

## **Criminal Benchbook Update Notes – May 2014**

1. Remove the old “Contents Index” pages numbered 1.1 – 1.9. Replace with the new “Contents Index” pages numbered 1.1 – 1.10.
2. Add the “Update Notes – May 2014” pages numbered 2I.1 – 2I.10.
3. Remove the old “3 – Table of Cases” pages. Replace with the new “3 – Table of Cases” pages.
4. Remove the old “4 – Introduction” pages. Replace with the new “4 – Trial Procedure” pages.
5. Remove the old “5B – Trial Procedure” direction pages. Replace with the new “5B – Trial Procedure” direction pages.
6. Remove the old “6 – Unrepresented Defendant” direction pages. Replace with the new “6 – Unrepresented Defendant” direction pages.
7. Remove the old “7 – Fitness for Trial” direction pages. Replace with the new “7 – Fitness for Trial” direction pages.
8. Remove the old “10 – Evidence of Affected Children” direction pages. Replace with the new “10 – Evidence of Affected Children” direction pages.
9. Add new “10A – Child Witnesses” directions pages.
10. Remove the old “11 – Special Witnesses and Child Witnesses” direction pages. Replace with the new “11 – Special Witnesses” direction pages.
11. Remove the old “12 – Competency of Witnesses, Including Children” direction pages. Replace with the new “12 – Competency of Witnesses Including Children” direction pages.
12. Remove the old “12A – Hostile Witnesses” direction pages. Replace with the new “12A – Hostile Witnesses” direction pages.
13. Remove the old “19 – Disposition of Charge against Co-Defendant” direction pages. Replace with the new “19 – Disposition of Charge against Co-Defendant” direction pages.
14. Remove the old “20 – Tape Recordings and Transcripts” direction pages. Replace with the new “20 – Disposition of Charge against Co-Defendant” direction pages.
15. Remove the old “21 – Interpreters and Translators” direction pages. Replace with the new “21 – Interpreters and Translators” direction pages.

16. Remove the old “24 – General Summing Up Directions” direction pages. Replace with the new “24 – General Summing Up Directions” direction pages.
17. Remove the old “25 – Views and Demonstrations” direction pages. Replace with the new “25 – Views and Demonstrations” direction pages.
18. Remove the old “26 – “Evidence of Defendant in Respect of Co-Defendant” direction pages. Replace with the new “26 – Evidence of Defendant in Respect of Co-Defendant” directions pages.
19. Remove the old “28A – Defendant not giving evidence, where no adverse inference” direction pages. Replace with the new “28A – Defendant not giving evidence, where no adverse inference” direction pages.
20. Remove the old “28B – Defendant not giving evidence, where an adverse inference may follow from that” direction pages. Replace with the new “28B – Defendant not giving evidence, where an adverse inference may follow from that” direction pages.
21. Remove the old “The Rule in *Jones v Dunkel*” direction pages. Replace with the new “The Rule in *Jones v Dunkel*” direction pages.
22. Remove the old “The Rule in *Brown v Dunn*” direction pages. Replace with the new “The Rule in *Brown v Dunn*” direction pages.
23. Remove the old “33 – Alternative Charges” direction pages. Replace with the new “33 – Alternative Charges” direction pages.
24. Remove the old “34 – Separate Consideration of Charges – Single Defendant” direction pages. Replace with the new “34 – Separate Consideration of Charges – Single Defendant” direction pages.
25. Remove the old “36 – Out of Court Confessional Statements” direction pages. Replace with the new “36 – Out of Court Confessional Statements” direction pages.
26. Remove the old “38 – Lies Told by the Defendant (Consciousness of Guilt)” direction pages. Replace with the new “38 – Lies Told by the Defendant (Consciousness of Guilt)” direction pages.
27. Remove the old “39 – Lies Told by the Defendant (Going only to Credit)” direction pages. Replace with the new “39 – Lies Told by the Defendant (Going only to Credit)” direction pages.
28. Remove the old “40 – Alibi” direction pages. Replace with the new “40 – Alibi” direction pages.
29. Remove the old “41 – Good Character” direction pages. Replace with the new “41 – Good Character” direction pages.

