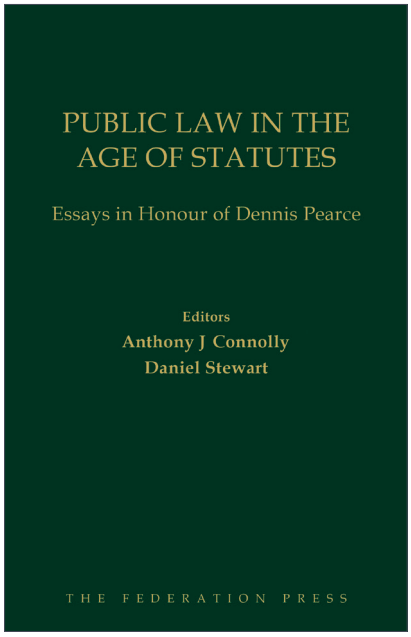
Public Law in the Age of Statutes: Essays in Honour of Dennis Pearce

By A J Connolly and D Stewart (eds) | The Federation Press | 2015



Professor Dennis Pearce AO is emeritus professor at the Australian National University. This book of essays came out of papers given at a conference held in his honour in October 2014.

Pearce is a preeminent Australian authority on statutory interpretation, as the co-author of *Statutory Interpretation in Australia* with Robert Geddes, the 8th edition of which was published in 2014, and which has been cited in over 2000 Australian judgments. Pearce was made professor at ANU in 1981, was dean of the ANU Law School from 1982 to 1984 and again from 1991 to 1993, and was acting deputy vice-chancellor in 1994. Upon retirement in 1996 he was appointed emeritus professor. His other appointments, which are too numerous to list fully, include the Commonwealth and Defence Force ombudsman from 1988 to 1990, chairman of the Australian Press Council from 1997 to 2000, and foundation adviser to the Senate Scrutiny of Bills Committee from 1981 to 1983.

The Hon Justice Gageler, an author of one of the essays in the book and one of Pearce's former students, describes Pearce as 'astute and controlled'.

Pearce became an officer of the Order of Australia in 2003 for, among other things, his service to law through work in statutory interpretation, delegated legislation, and administrative law. Much as it was, and is a continuing, feature of his life's work, the delegation of legislative functions to the executive is a continuing theme in this book.

In the first chapter, 'Public Law and a Public Lawyer in the Age of Statutes', the editors Anthony Connolly and Daniel Stewart note the growth over the last 30 years of the delegation of legislative functions. They quote Guido Calabresi, who used the term 'statutorification' to describe the shift from an American legal system dominated by the common law to one in which its primary source was statutes. White settlement of Australia, on the other hand, was 'born to statutes', although its veritable 'orgy of statute making', the authors point out, was built on a common law foundation that protected the Crown in its dealings with citizens.

His Honour Justice Gageler, in 'The Master of Words: Who Chooses Statutory Meaning', discusses when an administrative decision maker can give a meaning to statutory words in circumstances where the words permit of a range of potential meanings: that is, which is to have the authority to give them meaning – the decision maker or the court? Deftly his Honour weaves in reference to Lord Atkin's dissent in *Liversidge v Anderson* [1942] AC 206 and his invocation of a funny colloquy between Alice and 'the obtuse and erratic anthropomorphic egg', Humpty Dumpty, from Lewis Carroll's *Through the Looking Glass*.

In an insightful essay on the 'Constitutional Dimensions of Statutory Interpretation', Cheryl Saunders explores the ways in which the Commonwealth Constitution affects the principles and practices of statutory interpretation in Australia. Saunders provides a framework divided between three pillars: mandate, influence, and catalyst.

In a detailed chapter titled 'Executive Versus Judiciary Revisited' Margaret Allars looks back on an essay of Dennis Pearce's from 1991 titled 'Executive Versus Judiciary', in which Pearce alluded to the concerns of the executive regarding the burdensome impact of judicial review proceedings. Allars bases the first part of her article on *Attorney-General (NSW) v Quinn* (1990) 170 CLR 1 (which came down not long after Pearce's original article), finding both synergies and obscurities between it and *Marbury v Madison* (1803) 5 US 137, a US case involving similar facts but delivered almost 200 years earlier.

