

In Conclusion?: Current Australian Legal Citation Guides

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I recently had the opportunity to peruse the various legal citation guides that came onto the Australian market during 1998, with a view to recommending one of them to my postgraduate students. Most students consider citation rules unnecessary at best and boring at worst. In the past there has been little choice of Australian legal citation guides. Enid Campbell's *Presentation of a Legal Thesis*¹ has been most useful as a basic standard, with the concise guide in Morris' *Laying Down the Law*² the alternative. The AGPS *Style Manual for Authors, Editors and Printers*³ provided a more extensive backup source. However, the new group of publications promised a new era for Australian legal scholars.

The new guides include the following:

- *Australian Guide to Legal Citation*, Melbourne: Melbourne University Law Review Association, 1998
- Campbell, E., Fox, R. and Kewley G. *Students' Guide to Legal Writing*, Sydney: The Federation Press, 1998
- Fong, C. *Australian Legal Citation – A Guide*, St Leonards: Prospect Media, 1998⁴
- Rozenberg, P. *Australian Guide to Uniform Legal Citation*, Sydney: LBC Information Services, 1998
- Stuhmcke, A. *Legal Referencing*, Sydney: Butterworths, 1998

AN OVERVIEW OF THE GUIDES

Students' Guide to Legal Writing

The *Students' Guide to Legal Writing* is an update of Campbell's *Presentation of Legal Theses*⁵ with particular emphasis on the inclusion of the electronic source citation rules. The writing style is concise and very readable – similar to Campbell's other research texts, particularly the landmark, *Legal Research: Materials and Methods*⁶. The difference is that this guide seems to have been written in a tone directed to undergraduate students. Statements such as the following may not appeal to a mature-age postgraduate practitioner:

If you insist on handing in written work which significantly exceeds the prescribed word limit, you must expect that a deduction from the normal grade that would have been allocated will be made in fairness to those students who have complied with the word limit instructions.⁷

The text is in four parts covering:

- preparing written work;
- matters of style;
- notes and references; and
- a one page select bibliography.

¹ Campbell, E. *Presentation of Legal Theses*, 3rd ed. Melbourne: Monash University, 1996.

² Morris, G. et al. *Laying Down the Law: the Foundations of Legal Reasoning, Research and Writing in Australia*, 4th ed, Sydney: Butterworths, 1996.

³ 5th ed. Canberra: AGPS, 1994.

⁴ I have reviewed Colin Fong's Guide in this journal recently (*Australian Law Librarian* 6 (2) June 1998 at pp 136-137) so shall refer to it only in passing.

⁵ Campbell, E. *Presentation of Legal Theses*, 3rd ed. Melbourne: Monash University, 1996.

⁶ Campbell, E., Poh-York, L. & Tooher, J. *Legal Research: Materials and Methods*, 4th ed., Sydney: LBC Information Services, 1996.

⁷ Campbell, E., Fox, R. and Kewley, G. *Students' Guide to Legal Writing*, Sydney: The Federation Press, 1998 at p 2.

It is a compact 58 pages, but disappointingly has no index. Part One includes a succinct guide to academic writing for students including planning, researching, preparing the first draft and editing written work. A brief punctuation guide follows with the reader directed to the AGPS *Style Manual for Authors, Editors and Printers*⁸ for extra information. The third section sets out cite formats for footnotes, as well as general rules for later references using 'ibid', 'id', 'loc cit' and 'op cit'. This work remains a practical and concise guide.