30. Remove the old “42 – Bad Character” direction pages. Replace with the new “42 – Bad Character” direction pages.
31. Remove the old “44 – Prior Inconsistent Statements” direction pages. Replace with the new “44 – Prior Inconsistent Statements” direction pages.
32. Remove the old “45 – Privilege Against Self-Incrimination” direction pages. Replace with the new “45 – Privilege Against Self-Incrimination” direction pages.
33. Remove the old “47 – Motive” direction pages. Replace with the new “47 – Motive” direction pages.
34. Remove the old “50 – Similar Fact Evidence” direction pages. Replace with the new “50 – Similar Fact Evidence” direction pages.
35. Remove the old “51 – Jury Unanimity – Specific Issues” direction pages. Replace with the new “51 – Jury Unanimity – Specific Issues” direction pages.
36. Remove the old “52 – Jury Failure to Agree” direction pages. Replace with the new “52 – Jury Failure to Agree” direction pages.
37. Remove the old “52A – Majority Verdict” direction pages. Replace with the new “52A – Majority Verdict” direction pages.
38. Remove the old “55 – Expert Witnesses” direction pages. Replace with the new “55 – Expert Witnesses” direction pages.
39. Remove the old “57 – Reasonable Doubt” direction pages. Replace with the new “57 – Reasonable Doubt” direction pages.
40. Remove the old “60 – Witnesses whose evidence may require special warning” direction pages. Replace with the new “60 – Witnesses whose evidence may require special warning” direction pages.
41. Remove the old “61A – Defences in relation to sexual offences which relate to specific age or person with an impairment of the mind” direction pages. Replace with the new “61A – Defences in relation to sexual offences which relate to specific age or person with an impairment of the mind” direction pages.
42. Remove the old “61B – Defence not raised but available” direction pages. Replace with the new “61B – Defence not raised but available” direction pages.
43. Remove the old “63 – Absence of Fresh Complaint” direction pages. Replace with the new “63 – Absence of Fresh Complaint” direction pages.

44. Remove the old “65 – Longman Direction” pages. Replace with the new “65 – Longman Direction” pages.
45. Remove the old “66 – Evidence of other sexual (or violent) acts or other discreditable conduct” direction pages. Replace with the new “66 – Evidence of other sexual (or violent) acts or other discreditable conduct” direction pages.
46. Remove the old “68 – Attempts” direction pages. Replace with the new “68 – Attempts” direction pages.
47. Remove the old “69 – Conspiracy” direction pages. Replace with the new “69 – Conspiracy” direction pages.
48. Remove the old “70 – Evidence in Conspiracy Cases” direction pages. Replace with the new “70 – Evidence in Conspiracy Cases” direction pages.
49. Remove the old “72 – Accessory after the fact” direction pages. Replace with the new “72 – Accessory after the fact” direction pages.
50. Remove the old “73 – Claim of Right” direction pages. Replace with the new “73 – Claim of Right” direction pages.
51. Remove the old “74 – Unwilled Acts” direction pages. Replace with the new “74 – Unwilled Acts” direction pages.
52. Remove the old “75 – Accident: s 23(1)(b)” direction pages. Replace with the new “75 – Accident: s 23(1)(b)” direction pages.
53. Remove the old “76 – Mistake of Fact (s 24)” direction pages. Replace with the new “76 – Mistake of Fact (s 24)” direction pages.
54. Remove the old “76A – Mistake of Fact (Sexual Offences)” direction pages. Replace with the new “76A – Mistake of Fact (Sexual Offences)” direction pages.
55. Remove the old “77 – Extraordinary Emergency” direction pages. Replace with the new “77 – Extraordinary Emergency” direction pages.
56. Remove the old “78 – Insanity” direction pages. Replace with the new “78 – Insanity” direction pages.
57. Remove the old “79B – Intoxication” direction pages. Replace with the new “79B – Intoxication” direction pages.
58. Remove the old “80 – Capacity” direction pages. Replace with the new “80 – Capacity” direction pages.