In 'Private Standards as Delegated Legislation', Daniel Stewart, one of the editors of the book and a senior lecturer at the ANU Law School and a former John M Olin Fellow in Law and Economics at the University of Virginia, discusses how private standards such as Australian Standards – over a thousand of which are now referenced in Australian legislation – become legally binding obligations.

And in a timely piece titled 'Enquiring Minds or Inquiring Minders? Towards Clearer Standards for the Appointment of Royal Commissioners and Inquiry Heads', AJ Brown discusses the place of royal commissions and ad hoc public inquiries in Australia's modern system of governance and public integrity. As a prologue Brown quotes part of a debate on the *Judiciary (Diplomatic Representation) Bill 1942* (Cth) in which

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This is a timely collection of essays, with a vibrant range of topics of immediate relevance.

ire was directed toward the appointment of Sir Owen Dixon as Australian Government minister to the US; moving forward half a century Brown suggests that the appointment of former High Court Justice Dyson Heydon AC to chair the Royal Commission into Trade Union Governance and Corruption in 2014 raises similar questions as to whether there should be limits on how former judges may accept government appointments to head major inquiries.

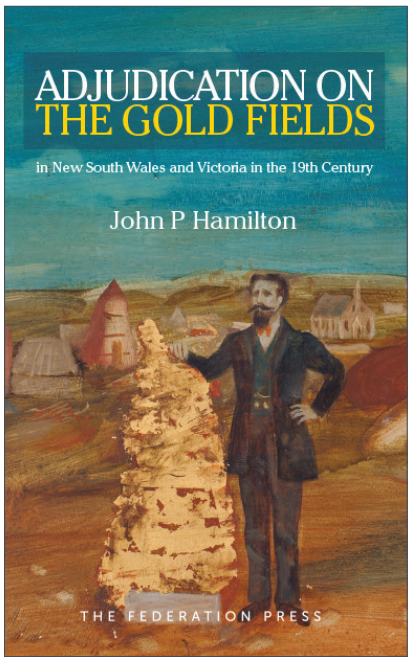
In a slight change of tack, the last three chapters look at the history and status of administrative review and governmental oversight bodies. Justice Susan Kenny in 'The Administrative Review Council and Transformative Reform' charts the history of the Administrative Review Council. Linda Pearson in 'The Vision Splendid: Australian Tribunals in the 21st Century' looks at the amalgamation of specialist tribunals into the Administrative Appeals Tribunal, and in doing so evokes Pearce's query in 1991 as to whether the 'vision splendid' of the consolidation of Commonwealth tribunals into the Administrative Review Tribunal had faded. And in the last chapter, John McMillan, a former Commonwealth and Australian information commissioner, reflects on the effectiveness of organisations such as the ombudsmen in effecting organisational cultural change.

This is a timely collection of essays, with a vibrant range of topics of immediate relevance. It is worthy of honouring the life work of Dennis Pearce.

Review by Charles Gregory

Adjudication on the Gold Fields in New South Wales and Victoria in the 19th Century

By John P Hamilton | The Federation Press | 2015



The mid nineteenth century gold rush period produced an unrivalled population explosion in Australia. Opportunists flocked from afar doubling the population in New South Wales and multiplying Victoria's sixfold. It was a golden period with Australia producing 39 per cent of the world's gold. A referenced extract captures the frenetic atmosphere, 'tents everywhere, an anthill swarming with frenzied activity… an earnestness you cannot imagine.'

An unexpected administrative crisis arose from the sudden onset of the fledging gold mining pursuits in the colony. Disputes frequently broke out on the gold fields. For example, disputes about the entitlement to ground, encroachment or stealing gold as well as co-ownership or partnership disputes. On busy fields, like Ballarat, there were hundreds of such disputes a year. There was a rush to establish a system of laws and processes to govern life on the gold fields and to promote order among a potentially revolutionary and demographically diverse community of mostly transient opportunists.