Australian Guide to Uniform Legal Citation

Pearl Rozenberg's *Australian Guide to Uniform Legal Citation*⁹ is a larger undertaking containing 134 pages and an index. Chapters cover referencing rules, plain English and the use of gender neutral language, the use of footnotes, bibliographies and tables, and then general citation rules with 10 appendices of abbreviations. The first chapter, prepared by Richard Krever, includes good use of substantive examples, and communicates a deep understanding of the need for full and accurate referencing in legal writing compared to other disciplines. The 'why' question is dealt with well:

Unlike the case with other disciplines, where argument is devised by the author and external sources serve primarily as inspiration or help to illustrate a point, in law, the external materials are the fundamental basis for the argument ... Conceptually completely integrated with it'.¹⁰

Chapter 5 contains the citation guide for an extensive range of materials and formats including books, databases, government publications, Internet sources, case law, legislation and electronic sources. The Guide takes a broad perspective on citation, for example with books, separate rules are specified where the publication is online, on a database, on the Internet or in paper format. Examples are given for both bibliography and footnote cites in each category. Rozenberg makes clear reference to the derivation of the cite styles including a note that the database cite style is based on MLA Style Guidelines in Gibaldi, J. *MLA Handbook for Writers of Research Papers*.¹¹ The Internet sources' style was based on Harnack's and Kleppinger's revisions for *Walkers MLA Style Citations of Electronic Sources*.¹² The text also has clear references to more detailed sources for foreign materials.

Australian Guide to Legal Citation

A special committee of the law student-run Review compiled Melbourne University Law Review's *Australian Guide to Legal Citation*.¹³ Like Rozenberg's and Stuhmcke's volumes, it has a blue cover in deference to Harvard's *Blue Book*.¹⁴ The layout of this booklet is well suited to its purpose with headings in the black margins on the left hand side of the page, and each rule followed by a clearly marked example. Each chapter has black tabs on the right hand side for ease of reference. The compilers also solicit comment on all aspects of the guide and provide an email work address for researchers to advise of problems in implementation. The coverage of this volume appears broader than its counterparts, and includes cases, legislation, journal articles, books and other sources such as encyclopaedias, looseleaf services, theses and interviews. It also includes citations for Canadian, New Zealand, UK, international, Asian, and US materials. The section on titles of judgments is particularly informative.¹⁵ The method stated does not appear to differentiate between bibliography and footnote references.

⁸ *Style Manual for Authors, Editors and Printers*, 5th ed, Canberra: AGPS, 1994

⁹ Sydney: LBC Information Services, 1998

¹⁰ *Id* at p 4.

¹¹ *Id* at p 36

¹² *Id* at p 45

¹³ Melbourne: Melbourne University Law Review Association, 1998

¹⁴ *The Blue Book: A Uniform System of Citation*, 16th ed, Cambridge: Harvard Law Review, 1996

¹⁵ *Australian Guide to Legal Citation*, Melbourne: Melbourne University Law Review Association, 1998 at pp 27-33

Legal Referencing

Anita Stuhmcke's *Legal Referencing*¹⁶ states in the Preface:

This guide does not purport to prescribe a uniform system of legal referencing; indeed given that there is no singular accepted method of legal referencing in Australia such a task is not yet possible ... Instead this guide seeks to instil [I] in the reader an appreciation of clarity, comprehensiveness and conciseness in legal referencing, and to make suggestions as to how and when to reference.¹⁷

In this vein, it includes an excellent section on plagiarism,¹⁸ and deals very briefly with parenthetical styles of referencing.¹⁹ This is the only guide that makes any attempt to explain the so-called 'Harvard' style and its derivatives that have become so common in interdisciplinary work. Stuhmcke also explains the difference between footnotes and endnotes and gives examples. Any examples are in boxes with shading, making for ease of identification by the reader. The guide is written in a chattier style than the other publications, and as with Campbell, it refers to the likelihood of receiving poor marks for doing this or that, which may limit its audience appeal. A specific chapter deals with the issue of referencing in exams.²⁰ This volume also includes a useful section on the titling of cases.²¹ Stuhmcke approaches the topic in a common sense and flexible manner allowing for personal variations in style and providing alternative rules.²² The chapter on citation of electronic material is also written in this vein.²³ International referencing is dealt with very briefly in Chapter 10, which in essence is no more than a select bibliography of pertinent foreign citation handbooks minus examples.