59. Remove the old “81 – Compulsion s 31(1)(c)” direction pages. Replace with the new “81 – Compulsion s 31(1)(c)” direction pages.
60. Remove the old “82 – Compulsion s 31(1)(d)” direction pages. Replace with the new “82 – Compulsion s 31(1)(d)” direction pages.
61. Remove the old “83 – Defence of Dwelling House” direction pages. Replace with the new “83 – Defence of Dwelling House” direction pages.
62. Add the new “83B – Domestic Discipline” direction pages.
63. Add the new “84A – Prevention of Repetition of Insult” direction pages.
64. Remove the old “85 – Criminal Negligence” direction pages. Replace with the new “85 – Criminal Negligence” direction pages.
65. Remove the old “86B – Self-Defence” direction pages. Replace with the new “86B – Self-Defence” direction pages.
66. Remove the old “87 – Provocation” direction pages. Replace with the new “87 – Provocation” direction pages.
67. Remove the old “88 – Diminished Responsibility” direction pages. Replace with the new “88 – Diminished Responsibility direction pages.
68. Remove the old “91 – Administering a Stupefying Drug” direction pages. Replace with the new “91 – Administering a Stupefying Drug” direction pages.
69. Remove the old “91A – Administering Poison with Intent to Harm” direction pages. Replace with the new “91A – Administering Poison with Intent to Harm” direction pages.
70. Remove the old “92 – Arson” direction pages. Replace with the new “92 – Arson” direction pages.
71. Remove the old “94 – Assault on a Police Officer in Execution of his Duty” direction pages. Replace with the new “94 – Assault on a Police Officer in Execution of his Duty” direction pages.
72. Remove the old “95 – Attempt to Pervert the Course of Justice” direction pages. Replace with the new “95 – Attempt to Pervert the Course of Justice” direction pages.
73. Remove the old “96 – Bomb Hoax s 321A(1)” direction pages. Replace with the new “96 – Bomb Hoax s 321A(1)” direction pages.
74. Remove the old “96A – Bomb Hoax s 321A(2)” direction pages. Replace with the new “96A – Bomb Hoax s 321A(2)” direction pages.

75. Remove the old “97 – Burglary” direction pages. Replace with the new “97 – Burglary” direction pages.
76. Remove the old “98 – Carnal Knowledge” direction pages. Replace with the new “98 – Carnal Knowledge” direction pages.
77. Remove the old “98A.1 – Involving Child in Making Child Exploitation Material” direction pages. Replace with the new “98A.1 – Involving Child in Making Child Exploitation Material” direction pages.
78. Remove the old “98A.1 – Making Child Exploitation Material” direction pages. Replace with the new “98A.2 – Making Child Exploitation Material” direction pages.
79. Remove the old “98A.3 – Distributing Child Exploitation Material” direction pages. Replace with the new “98A.3 – Distributing Child Exploitation Material” direction pages.
80. Remove the old “98A.4 – Possessing Child Exploitation Material” direction pages. Replace with the new “98A.4 – Possessing Child Exploitation Material” direction pages.
81. Remove the old “98AA - Carnal knowledge of a person with an impairment of the mind” direction pages. Replace with the new “98AA - Carnal knowledge of a person with an impairment of the mind” direction pages.
82. Remove the old “98B – Abduction of Child under 16” direction pages. Replace with new “98B – Abduction of Child under 16” direction pages.
83. Remove the old “98D – Taking Child under 16” direction pages. Replace with new “98D – Taking Child under 16” direction pages.
84. Remove the old “98E – Cruelty to Children under 16” direction pages. Replace with new “98E – Cruelty to Children under 16” direction pages.
85. Remove the old “99 – Circumstance of Aggravation” direction pages. Replace with the new “99 – Circumstance of Aggravation” direction pages.
86. Remove the old “100 – Circumstance of Aggravation in Sexual Offences” direction pages. Replace with the new “100 – Circumstance of Aggravation in Sexual Offences” direction pages.
87. Remove the old “101A – Conspiracy” direction pages. Replace with the new “101A – Conspiracy” direction pages.
88. Remove the old “102 – Corruption of a Witness” direction pages. Replace with the new “102 – Corruption of a Witness” direction pages.