This book charts the development, between 1851and 1875, of the public administration of the gold fields in New South Wales and Victoria. In particular, it chronicles the origins, development and nature of the heyday of gold fields adjudication at that time in those two colonies. It gives a contained and carefully documented example of the development of government in colonial Australia which tended to be characterised by a blend of principle and pragmatism.

Adjudication on the Gold Fields in New South Wales and Victoria in the 19th Century (Federation Press, 2015)

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This is a valuable academic nugget. Its author, John Perry Hamilton, formerly a barrister and then judge of the Supreme Court of New South Wales recently obtained his PhD in history. His thesis forms the basis of this book. His research is meticulous. He relies upon primary records from what must have been exhaustive mining of archives, somewhat frustrated by the practice of many colonial mining adjudications taking place without written records.

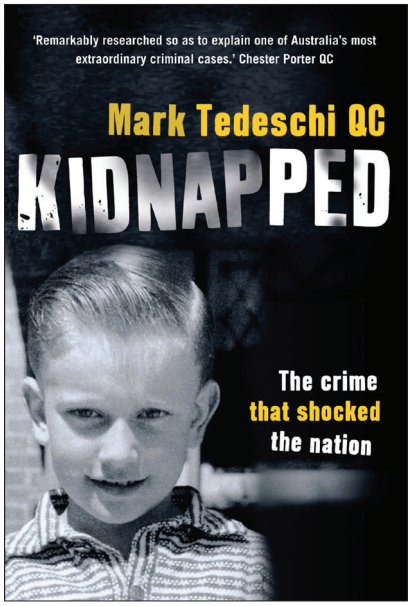
While there is considerable historical writing about life on the gold fields, particularly the rebellion of the Eureka Stockade, this book cures a long lasting lacuna of historical literature on the *adjudication* systems of the gold fields. It is a triumph of literary form. It is novel-like as well as a study and a subject matter authority. It contains both social history, colonial jurisprudence and personal stories. It really is a golden addition to any historical library, particularly one focussing on Australian history or legal history.

The book is structured thus. Chapter 2 summarises the history and social background, including the nature of gold fields demography and gives a brief account of the Eureka Stockade and the royal commission. Chapter 3 deals with the origins of the administrative systems for the gold fields. Chapter 4 provides an account of the legislative history relating to adjudication in both New South Wales and Victoria. Chapter 5 concerns the establishment of gold commissioners as adjudicators. It homes in on the role of John Richard Hardy, a pivotal figure in the administration of the gold fields in New South Wales who established a very successful dispute resolution system (coincidentally, he was the brother in law of Alfred Stephen, a chief justice of New South Wales). Chapter 6 concerns the operation of Wardens' Courts and Local Courts as adjudicators in Victoria, and the abolition of Local Courts and their replacement by the Courts of Mines. Chapter 7 deals with the manner of adjudication by gold commissioners and the continuation and development of their function in New South Wales. It contains some fascinating extracts of 19 entries of disputes from the 'Rocky River Record'. These are the (very rare) written records of a commissioner at Rocky River near Uralla maintained in a leather bound book. They record the disputes he presided over during a two month period. These are a remarkable and valuable record because the adjudication system was effectively unwritten. Chapter 8 is concerned with the 1866 legislation and the New South Wales Royal Commission. Chapter 9 deals with the continued operation of adjudicators in New South Wales from 1867 to 1873. Legislative activity during this period was sparse. Chapter 10 deals with the establishment of the Victorian Courts of Mines and Wardens' Courts and offers a comparison with the New South Wales system. Chapter 13 deals with the establishment and operation of the Wardens Courts in New South Wales and Chapter 14 with the body of jurisprudence in the superior courts of New South Wales and Victoria relating to the adjudication system in the specialised mining courts. It examines the reported cases available in the period 1851 to 1875 (which effectively means reported cases in the 1860s and 1870s). In New South Wales, there were 13 cases touching on mining adjudications. Of these, 8 were encroachment cases, three were criminal cases, one was a partnership case and one was a contract case. In Victoria, there was a larger volume of reported decisions: 46 cases were noted. Of these, 24 were encroachment cases, 12 were forfeiture cases, two were criminal cases and one was a nuisance case. Chapter 15 considers the history of the Wardens' Courts after 1875. In conclusion, the book offers three helpful appendices. One contains a table of cases determined by Beechworth Local Court, another contains cases from Hill End Bench Book. The third contains the Register of Complaints in Sofala Warden's Court.

