

Preface

This is in many ways a second and expanded edition of my earlier book, *Jenshel's Annotated Civil Procedure Rules*, published in 2007. Many readers will be aware that publication of that book was not without incident. The first production run of 40 out of 500 volumes was marked by delays, misaligned covers, crooked printing and poor binding. A few of the best of this bad bunch were distributed during the book's launch at the Australian High Commission in Port Vila in December 2007, having been received only hours earlier.

Continuing technical difficulties eventually forced production offshore and the first batch of just 19 good quality books was obtained in late February 2008 by air freight. These were quickly dissipated among too few of the many who, having requested copies, had waited patiently. It was expected that the balance of the order would follow reasonably soon by sea. It did not. It was later discovered that only 200, rather than the contracted 500, volumes had been printed and that these were gathering dust in a Brisbane warehouse. Full distribution was finally commenced in June 2008, about 9 months behind the original schedule.

To those who have endured the crooked text and falling pages of the first production run and to those who should have received a copy earlier but did not, I sincerely apologise.

It was always intended regularly to update the original book, as is conventional for such works, and I have borne in mind the advice of Lord Justice Brooke¹, speaking of the English *Civil Procedure Rules* 1998:

“It is going to be increasingly important with the regime² under the new Civil Procedure Rules that judges dealing with interlocutory issues are afforded up-to-date assistance on the law by advocates appearing in front of them.”

A loose-leaf format capable of regular updating was originally contemplated but was found to be uneconomical for the small number (376) of pages involved, a problem solved by this “second edition” which includes the full text of, and annotations to, the *Constitutional Procedures Rules*, *Election Petitions Rules*, *Probate and Administration Rules* and *Court of Appeal Rules*. The original annotations to the *Civil Procedure Rules* have also been updated and considerably expanded. Though the book is now considerably more “corpulent”³ I have nevertheless tried to adhere to the *lex parsimoniae*, for both aesthetic and practical reasons.

This additional content has also produced a change of title; one more in keeping with content and ambition. A number of consequential stylistic and layout changes are designed to facilitate more efficient quick-reference and future updating.

An updated and expanded work (of more modest scope) was promised to the Government of Vanuatu by the Vanuatu Legal Sector Project (AusAID/NSWAGD) at a meeting of the Project Coordination Committee in March 2008. At that time the frustration of delays associated with printing *Jenshel's Annotated Civil Procedure Rules* was

¹ *Copeland v Smith* [2000] 1 All ER 457 at 462.

² His Lordship was referring to the regime comprised by Part 1 which is, almost verbatim, the source of Part 1 of the Vanuatu *Civil Procedure Rules* and imported also into the *Constitutional Procedures Rules*, *Election Petitions Rules* and *Probate and Administration Rules*.

³ As Sir Carleton Kemp Allen long ago described the then condition and tendency of the *White Book in Law and Orders* (3rd ed.), Stevens & Sons, London, 1965, p.82.

particularly acute and, thinking I might never see any more than a handful of the book in print, accelerated work on this new publication. The following months were characterised by a state of general panic and emotional debilitation and I was quite tempted by James Thurber's advice to writers: "Don't get it right, just get it written!" The eventual delivery of the volumes in June granted me the luxury to get it written and, I hope, to get it right too.

The aim has been to produce a durable and portable volume containing all the materials a practitioner or judicial officer might require, ready to hand. The tenor is primarily descriptive, though I have not hesitated to offer critique from time to time if it was necessary to describe not only what the law *is*, but what perhaps it *should* be. This has been an especially delicate task due to my personal involvement in several important matters. This cannot be helped and I can offer only that I have borne this tension in mind and have tried to be neither timid nor defensive.

It is my hope that this book will stimulate (further) consideration and debate about the scope and effect of the various rules of court. This should, in turn, lead to (greater) predictability and transparency in the delivery of procedural decisions, bearing in mind Lord Camden's⁴ oft-cited warning:

"...the discretion of a judge is the law of tyrants; it is always unknown; it is different in different men; it is casual, and depends on constitution, temper and passion. In the best it is very often caprice, in the worst it is every vice, folly and passion to which human nature is liable."

I am grateful to those people who have provided both praise and constructive criticism of *Jenshel's Annotated Civil Procedure Rules*. This work is certainly much better for the latter. I also reiterate my comments, and renew my gratitude to those mentioned, in the preface there.

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October 2008

⁴ *Hindson v Kersey* (1680) 8 How St Tr 57. As to this theme see also *R v Wilkes* (1770) 4 Burr 2527 at 2539; *Caltex Oil v The Dredge "Willemstad"* [1975-6] 136 CLR 529 at 567.