89. Remove the old “103 – Dangerous Operation of a Motor Vehicle” direction pages. Replace with new “103 – Dangerous Operation of a Motor Vehicle” direction pages.
90. Remove the old “104A – Deprivation of Liberty” direction pages. Replace with the new “104A – Deprivation of Liberty” direction pages.
91. Remove the old “105 – Drugs: Commonwealth offences under s 233 Customs Act” direction pages. Replace with the new “105 – Drugs: Commonwealth offences under s 233 Customs Act” direction pages.
92. Remove the old “105B – Drugs: Commonwealth drug offences under the Criminal Code Act 1995” direction pages. Replace with the new “105B – Drugs: Commonwealth drug offences under the Criminal Code Act 1995” direction pages.
93. Remove the old “106 – Drugs: Drugs Misuse Act” direction pages. Replace with the new “106 – Drugs: Drugs Misuse Act” direction pages.
94. Remove the old “108 – Escape from Lawful Custody” direction pages. Replace with the new “108 – Escape from Lawful Custody” direction pages.
95. Remove the old “109 – Extortion s 415(1)” direction pages. Replace with the new “109 – Extortion s 415(1)” direction pages.
96. Remove the old “109A – Extortion from 1 December 2008” direction pages. Replace with the new “109A – Extortion from 1 December 2008” direction pages.
97. Remove the old “110 – False Statement under Oath” direction pages. Replace with the new “110 – False Statement under Oath” direction pages.
98. Remove the old “113 – Going Armed in Public” direction pages. Replace with the new “113 – Going Armed in Public” direction pages.
99. Remove the old “114 – Grievous Bodily Harm” direction pages. Replace with the new “114 – Grievous Bodily Harm” direction pages.
100. Add the new “114A – Grooming Children under 16” direction pages.
101. Remove the old “117 – Incest” direction pages. Replace with the new “117 – Incest” direction pages.
102. Remove the old “118 – Indecent (Sexual) Assault” direction pages. Replace with the new “118 – Indecent (Sexual) Assault” direction pages.
103. Remove the old “119 – Indecent dealing with a child under 16” direction pages. Replace with the new “119 – Indecent dealing with a child under 16” direction pages.