Reviewed by Talitha Fishburn

Kidnapped

By Mark Tedeschi QC | Simon & Schuster Australia | 2015



Stephen harboured an under-current of intense envy and greed, fuelled by a desperate need for social acceptance, a readiness to undertake appalling risks, an un realistic sense of his own perspicacity, and a perverse thrill in the face of great danger.

We have all probably heard about this famous case. It might very well be one of the most famous cases in Australian history and it truly must have been 'the crime that shocked the nation'. On 7 July 1960 an eight year old schoolboy named Graeme Thorne was kidnapped in Bondi on his way to school. About a month earlier, Graeme Thorne's father had won the tenth draw of the Opera House lottery, 100,000 pounds prize (equivalent to about $4 million today-p.290). There was much publicity about this. However, for the Thorne family there was a shocking consequence: the kidnapping of their son and subsequent ransom demands. But that of course was not the end of the matter. On 16 August 1960, five weeks and five days after Graeme Thorne's disappearance, police found his body, still fully dressed in his Scots College uniform, on a bush covered vacant block, in Grandview Grove, Seaforth.

What followed was of course an intense police investigation and the subsequent arrest and trial of the accused - Stephen Bradley. The author, given his experience as a Crown prosecutor, has tremendous insight into police investigations, the analysis of evidence in a criminal trial as well as the mind of a killer. And this is what we have in this book.

The research is thorough and extremely interesting. We learn of Stephen Bradley's background, in Budapest, and his life there during World War II. He migrated to Australia in 1950 and had a life initially in Melbourne. He changed his name and moved to Sydney in 1957 with his third wife. We learn of the marriage that Stephen Bradley had and what he did, how he lived in Sydney and importantly, the financial pressure the family was under. But what the author does so well, is highlight the type of person Bradley must have been in order to have committed this terrible crime. He writes at page 37 '… beneath the surface, Stephen harboured an undercurrent of intense envy and greed, fuelled by a desperate need for social acceptance, a readiness to undertake appalling risks, an unrealistic sense of his own perspicacity, and a perverse thrill in the face of great danger.'

The book is fascinating because it is part of Australia's recent history, and not only because we have descriptions of what life was like in the suburbs of Sydney at this time, but also because we learn of the detailed, intense and thorough police investigation which eventually led to Stephen Bradley. Looking 'backwards' at what police did, i.e. analysing what they did after we all know the end result, is always a fantastic tale. What they did well is contrasted with what could have been done better and leads not taken could very well have resulted in an earlier capture. We also have a great summary of the trial with the author having access to the court records and speaking to several relatives of key players. Yet, we have the author's perspective on what Bradley must have been doing at the critical times and what he was thinking. As the author writes in the Preface:

