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Update Summary

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UPDATE 212

AUGUST 2022

CRIMINAL LAW
INVESTIGATION AND PROCEDURE
VICTORIA

I Freckelton

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Update 212
August 2022
Updated commentary

Unlawful Assemblies and Processions Act 1958

- See new annotations at [UAA.5.20] and [UAA.10.20].

Ministerial Orders

- See new ministerial order regarding electronic scooter trial at [MO.45].

Road Safety Act 1986

Kyle McDonald has updated annotations as follows:

- Request or signal at [RSA.59.260].
- Powers exercisable by protective services officers and officers of the Corporation at [RSA.59.300].
- Owner of motor vehicle at [RSA.60.80].
- Relevant nominated person in relation to a motor vehicle at [RSA.60.100].
- Requirement to give information at [RSA.60.180].
- Occasion at [RSA.60.200].
- “accident” at [RSA.61.180].
- Overview at [RSA.63B.20].
- See also, new annotations to s 65C at [RSA.65C.20] to [RSA.65C.100].

Evidence

Professor Mirko Bagaric has updated annotations as follows:

- No need for striking similarity at [EA.PT3.6.200].

Crimes Act 1958 and *Charter of Human Rights Act 2006* annotations have been reviewed for currency. Committal Proceedings commentary has been reviewed for currency.

Crimes Act 1958 has been reviewed and updated.

Magistrate Gregory Connellan has updated annotations as follows:

Sex Offences

- Alternative arrangements for giving evidence at [SO.110].
- Section 36A: Reasonable belief in consent at [SO.540].
- Section 37: Care, supervision, authority at [SO.550].
- Elements – S 46(1) at [SO.682].
- Child abuse material at [SO.1740].

Benjamin Lindner has updated annotations as follows:

Questioning

- Introduction at [Q.20].
- Common law (pre-Evidence Act 2008) at [Q.1040].
- Effect of failure to accord right to silence at [Q.1080].
- Confession/record of interview of co-defendant at [Q.2160].
- The fairness discretion at [Q.2180].
- “investigating official” – cases at [Q.3040].
- “person in custody” – cases at [Q.3120].
- Questioning by non-police investigators at [Q.5040].

Justice Phillip Priest has updated annotations as follows:

Appeals and references

- Appeal after judge alone trial at [AAR.1010].
- Appeals after interlocutory rulings at [AAR.1060].
- Appeals against interlocutory decisions at [AAR.6020].

Benjamin Lindner has updated annotations to this product as follows:

Drugs

- “drugs of dependence” at [DPCSA.4.20].
- “traffick” – defined under the Act at [DPCSA.70.100].
- Intention – Trafficking at [DPCSA.71.120].
- General at [DPCSA.71F.20].

Professor Mirko Bagaric has updated annotations to this product as follows:

Evidence

- Exception – evidence relevant for a non-hearsay purpose at [EA.60.20].
- Notice at [EA.67.20].
- Relationship evidence at [EA.PT3.6.260].
- Notice requirement at [EA.99.20].
- Section 136 discretion at [EA.136.20].
- Meaning of prejudice at [EA.137.60].

Professor Mirko Bagaric has updated the annotations to the Crimes Act 1958 to reflect case law developments. Annotations have been updated as follows:

Section 17

Causing serious injury recklessly at [CA.17.20]

Section 76

Burglary at [CA.76.20]

Section 82

Obtaining financial advantage by deception at [CA.82.20]

Professor Mirko Bagaric has updated the annotations to the Evidence Act 2008 to reflect case law developments. Annotations have been updated as follows:

Section 65

Section 65(2)(b) – where the representation was made when or shortly after the asserted fact occurred and in circumstances that make it unlikely that the representation is a fabrication at [EA.65.60]

Section 78

Lay person exception – interpreted broadly at [EA.78.20]

Section 90

Fairness (s 90) discretion at [EA.90.20]

Part 3.6

No need for striking similarity at [EA.PT3.6.200]

Professor Mirko Bagaric has updated the annotations to the Charter of Human Rights and Responsibilities Act 2006 to reflect case law developments. Annotations have been updated as follows:

Statutory interpretation technique and judicial statements of Charter inconsistency at [CHRR.ACT.80].

Section 13

Right to privacy not relevant to s 6 of Surveillance Devices Act 1999 at [CHRR.13.20]

Justice Phillip Priest has updated the annotations to the Sentencing Act 1991 to reflect case law developments. Annotations have been updated as follows:

Section 5

Alcohol use by offender at [SA.5.380]

Plea of guilty at [SA.5.560]

Section 5(2AB) and (2AC) – Undertaking to assist authorities at [SA.5.680]

Part 2B

Part 2B (ss 6G–6J) – Continuing criminal enterprise offenders at [SA.PT2B.20]

Division 1A

Division 1A (ss 8A–8D) – Pre-sentence reports at [SA.DIV1A.20]

Section 9

Aggregate sentence of imprisonment at [SA.9.20]

Section 11

Foreign nationals at [SA.11.140]

Subdivision 1C

Subdivision (1C) (ss 18X–18ZT) at [SA.SDIV1C.20]

Subdivision 4

Subdivision (4) (ss 32–35) at [SA.SDIV4.20]

Youthful offenders at [SA.SDIV4.60]

Part 3BA Division 2

Principles applicable to sentencing intellectually impaired and mentally ill offenders at [SA.PT3BADIV2.40]

Section 82AA

Residential treatment orders at [SA.82AA.20]

Magistrate Greg Connellan has updated annotations to this product as follows:

Summary Trials

- Requirements for a valid charge at [ST.180].
- Describing the offence at [ST.240].
- Amendment to a charge at [ST.250]. **(New commentary)**.
- Amendment to a charge – cases under earlier enactments at [ST.255]. **(New commentary)**.
- The accused person’s consent to summary jurisdiction at [ST.480].

Road Safety Act (Part 5 - Offences involving alcohol or other drugs)

- Requirements for a valid s 49 charge at [RSA.49.90].
- Statutory time limit and amendment to a charge at [RSA.49.100].

Control of Weapons

- “Body armour” at [CWA.3.20].