

Citation of Legal Authorities – Australia – Handbooks, Manuals, etc.

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The publication of the *Australian Guide to Legal Citation*¹ (the *Australian Guide*) coincides with the publication of a number of other similar Australian titles.² In a short space of time we have gone from a situation where there was a 'gap in the market' to a situation where there are a number of rival publications to choose from. How well does the *Australian Guide* fill the gap?

The *Australian Guide* represents an attempt to provide an accepted Australian guide to legal citation, along the lines of *The Bluebook: A Uniform System of Citation*, the US guide now in its 16th edition. The *Australian Guide* has grown from the style guide for the *Melbourne University Law Review*. According to the preface, it was an "ambitious project" and the end product "attempts to set down and clarify citation customs where they exist, and to determine the best practice where no particular custom has been established".³ The guide is shamelessly modelled on the *Bluebook*. The page size (A5), the blue cover, the use of a thumb index to direct users to specific sections of the book and the use of a quick reference guide located inside the back cover are features common to both works.

There is a hope by the editors that the guide will be adopted widely (as has been the case with the *Bluebook*) and thus reduce the work of academics, students, librarians, practitioners and editors. The need to learn a style for publication in one forum and another style for publication in another forum would be eliminated if there were widespread adoption of this standard.

Before something can be adopted as a standard, however, it needs to do at least two things. Firstly, it needs to be comprehensive. How well does it cover all possibilities? Are there enough examples to illustrate all of the possibilities? On this count, the *Australian Guide* succeeds admirably. In 158 pages most options are covered well. The citation of cases, legislation, journal articles, books, government documents, newspaper articles, looseleaf services (and legal encyclopaedias) and theses are all illustrated and there is some attention to the citation of electronic and Internet sources/formats (specifically in the sections on cases, journal articles and newspaper articles).

Secondly, does the *Australian Guide* reflect widely accepted practice? Or does it represent a change from existing practices? If it does represent a change from existing practices, are

¹ *Australian Guide to Legal Citation*, Melbourne. Melbourne University Law Review Assoc, 1998

² Fong, C. *Australian Legal Citation: a Guide*, St Leonards, Prospect, 1998; Stuhmcke, A. *Legal Referencing* Sydney, Butterworths, 1998; Campbell, E. Fox, R. and Kewley, G. *Students' Guide to Legal Writing* Leichardt, Federation Press, 1998; Rozenberg, P. *Australian Guide to Uniform Legal Citation*, North Ryde, LBC Information Services, 1998

³ *Australian Guide to Legal Citation*. Melbourne, Melbourne University Law Review Assoc, 1998 [Preface]

the changes worth making? Or will editors and publishers cling to their existing practices and demand conformity to the existing 'house style'? On this count, the guide is perhaps less successful.

Table 1 presents the existing practice for the citation of books in six Australian law journals. The most obvious difference between the *Australian Guide* and the others is the insistence on the use of the author's first name, rather than an initial. Another difference is the use of superscript to identify edition number (12th ed rather than 12th ed) in the *Australian Guide*. Generally the other differences are not significant. The *Australian Law Journal* and *Company and Securities Law Journal* approach is to include publisher and place of publication but this approach is the exception rather than the rule amongst those titles sampled.

Table 1: Examples of Book Citations

Australian Guide to Legal Citation	Brent Fisse, <i>Howard's Criminal Law</i> (5 th ed, 1990), 39.
Australian Law Journal	Poh Ling Tan (ed), <i>Eastern Legal Systems: Law, Culture and Pluralism in East Asia</i> (The Federation Press, Sydney 1997).
Company and Securities Law Journal	H A J Ford, R P Austin and I M Ramsay, <i>Ford's Principles of Corporations Law</i> (8th ed, Butterworths, Sydney, 1997), para [20110].
Federal Law Review	G Sawer, <i>Australian Federalism in the Courts</i> (1967) at 208.
Monash University Law Review	D Stuart, <i>Charter Justice in Canadian Criminal Law</i> (1991) 250.
Sydney Law Review	Walker, G and Fisse, B (eds), <i>Securities Regulation in Australia and New Zealand</i> (1994) at 264.
University of New South Wales Law Journal	CS Reynolds, <i>Public Health Law In Australia</i> , Federation Press (1995) p 269.