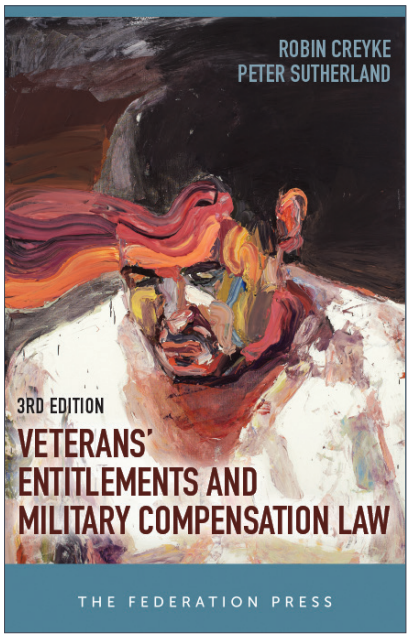
> Over many years, I have prosecuted a number of such people for murder. The feature I have observed that they most commonly share is an ingrained, almost unshakeable, belief that they are owed something by the universe. The man I describe in this book was so gripped by his desires and so intent on achieving his ends that he lost the ability to see what most other sane people would have realized in an instant: that he was hell bent on a path of inevitable self-destruction. His downfall was almost assured by the brazenness of his covetous pursuits and the risks inherent in his chosen methods.

This is a fascinating book and every lawyer in Sydney should read it.

Reviewed by Caroline Dobraszczyk

Veterans' Entitlements and Military Compensation Law (3rd ed)

Robin Creyke and Peter Sutherland (eds) | The Federation Press | 2015



The third edition of this work, first published in 2000, provides detailed commentary and annotations to the *Veterans' Entitlements Act 1986* (Cth) and *Military Rehabilitation and Compensation Act 2004* (Cth). The text is a companion to the statutes which are tracked sequentially, although the sections are referenced by catchwords rather than fully repeated.

The commentary on the later statute, which governs compensation to members of the armed forces who die or are severely injured due to their service on or after July 2004 and to the dependents of such members, is a new addition. Since there has, to date, been relatively little cause for judicial interpretation of the later statute the authors necessarily annotate it with references to comparable provisions of the earlier legislation or the *Safety Rehabilitation and Compensation Act 1988* (Cth). The interpretation of the two principal acts is assisted by the detailed cross references to other relevant statutes and annotations.

A notable example of the close analysis the statutes require is found in the commentary and annotations to section 120 of the *Veterans Entitlements Act 1986*. That section sets the standards of satisfaction or proof for claims under the Act. The discussion is necessarily extensive. The authors explain that there are two standards of proof, 'the reverse criminal standard, which is more generous, and the civil standard'. The more generous provision applies to a veteran whose incapacity is war-caused, 'provided there is a 'reasonable hypothesis' of a connection between service and the incapacity, which is not disproved beyond reasonable doubt'. This, the authors observe, offers a unique contribution to legal jurisprudence and the accompanying explanation demonstrates that it calls into play extensive consideration of evidentiary principles in general and the authorities which have determined the application of the standard to the facts of particular cases.

Claims lodged after 1 June 1994 became subject to the Statement of Principles scheme by which legislative instruments establish factors defining the 'reasonable hypothesis' that applies to particular circumstances (disease, injury, cause of death). The operation of the Statements of Principles scheme is explained with precision and considerable detail and supplemented by a detailed commentary on their interpretation, with focus on some key expressions and difficulties.

The authors have found scope for reflection on the history of military compensation legislation in Australia and the many complications the long history of its application has generated. It is explained that the *War Pensions Act 1914* was the first specific compensation scheme enacted by the Commonwealth of Australia but provision for compensation for injury in the course of service was in existence before the First World War. The principles for compensation retained in the *Veterans Entitlements Act 1986* are sourced in the provisions which were developed in response to successive major conflicts involving Australian armed forces. The authors explain by the 1970s there was compensation for death or incapacity (a) from employment directly in connection with war or warlike preparations, (b) that occurred during service, (c) which had arisen out of or was attributable to service, (d) due to a condition which predated service but which was contributed to in a material degree or aggravated by service, or (e) from pulmonary tuberculosis where the person had served in a theatre of war.