MINOR VARIATIONS AND COMPARISONS

There seems to be a disagreement amongst the authors in relation to the use of 'ibid' and 'id'. Campbell uses 'id' to refer to a reference immediately following and to exactly the same source and page.²⁴ This is where 'ibid' has been used previously. 'Ibid' is used with changes to the pinpoint reference. This is the same as Campbell's 1996 edition of *Presentation of Legal Theses*,²⁵ but contrary to earlier editions.²⁶ The MULR guide has done away with the use of 'id' entirely,²⁷ using 'ibid' for references exactly the same as the preceding one or the same reference but at a different page, for example, 'ibid 30'. Thus 'ibid' is taking over the role of 'id'. Rozenberg's guide recommends the use of 'ibid' whenever a citation is exactly the same as the immediately preceding authority. 'Id' is used where there is 'any variation between the previous and present footnote.'²⁸ The latter seems correct to me – and my knowledge would be based on previous editions of Campbell! Other texts have also followed this convention. Nemes and Coss²⁹ include examples using 'ibid' for exactly the same citation and 'id' where there is a reference to the document just cited, but at a different page. Derek French provides another view for the differences:

In citations, 'ibid' (from the Latin *ibidem*, meaning 'in the same place') is used to mean that the same authority is being cited as in the immediately preceding citation. Accordingly it can be used only when the same authority

¹⁶ Stuhmcke, A. *Legal Referencing*, Sydney: Butterworths, 1998

¹⁷ Id at p. xiii.

¹⁸ Id at pp 20-25.

¹⁹ Id at p. 8

²⁰ Id at chapter 12

²¹ Id at pp 40-41.

²² Id at pp 81 and 90.

²³ Id at chapter 9.

²⁴ Campbell, E., Fox, R. and Kewley, G. *Students' Guide to Legal Writing*, Sydney: The Federation Press, 1998 at p. 47.

²⁵ Campbell, E. and Kewley, G. *Presentation of Legal Theses*, 3rd ed. Melbourne: Monash University, 1996 at p. 35

²⁶ Campbell, E. *Presentation of Legal Theses* rev ed. Melbourne: Faculty of Law, Monash University, 1987 at p. 26.

²⁷ *Australian Guide to Legal Citation*, Melbourne: Melbourne University Law Review Association, 1998 at p. 5.

²⁸ Rozenberg, P. *Australian Guide to Uniform Legal Citation*, Sydney: LBC Information Services, 1998 at p. 23

²⁹ Nemes, I. and Coss, G. *Effective Legal Research*, Sydney: Butterworths, 1998 at p. 22 [2.17]

is repeatedly cited with no intervening citations of other authorities ... Sometimes, 'ib' is used instead of 'ibid' and sometimes the punctuation is omitted. Americans, perhaps more logically, prefer 'id.'³⁰

To confuse the issue further, the current AGPS *Style Manual* includes a different interpretation yet again.³¹

Where there are intervening citations, Rozenberg has moved to the use of 'above' and 'below'.³² Stuhmcke has scorned the Latin phrases for intervening repeat citations and uses a plain English equivalent referred to as the 'Note x' method. With this system, all subsequent references are indicated by the footnote number of the relevant prior cite.³³ The only difficulty that might be encountered with this method is that the author cannot rely on inserting footnote references during writing. If an extra footnote is inserted at a late stage then the following 'Note x' references would be incorrect, and would need to be changed manually. Perhaps there might still be a place for the use of 'op cit', or at the very least, the author's name along with the footnote number

There also seems to be a general acceptance that it is useful to omit unnecessary punctuation. Stuhmcke recommends 'minimalism',³⁴ and Rozenberg comments in the Preface:

... all extraneous punctuation and other typographic marks have been removed leaving a simple and clear guide that is easy to key in when typing, as well as to use.³⁵

It is therefore a little surprising to note Rozenberg's recommended use of brackets enclosing publication details, not only in the footnote, but also in the bibliography reference.³⁶ Campbell's guide also follows this formula.³⁷ Stuhmcke omits the brackets altogether³⁸, but the MULR guide omits the place of publication and brackets the edition and publication date details.³⁹ It would seem that brackets are unnecessary. Perhaps a stronger case might be made out for the angle brackets surrounding web addresses '<>'. Stuhmcke⁴⁰, the MULR guide⁴¹ and Rozenberg⁴² use these. No doubt, as the format for electronic addresses become more familiar to readers, even these will become superfluous.