Table 2 presents the existing practice for the citation of an article from a law journal. The *Australian Guide* opts for using the full name of the journal (*Melbourne University Law Review* not *MULR*), as does the *University of New South Wales Law Journal*. This is a useful position; the use of abbreviations causes much difficulty in relation to law journals (is it *Syd LR* or *Syd L Rev*?) and the decision to dispense with the use of abbreviations is one to be applauded. There is a continuing reluctance to refer, when citing a journal article, to both the commencing page and final page. This causes difficulty from time to time when making a decision to pursue a cited reference. Surely one of the main reasons for the development of a guide to referencing is to guide the reader quickly to the source used. However, in the absence of a guide to the size of the cited article (that is the number of

pages) the reader may at times pursue a 'vital' article only to find that it is either very short or, less problematically, very long

Table 2: Examples of Journal Citations

Australian Guide to Legal Citation	Robin West, 'Submission, Choice and Ethics: A Rejoinder to Judge Posner' (1986) 99 <i>Harvard Law Review</i> 1440, 1449-56.
Australian Law Journal	Mason, "Future Directions in Australian Law" (1987) <i>MULR</i> 149 at 154-155
Company and Securities Law Journal	I Ramsay, "Holding Company Liability for the Debts of an Insolvent Subsidiary: A Law and Economics Perspective" (1994) 17 <i>UNSWLJ</i> 520.
Federal Law Review	J Toohey, "A Government of Laws, and Not of Men?" (1993) 4 <i>Pub LR</i> 158 at 164-165.
Monash University Law Review	A Mason, 'The Regulation of Appeals to the High Court of Australia: The Jurisdiction to Grant Special Leave to Appeal' (1996) 15 <i>U Tas LR</i> 1, 21
Sydney Law Review	Hancock, N, "How to Keep a Secret" (1995) 77(3) <i>Aboriginal L Bull</i> 4.
University of New South Wales Law Journal	D Mossop, "Sentencing Environmental Offenders in New South Wales" (1996) 13 <i>Environmental and Planning Law Journal</i> 423.

Space does not permit a detailed comparison of the other forms of publication. Appendix B to the *Australian Guide* contains a detailed list of abbreviations for law reports and advocates the use of abbreviations for cases. The list is indeed comprehensive, covering other jurisdictions (for example *Man LR*), older case reports (for example, *Beav*) and newer reports (for example, *NILR*). The use of abbreviations for cases but not for journals might be regarded by some as inconsistent, but the advantages of the recommended approach probably outweigh the disadvantages.

As well as documenting procedures for the citation of Australian material, there are chapters for Canada (chapter 7), New Zealand (chapter 8), United Kingdom (chapter 9), United States (chapter 10), and international materials (chapter 11) The treatment of Asian materials is limited to a brief explanation of the methods of citing Chinese materials, with a statement that the "rules relating to the citation of Asian materials are currently being developed".⁴

⁴ Id at p 109

Whilst there are guidelines for citing decisions and newspaper articles published in electronic form, sections 2.9.2 and 6.2.4 respectively, the examples given relate to Internet sources, where there is a clear URL. Lexis and Westlaw are mentioned in passing but no examples of citations are given for documents obtained from these sources. There appears to be no mention of CD-ROM as a format and yet, for the foreseeable future at least, CD-ROM will continue to be a widely used method of delivering legal information. Looseleaf services, legal encyclopaedias, even newspapers commonly arrive in law libraries as CD-ROMs and whilst they may closely resemble the print products with the same name there are often some differences between both formats. How does the writer alert the reader to the fact that an electronic version was used? Whilst the section on decisions published in electronic form includes the advice: "Citations to decisions published in electronic form should only be given if the decision has not been published in print form"⁵ what happens when the print form is not readily accessible? How would you cite a journal article when you have used the electronic version and the title is an overseas title not readily accessible in print format?

The *Australian Guide* is available for downloading from the Internet.⁶ This is an earlier version of the *Australian Guide* and it includes an additional (brief) chapter directed towards students writing assignments. The main recommendation contained in this section is that a bibliography must be included at the end of the assignment and references "... should be in the style detailed in the relevant part of this Style Guide, with the exception that for books the publisher and place of publication should also be included" (p 52). It is proposed that the bibliography be divided into three sections: one section for journal articles/books/reports/encyclopaedias, another section for cases and a third section for legislation. Given that one of the possible uses for the publication would be to guide law students in the submission of their written work and postgraduate students completing their theses, it is disappointing that this section was omitted from the published guide.

What continues to be frustrating for those faced with the task of writing (either students writing essays or theses or others writing for publication) is that the task of organising the footnotes remains an arduous task. Whilst software to automate the process of managing citations and creating a bibliography⁷ has been enthusiastically embraced by most other academic disciplines, the 'unique' style of citation in law has meant that few have managed to customise the software for the unique requirements of law. The custom of preceding the author's surname by first name (or initials) means that writers cannot even take advantage of the 'sorting' facility that comes with most word processors when preparing their bibliography. How simple it should be to get the computer to prepare an alphabetical list of secondary sources.

There is no shortage of new 'blue books', ensuring that there will be healthy competition for the standard title. The *Australian Guide* broadly supports existing practices, but continues to advocate a few questionable variations, as outlined above, and it has failed to satisfactorily deal with the range of electronic formats available. It remains for legal scholars and the profession to determine which of the new manuals will emerge as dominant in the marketplace.

⁵ Id at p 38

⁶ <http://www.law.unimelb.edu.au/mltr/>

⁷ For example EndNote2 Plus