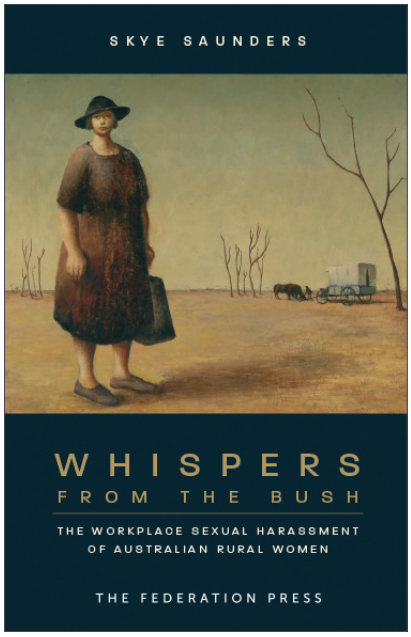
... the analysis is clear, accessible and supported by detailed reference to authorities and aids to interpretation.

The annotation form is driven by practical objectives to distil an extensive body of case law emerging over many decades into an efficient guide to the present operation of the compensation regime for military service. In this work the analysis is clear, accessible and supported by detailed reference to authorities and aids to interpretation. The authors expressed desire to honour those members of their families who served Australia and New Zealand as members of military forces has produced as clear a guide to the rights of claimants as the legislation and extensive judicial determinations can allow.

Reviewed by Jane Merkel

Whispers From the Bush: The Workplace Sexual Harassment of Australian Rural Women

By Skye Saunders| The Federation Press | 2015



Despite what the title may suggest, Skye Saunders' pioneering research publication speaks volumes about the extent of the 'cultural epidemic' of sexual harassment in rural Australian workplaces. In *Whispers From the Bush: The Workplace Sexual Harassment of Australian Rural Women* Saunders draws on original research to examine the entrenched sexual harassment culture pervading the lives of working women. A total of 107 interviews conducted with rurally located participants deliver results that are both staggering and heartbreaking, leaving the reader with far more than a whisper of a problem in desperate need of redress.

The foreword to the book is written by former chief of army, David Morrison who situates the book on a historical continuum of workplace sexual harassment in Australia. A coincidentally notable choice, Morrison records a sombre opinion that the same degrading cultures he says were in the army 'are present in almost every workforce and workplace in Australia'. However, he says, 'too often [women in rural environments] are not given the voice and resonance that they warrant.' And it is precisely into this cultural void that Saunders takes her aim.

Drawing on new and existing research Saunders' book proposes that sexual harassment is a 'cultural epidemic' that teeters on acceptance as a social norm in rural workplaces. She argues that 'urgent, remedial action must now be taken to provide women with the safe workplaces to which they are, by law, entitled' and sets out a plan of action for achieving this goal.

The use of both qualitative and quantitative research methods despite a smaller sample size allows Saunders' to construct a thorough and insightful portrait of sexual harassment in remote communities.

The book is useful from a legal perspective in a number of ways. Chapter 1 (Reduced to Silence) provides an analysis of the legislative responses to workplace sexual harassment, namely section 28(1) of the *Sex Discrimination Act 1984* (the Act). In particular Saunders concerns herself with examining the barriers of a rural lifestyle that compromise the Act's proper application.

In addition Saunders' exploration of the language of the Act opens an important dialogue around its ability to properly protect rural women. For example she argues the word 'possibility', which was intended to lower the threshold for sexual harassment, is instead undermined by the concept of 'reasonableness' and the male experiences that she contends are entrenched within it. Placing such an evaluation at the outset of the book allows Saunders to explore the legislation in later discussion of cases and her own empirical evidence.

Secondly, in the latter half of the book Saunders draws heavily on recent case law to present examples, particularly of the litigation experience across urban and rural areas.

The case of *Brown v Richmond Golf Club*[1] is used as an example of judicial responses to ongoing versus 'one-off' behaviours. In that case Britton J sitting as ADT Judicial Member was not satisfied that an attempted kiss on the cheek made by the claimant's general manager constituted conduct of a sexual nature, but instead should be considered a one-off event of relatively low harm. Saunders contrasts this with cases like *Fischer v Byrnes*[2] where ongoing humiliation and intimidation was more likely to lead to a successful sexual harassment claim.

