editorial team.
- Recent developments:
 - Large numbers of legislative additions in the last 4 months with CLSA reflecting amendments to, among others: Bail Act 1985, Crimes Act 1914, Criminal Law Consolidation Act 1935, Criminal Procedure Act 1921, Motor Vehicles Act 1959, Road Traffic Act 1961, Sentencing Act 2017, and Sentencing Regulations 2018.
 - Upcoming commentary and annotations to key legislation in the next hardcopy Service 188 (April 2021).

Civil Procedure ACT

- In the 6 month period between September 2020 and February 2021 there were six legislative amendments and the authors of CPACT wrote over 30 annotation updates covering the Court Procedures Rules 2006, Supreme Court Act 1933 and Magistrates Court Act 1930.
- These updates were delivered in hardcopy Service 129 (March 2021).
- As of 2021 CPACT has a new primary author – barrister Wayne Sharwood. Wayne started off as a solicitor in Wagga Wagga and then Sydney, from 2000-2003 he was a Senior Associate with Minter Ellison in Canberra, where he was engaged in commercial litigation and some personal injury work for defendants and insurers. He was called to the Bar in 2003. His areas of practice are personal injury (ACT), administrative, succession and family provisions, commercial and equity law.

Civil Procedure Tasmania

- CPTAS covers civil procedure developments of Tasmania’s two key courts, the Supreme Court and Magistrates Court. It the only publication of its kind offering annotated Supreme Court Rules and Magistrates Court (Civil Division) Rules.
- CPTAS also covers the growing jurisdiction and workload of the Administrative Division of the Magistrates Court.
- Recent highlights:
 - Commentary updates to over 40 paragraphs; particularly to the Supreme and Magistrate’s Court Rules, again, valuable because of the expertise of the authors, and no doubt of particular importance to the Tasmanian Bar and the many Victorian barristers who often accept Tasmanian briefs;
 - Upcoming commentary update around the recent Supreme Court judgment of *McCarthy v Saltwood Pty Ltd* [\[2021\] TASSC 1](#) which made important rulings about aspects of the Supreme Court Rules of Tasmania that deal with offers of compromise and the failure to accept an offer made during the course of proceedings.
 - There is an upcoming service being prepared for April 2021 (Service 60) that will address the impact of the *McCarthy* case above as well as some commentary around costs issues in the Magistrates Courts

High Court Federal Court Practice and Procedure

- In the 3 month period between December 2020 and February 2021 authors of HCFCP including Dr Lindgren (former Federal Court Judge), Judge Rolf Driver (Federal Circuit Court Judge), (Dr Natalie Cujes (Former Registrar of Federal Court and Senior Law Lecturer), barrister Paul Nichols and solicitor Ray Steinwall wrote 100+ annotation updates. This resulted in 2 x 900+ page hardcopy services being published (Service 288 in December 2020 and Service 289 in March 2021).
- Federal Court Volume: 20+ annotations to the Federal Court Rules were updated including discussion on judgment against the respondent by way of relief, costs on application and costs. Notable case discussions include the case of *Manolo Blahnik Worldwide v Estro Concept (No 2)* 2020.
- Competition and Consumer Volume: 50+ annotations to the Competition and Consumer Act were updated including discussion on the new ‘fit and proper person’ test provided by the Financial Sector Reform Act 2020, guarantee as to acceptable

quality of goods and manufacturer warranties, the strengthening of unfair contract terms, updated definition of 'consumer', introduction of 'major failure' to comply with a customer guarantee and the introduction of new Pt XICA. Notable case discussions include: *AER v Energy Aus*, *AER v Snowtown*, *ACCC v Glencore Coal*, *ACCC v Woolworths*, *ACCC v Viagogo*.

- Bankruptcy Volume: 30+ annotations to the Bankruptcy Act were updated including an updated definition of insolvency, equitable lien, 'without reasonable prospect of success' and discussion on freezing orders, costs orders and instances where s 109 applies. Notable case discussions include: *D&D Corak Investments (In Liquidation) 2020*, *Commissioner of Taxation v Lane 2020*, *Re Owies Family Trust 2020*, *Kaji Australia v Glover 2020*, *General Trade Industries v AGL Energy Ltd 2020*, *Mariconte v Nobarani 2020*, *Du Bray v ACW 2020*, *Williams v Mortgage Ezy 2020*, *Condon v ANZ 2020*, *Williams v Turco 2020*, *Commissioner of Taxation v Lane 2020*, *CBA v WA (2020)*
- High Court Volume: A comprehensive review of the Constitution and High Court Act was conducted and published in December 2020.
- Upcoming changes: After the recent proposed Family Court and Federal Circuit Court merger Bill has passed. We expect a total commentary adjustment later in the year to account for this and will do so under the guidance of Judge Driver, current judge of the Federal Circuit Court and member of the Rules Committee.

Federal Criminal Law

- In the four month period between November 2020 and March 2021 over 35 legislative amendments were inserted and the authors of Federal Criminal Law wrote over 45 annotation updates covering the chapters Prosecution of Federal Offences, Criminal Code, Crimes Act, Sentencing of Federal Offenders, Procedural Legislation and Tax Offences.
- The authors who sent through updates include Justice Payne of the Supreme Court of NSW, Neil Williams SC and Director of the DPP (Cth) Sarah McNaughton.
- These updates were partially delivered in hardcopy Service 138 (January 2021) and will follow in upcoming Service 139 (April 2021).