Several of the Guides include abbreviation lists:

- Rozenberg has nearly 50 pages of appendices covering common journals, court names, case reports and the like;⁴³
- Stuhmcke has 15 pages including a table of recommended abbreviations, what they mean and where they can be used. Appendix 11 has law report citations including publishers and notations as to the series dates and which are authorised;⁴⁴
- Campbell has a brief 6 page listing of common legal abbreviations crucial for the writer;⁴⁵ and
- The Melbourne University Law Review guide has a 36 page Appendix with abbreviations used in the text, abbreviations used in the footnotes, and law reports listings⁴⁶

³⁰ French, D *How to Cite Legal Authorities*, London: Blackstone Press, 1996 at p. 6

³¹ *Style Manual for Authors, Editors and Printers*, Canberra: AGPS, 1994 at p 181 [9.191]

³² Rozenberg, P. *Australian Guide to Uniform Legal Citation*, Sydney: LBC Information Services, 1998 at p. 24

³³ Stuhmcke, A. *Legal Referencing*, Sydney: Butterworths, 1998 at Chap 11

³⁴ *Id* p. 75

³⁵ Rozenberg, P. *Australian Guide to Uniform Legal Citation*, Sydney: LBC Information Services, 1998 at p. v

³⁶ *Id* p. 33

³⁷ Campbell, E., Fox, R. and Kewley, G. *Students' Guide to Legal Writing*, Sydney: The Federation Press, 1998 at p. 58

³⁸ Stuhmcke, A. *Legal Referencing*, Sydney: Butterworths, 1998 at p. 32

³⁹ *Australian Guide to Legal Citation*, Melbourne: Melbourne University Law Review Association, 1998 at 59

⁴⁰ Stuhmcke, A. *Legal Referencing*, Sydney: Butterworths, 1998 at Chap 9, 106-

⁴¹ *Australian Guide to Legal Citation*, Melbourne: Melbourne University Law Review Association, 1998 at p. 39

⁴² Rozenberg, P. *Australian Guide to Uniform Legal Citation*, Sydney: LBC Information Services, 1998 at p. 51

⁴³ *Id* at pp. 79-126

⁴⁴ Stuhmcke, A. *Legal Referencing*, Sydney: Butterworths, 1998 at pp. 129-154

⁴⁵ Campbell, E., Fox, R. and Kewley, G. *Students' Guide to Legal Writing*, Sydney: The Federation Press, 1998 at pp. 51-57

⁴⁶ *Australian Guide to Legal Citation*, Melbourne: Melbourne University Law Review Association, 1998 at pp. 115-152

While a generally useful addition, such tables are necessarily incomplete, and perhaps researchers would need to consult more lengthy lists in Fong⁴⁷ or Raistrick⁴⁸ in any event. The 'value-adding' evident in Stuhmcke's use of a table including additional information and detail is to be applauded

CRITERIA

Thus, I approached the task of choosing a guide with some very basic criteria in mind. These are:

Accessibility

Researchers regard citation as the 'icing on the cake' rather than their substantive concern. If they are looking for a cite point then they would prefer to be able to access the rules source quickly and specifically. This can be accomplished through an excellent detailed index and an accessible layout. The Melbourne University Law Review guide certainly wins the layout prize.

Completeness

Most people will turn to a guide for the really 'thorny' issues, so too many follow-up references to more complete guides or separate guides for other jurisdictions are extremely frustrating. In addition, completeness of the record aids the reader. Cites should include all the necessary information so that the reader can assess the authority cited in terms of author, date, edition, publisher and jurisdiction of publication. A cite style that neglects to advise publication jurisdiction may be insufficient for some needs, unless there are fuller references in the bibliography.