Chapter 6 (So Help Me, God… A Comparison of (Un)Successfully Litigated Sexual Harassment Complaints from Rural and Urban Australia) will prove a useful resource for law practitioners and students. Saunders delves deep into a number of significant cases that explore factors affecting litigation outcomes in a rural setting. For example she writes about *Cross v Hughes*[3] where an employer booked a single hotel room for himself and an employee on a business trip and made unwelcome remarks and suggestions throughout the stay. This case is used by Saunders to demonstrate how the relative seniority of the alleged harasser can point to 'circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the person harassed would be offended, humiliated or intimidated.'[4]

It is a credit to the author that a topic so often drenched in statistics preserves the personality and experiences of those who contributed to it. At times the book is hard to put down, at other times the weight of personal stories can make it hard to read at all.

Rigorous footnoting will also make this book an invaluable resource for those wishing to explore the issue further.

The remainder of the book, while not strictly legal in content, provides an up-to-date examination of sexual harassment in remote areas from all angles. Chapter 2 (Listening to the Distant Whispers) lays out the methodology employed in the research and serves as an indicator of the challenges involved in undertaking such a study.

Chapter 3 (The Dramatic Backdrop of the Bush and Gendered Harm Within It) looks at the legacy of gender-based harm and how it has been influenced by bush-culture in remote areas.

Chapter 4 (It's All a Bit Different Out 'Ere… Special Characteristics of the Bush and Their Effect on Reporting Rates) raises the myriad barriers to reporting sexual harassment in isolated areas, with particular reliance on first hand interviews with rural working women. Beyond the evident physical barriers, Saunders also raises a number of legitimate social barriers that can prevent women from seeking help, such as the power of gossip and victim blaming.

In Chapter 5 (When the Boys Come Out to Play… Sexual Harassment and the Impact of Male-Dominated Working Environments) fuses case law with interview responses to explore the nexus between 'male' working environments and the prevalence and nature of sexual harassment.

Chapter 7 (Fit In or F#$@ Off! The (Non) Reporting of Sexual Harassment in Rural Workplaces) draws on extensive data from previous and original research to present chilling evidence of low reporting rates despite the prevalence of sexual harassment incidents in rural areas.

Chapters 8 (Just the Boys Havin' Fun! The Nature, Pervasiveness and Manifestations of Sexual Harassment in Rural Australia) and Chapter 9 (Stripping Off the Layers… Sexual Harassment 'Survival' Behaviours in Rural Australian Workplaces) examine the manifestations of sexual harassment in remote workplaces and the mechanisms employed by victims in response.

Chapter 10 (A New 'Coo-ee!': An Australian Bush Transformation) is a space for Saunders to make recommendations for the 're-invigoration of rural workplace culture' with a particular focus on re-education and response strategies from the top down.

As may be seen by labelling each chapter with the same words and phrases used to normalise harassing behaviour Saunders subtly demonstrates the kind of complicity that has led to the very issue she is researching.

Despite the enormous quantity of data the book has to offer, Saunders' triumph is her ability to siphon through the information and bring the most salient points to the reader's attention in a thought-provoking way. It is a credit to the author that a topic so often drenched in statistics preserves the personality and experiences of those who contributed to it. At times the book is hard to put down, at other times the weight of personal stories can make it hard to read at all. The responses of the interviewees can, at times, make for uncomfortable reading, but play an important part in giving a voice to those who have remained voiceless for so long. In Saunders' own words this book is truly a 'work of the heart'.