104. Remove the old “120 – Indecent dealing – unlawfully procuring a child under 16 to commit an indecent act” direction pages. Replace with the new “120 – Indecent dealing – unlawfully procuring a child under 16 to commit an indecent act” direction pages.
105. Remove the old “121 – Indecent dealing – permitting indecent dealing” direction pages. Replace with the new “121 – Indecent dealing – permitting indecent dealing” direction pages.
106. Remove the old “122 – Indecent dealing – wilfully and unlawfully exposing a child under 16 to an indecent act” direction pages. Replace with the new “122 – Indecent dealing – wilfully and unlawfully exposing a child under 16 to an indecent act” direction pages.
107. Remove the old “124 – Indecent dealing – taking an indecent photo etc of a child under 16” direction pages. Replace with the new “124 – Indecent dealing – taking an indecent photo etc of a child under 16” direction pages.
108. Remove the old “124A – Kidnapping” direction pages. Replace with the new “124A – Kidnapping” direction pages.
109. Remove the old “124B – Kidnapping for Ransom” direction pages. Replace with the new “124B – Kidnapping for Ransom” direction pages.
110. Remove the old “127A – Malicious Acts with Unlawful Intent” direction pages. Replace with the new “127A – Malicious Acts with Unlawful Intent” direction pages.
111. Remove the old “128 – Official Corruption s 87(1)(a)” direction pages. Replace with the new “128 – Official Corruption s 87(1)(a)” direction pages.
112. Remove the old “128A – Official Corruption s 87(1)(b)” direction pages. Replace with the new “128A – Official Corruption s 87(1)(b)” direction pages.
113. Remove the old “129 – Perjury” direction pages. Replace with the new “129 – Perjury” direction pages.
114. Remove the old “130 – Possession of a Child Abuse Computer Game” direction pages. Replace with the new “130 – Possession of a Child Abuse Computer Game” direction pages.
115. Remove the old “131A.1 – Observations or Recordings s 227A(1)” direction pages. Replace with the new “131A.1 – Observations or Recordings s 227A(1)” direction pages.
116. Remove the old “131A.2 – Observations or Recordings s 227A(2)” direction pages. Replace with the new “131A.2 – Observations or Recordings s 227A(2)” direction pages.



117. Remove the old “131A.3 – Distributing Prohibited Visual Recordings” direction pages. Replace with the new “131A.3 – Distributing Prohibited Visual Recordings” direction pages.
118. Remove the old “133 – Rape before 27 October 2000” direction pages. Replace with the new “133 – Rape before 27 October 2000” direction pages.
119. Remove the old “133A – Rape after 27 October 2000” direction pages. Replace with the new “133A – Rape after 27 October 2000” direction pages.
120. Remove the old “134 – Receiving” direction pages. Replace with the new “134 – Receiving” direction pages.
121. Remove the old “135 – Receiving from 1 December 2008” direction pages. Replace with the new “135 – Receiving from 1 December 2008” direction pages.
122. Remove the old “137 – Riot and Unlawful Assembly” direction pages. Replace with the new “137 – Riot and Unlawful Assembly” direction pages.
123. Remove the old “138 – Robbery” direction pages. Replace with the new “138 – Robbery” direction pages.
124. Remove the old “142A – Threat” direction pages. Replace with the new “142A – Threat” direction pages.
125. Remove the old “143 – Torture” direction pages. Replace with the new “143 – Torture” direction pages.
126. Remove the old “144 – Unlawful Killing Murder s 302(1)(a)” direction pages. Replace with the new “144 – Unlawful Killing Murder s 302(1)(a)” direction pages.
127. Remove the old “145 – Unlawful Killing Murder s 302(1)(b)” direction pages. Replace with the new “145 – Unlawful Killing Murder s 302(1)(b)” direction pages.
128. Remove the old “148 – Unlawful Sodomy – Unlawful Sodomy of a Person under 18” direction pages. Replace with the new “148 – Unlawful Sodomy – Unlawful Sodomy of a Person under 18” direction pages.
129. Remove the old “149 – Unlawful Sodomy – Permitting Sodomy by a Person under 18” direction pages. Replace with the new “149 – Unlawful Sodomy – Permitting Sodomy by a Person under 18” direction pages.
130. Remove the old “150 – Unlawful Sodomy – Unlawful Sodomy of an Intellectually Impaired Person” direction pages. Replace with the new “150 –

Unlawful Sodomy – Unlawful Sodomy of an Intellectually Impaired Person” direction pages.

131. Remove the old “151 – Unlawful Use of a Motor Vehicle” direction pages. Replace with the new “151 – Unlawful Use of a Motor Vehicle” direction pages.
132. Remove the old “154 – Using Internet etc to Procure Children under 16” direction pages. Replace with the new “154 – Using Internet etc to Procure Children under 16” direction pages.
133. (To Associates) **DO NOT** discard or replace any page on which your judge has written or made notes.