Efficiency

Many students are typing their own materials – or paying for someone else's time to do so. Unnecessary punctuation adds time and therefore cost to the finished product, so it would seem that the modern conventions should be used to omit brackets, commas, full stops and unnecessary punctuation. In particular, brackets surrounding publishing details in footnotes and bibliographies really do seem surplus. These still feature in most of the guides.

Reference to Prior Notes

A confusing aspect in using footnote references lies in the use of the Latin tags such as 'supra', 'op cit' and 'loc cit'. Even 'see above' can lead to a futile tracking through previous pages. It is wasteful to repeat heavily used cites in full, but a clear method for referring to prior notes is paramount. Perhaps in the era of 'cut and paste' technology, repetition has its merit.

New Electronic Formats

Provision must be made for citation from all sources such as Internet websites, email discussion lists, CD-ROMs, online subscriptions, and personal interviews.

Historical Style Foundation

The modern world thrives on choice, but even so, with citation, many writers prefer to use the style they have become accustomed to rather than learn an altogether different way of doing things. After all, it really does not matter to the reader in what order the various elements of the cite appear as long as all the details are present and correct, and

⁴⁷ Fong, C. and Edwards, A. *Australian and New Zealand Legal Abbreviations*, 2nd ed, Sydney: Australian Law Librarians' Group, NSW Branch, 1995.

⁴⁸ Raistrick, D. *Index to Legal Citations and Abbreviations*, 2nd ed, London: Bowker-Saur, 1993

provided there is some internal consistency in the document. There is a natural inclination to the style used in the past. It is more efficient for a researcher to learn a particular style and use it in all writing than to use a variety of styles.

Interdisciplinary Work

The social science rules using in-text references have been scorned by lawyers, however many interdisciplinary journals now use this method as a matter of course. A complete legal guide should include something about the 'other' way of doing things.

Legal Eccentricities

Legal research sources are 'different', and so any cite guide aspiring to be generally accepted needs to cover the intricacies of the various legal materials. The depth of the coverage in areas such as the rules regarding the choice of the titles of cases, or lists of authorised cases can also be very useful.⁴⁹

Examples

Cite rules are tedious and confusing if they are not accompanied by many examples. This also clarifies any inadequacies in the explanations.

Underlying Rationales

Lawyers and law students are taught to question and analyse, and therefore it seems absurd to harass this group by presenting a detailed and intricate set of citation rules for them to follow, without also explaining the underlying rationale. A complete guide will address this issue and include information and examples on how and where to use citation and also why. The 'why' is to facilitate further understanding, critique and research by the reader and also to aid the writer to avoid plagiarism. Plagiarism is very rarely explained in any detail, but in order to use a style guide wisely it is important to appreciate when it is necessary to footnote.

Quick Guides

Many times a researcher will reach for the guide to check on a small point, for example whether to include a full stop or a comma or double quotation marks, bearing in mind that any unnecessary punctuation should have been eliminated. A 'Quick Basic Guide' in the front or back of the volume is most useful for these times, and both Stuhmcke's guide and the Melbourne University Law Review guide provide this.

Understandably, no one guide met all the criteria, but one or two came closer than the others. My favourite would have to be Stuhmcke, in particular because of the section on plagiarism, and its flexible attitude to personal preferences. However, the 'Note X' method for repeating cites might prove confusing without being bolstered by the use of 'ibid' and 'id'. Overall, the Guides are a welcome addition for legal researchers, but one day someone may be prepared to argue for an industry standard in Australia. If this occurs, it will probably emanate from a committee such as that which produced the Melbourne University Law Review guide. It is necessary to allow for discussion and debate of each specific issue, and in many respects it is a matter the Australian Law Librarians as a group or the Australian and New Zealand University Law Librarians could address as a group project. Perhaps this might be achieved in conjunction with the work being done on electronic publishing standards by such organisations as the Legal Information Standards Council.⁵⁰ These guides, as they stand at present, do not represent a conclusion of the matter.

⁴⁹ Specialist manuals are available of course. See Haxton, N *A Manual on Law Reporting*, Sydney: The Federation Press, 1991.

⁵⁰ www.fl.asn.au/lisc/about.html