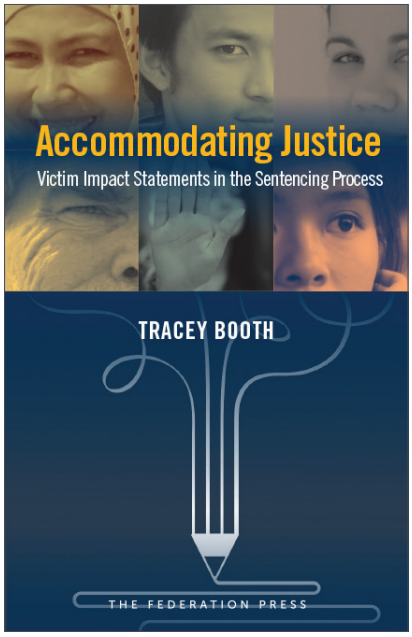
Endnotes

1. [2006] NSWADT 104
2. [2006] QADT 33
3. [2006] FMCA 976

Reviewed by Richard Bell

Accommodating Justice - Victim Impact Statements in the Sentencing Process

By Tracey Booth | The Federation Press | 2015



This book deals very comprehensively with an important topic in criminal law that still can cause confusion in its application: victim impact statements ('VIS').

Chapter 1 deals with the issues of who can submit a victim impact statement, what form it should take, what it should be about, and what is its purpose. The author makes clear that it is not simply a matter of considering the legislation to determine what VIS are, it is also a subjective, personal narrative. The author considers recent case law and legislation from around Australia.

Chapter 2 deals with the relevance of VIS to the determination of any penalty and in particular, the use of them as evidence in homicide matters where the consideration is the harm caused to 'family victims'. Once again the author considers case law around Australia. Chapter 3 is headed 'The Expressive Function of Victim Impact Statements' and includes the importance of victims having 'a voice' in the criminal justice process, and how VIS in sentencing proceedings might be considered to have restorative elements. Another interesting issue in this chapter is the therapeutic aspects of VIS, i.e., how the legal proceedings impact on a victim's welfare. Booth also describes how the expressive function of VIS are implemented in sentence hearings.

Chapter 4 deals with the theoretical incompatibility between VIS and the adversarial sentencing hearing, i.e., traditional views and processes are that victims are not 'technically' part of the sentencing proceedings, the focus should be on the offender and the excessive 'emotionality' of the victims does not assist in the sentencing process. The author details how VIS and emotionality can be managed in the court room.

Chapter 5 deals with how VIS are dealt with in a sentence hearing, i.e., the author details case law on the probative value and prejudicial nature of VIS, cross examining the makers of VIS, and what types of objections can be raised when such evidence is given. The author also details the interesting issue of how sentencing judges should be able to disregard overly emotional, unfairly prejudicial and non probative victim impact evidence for the purposes of sentencing. Once again the author details recent case law from around Australia in relation to this issue. The author also provides what the research shows in relation to the impact of VIS on penalties, including her own research. Interestingly, she says that in common law jurisdictions the research tends to show that VIS generally have little impact on sentencing outcomes although it seems that it is very difficult if not impossible to measure this. Her own research in NSW in relation to homicide offenders found it difficult to measure the impact of VIS on penalty where the courts adopt an intuitive approach to sentencing.

The last chapter, Chapter 6, deals with VIS from the perspective of the victims. Not surprisingly, the research shows that generally, crime victims have positive views about the value of VIS however the author details plenty of examples where the victims were left feeling frustrated and let down by the whole process. The author notes however that VIS '… can be empowering and cathartic and provide an important opportunity to be heard in the process...'(at page 137). She details the importance of 'speaking' and 'having a voice' and whether this is really constrained by the sentencing process. The author refers to many international studies to inform us.

In the Conclusion, she sums up numerous issues, including the fact that although VIS are a well established feature of contemporary sentence hearings, their '…bifurcated nature renders them contentious' (at page 162). There is no doubt that the subjective and 'real' aims of victims who come before our courts is not really matched in how the sentencing process evolves. She concludes by saying that 'It is the sentencing judge's task to provide a well managed space for victims to express their feelings publicly and treat those victims with respect in a manner that does not conflict with giving the offender's due process entitlements and the imposition of an appropriate penalty…judges should be provided with training and support as necessary.'

I recommend this book to all lawyers especially those who practise in criminal law.

Reviewed by Caroline Dobraszczyk