BOOK REVIEWS

Seddon on Deeds

By N Seddon | Federation Press | 2015

The topic of deeds has not attracted standalone academic text writing. As the Hon Michael Kirby AC CMG points out in his foreword, the standalone (in some senses of the word) text is Odgers on Deeds, whose second edition was published in 1928 and is not replete with Australian authority. Yet a glance at Nicholas Seddon’s footnotes shows that there is a rich ore of Australian authority to mine, much of it recent.

This is possibly because what is viewed by academics as a fusty document shackled by its feudal and earlier origins, ossified, tricky for the unwary and obsolete with the modern law of contract, enjoys a different perspective in lay perception, leading to continued use in commercial and property transactions. A deed is possibly perceived as giving a deal a solemnity and certainty from its formality and long tradition of use. The perception may be misplaced in many instances, but is strong. The author examines that ‘gravitas’ in the first chapter and clearly sees it as outweighed by the risks of non-compliance with complex formalities. He sees the solution in a uniform model law on deeds Australia-wide developed by a law reform commission.

There are areas of current practical advantage, for instance in limitation statutes. There are areas of self-evident necessity in gifts of some legal property and gifts of equitable property particularly when writing is required, from the absence of contractual consideration (although the author points out the wisdom of including at least nominal consideration for the purpose of equitable enforcement). Statutes, including land title by registration, import the status of a deed in some situations, which requires an understanding of what is being imported, although as the author points out one must be careful that a unique statutory creature simply given the label of ‘deed’ has not been created: MYT Engineering Pty Ltd v Mulcon Pty Ltd (1999) 195 CLR 636, [1999] HCA 24. Any reform would need to include policy decisions on preserving or removing practical advantages and dealing with an alternative for the areas of necessity. The latter would require difficult and detailed examination of Australian statute law to avoid unintended consequences, which may be a bridge too far and make an improvement of the existing law a more practical option.

The foregoing is the range of matters discussed in Chapter 1. Chapter 2 is the bulk of the book. It examines the complex requirements to create a valid deed, not just the formalities of execution, but also what is required for intention. The discussion of execution of deeds by company officers and governments, the validity or otherwise of virtual execution and exchange, and the ways to ‘save’ some legal consequences from an invalidly executed document are of great practical benefit as well as intellectual interest.

Chapter 3, again quite long, tackles the vexed questions surrounding delivery (intention immediately to be bound) and escrow (which is not the opposite but merely one alternative to delivery). Chapter 4 critiques the even more vexed rule in Pigot’s Case concerning material alterations to deeds, the attempts to circumvent or ameliorate it, and the worthwhile effects in some jurisdictions (NSW alone within Australia) of abolishing it.

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Chapter 5 outlines the same interpretation principles for deeds as for contracts, then focuses on the place of recitals in the interpretation and operation of deeds (including a brief discussion in relation to releases in compromises by deed), the unique doctrine of estoppel by deed and its distinction from estoppel by convention (where the recitals replace the implicit reliance shown by a course of conduct giving rise to the common assumption), statutory provisions concerning receipts and other matters, and curing of discrepancies in counterparts. A suggestion: the discussion of ‘privies’, an obscure but important concept, could have been slightly more fulsome, even by reference in footnotes.

Chapter 6 contains detailed discussion of enforcement, remedies and defences, in
**BOOK REVIEWS**

_Seddon on Deeds_ (Federation Press, 2015)

_The writing is crisp, clear, propositional. The book has, as a consequence, brevity without loss of comprehensiveness and lucidity._

The book analyses some cases common with contracts, in other cases unique to deeds, sometimes unique to deeds poll. There is a useful discussion of privity in that last context, and of the characterisation of deeds _inter partes_ and deeds poll which throws light on the circularity of reasoning between characterisation and outcome. There is a pithy but equally useful discussion of accord and satisfaction within the discussion of deeds of compromise. The rights and burdens of multiple parties are analysed. The need to provide consideration if equitable remedies are to be attracted in aid of common law rights is stressed in the course of indicating where equitable relief is or may be available. Chapter 7 shortly describes the parallels with and distinctions from contract law in relation to the discharge of deeds.

As the author says in his preface, ‘in the main, there is no need to refer to old English cases’. This is a precedent which it would be beneficial to follow in some chapters of Australian legal encyclopaedias which, in distinction to the title of the work in which they appear, sometimes significantly repeat the leading overseas authority rather than display an Australian exposition or application, which may not be as well known but would thereby become so. The writing is crisp, clear, propositional. The book has, as a consequence, brevity without loss of comprehensiveness and lucidity. The argument is in the text, with the footnotes being useful but not intrusive. The index is thoughtfully constructed and also useful. In areas of difficulty or controversy, the competing lines are discussed, authority critiqued and difficulties discussed with respectful rigour, and a reasoned conclusion and preference posited. The quotations at the start of each chapter are apposite and add verve.

It should be clear that I like this book; if I had not been given a review copy I would have gone out and bought it. It will be of interest and use to academic and practitioner. It is overdue. If its theme of law reform is taken up, then any subsequent edition may require a new start and the ‘1st and only’ edition will gain added value from becoming a collectors’ item!

Reviewed by Gregory Burton SC FCIArb

**Commonwealth Criminal Law**

By T Anderson | The Federation Press | 2014

The Australian Federal criminal justice system is a complex meshing of various Federal statutes, the effects of the Australian Constitution, Federal and state investigative bodies, prosecutorial bodies and courts and state prisons. It is not always obvious what law regulates the elements of a criminal offence, its investigation, the right to silence or its abrogation, trial procedure, extradition and so on.

This new text successfully takes on the difficult task of drawing together this lacework of legal threads and presenting them in a studied and practical manner.

The text adopts a structure that is accessible to experienced practitioners and strangers to the Commonwealth criminal law.

Each chapter addresses defined issues in a logical manner and pinpoints key authorities and legislation. The text is very helpful to practitioners wanting to find a succinct discussion of issues and the main cases relating to them.

The first chapter provides an overview of the legislation that applies to the Commonwealth criminal law and how these interact with each other and state laws. This includes an explanation of the
Commonwealth Criminal Law (The Federation Press, 2014)

The author is a member of the NSW Bar who practices in the Commonwealth criminal field in both prosecution and defence roles. Equally, the text deals with its subject matter in a balanced and factual way.

role of the Commonwealth Criminal Code.
The first chapter also addresses the roles of prominent participants in the Commonwealth criminal system and their empowering statutes, such as the Australian Federal Police, the Commonwealth Director of Public Prosecutions, ASIC and the ACCC.
The second chapter gives an analysis of key concepts of criminal responsibility and defences. It explains how Commonwealth legislation has changed common law concepts. The chapter canvases issues such as mental and physical elements of offences, corporate criminal responsibility, onus of proof and geographical jurisdiction.
The third to eighth chapters cover various offences arising under Commonwealth criminal laws. The author has adopted the helpful format in each chapter of addressing investigation issues particular to such offences (including proceeds of crime issues), specific charges, case law on the elements of those charges and sentencing issues particular to such offences.
This structure in the third to eighth chapters is one I haven’t seen before in a legal text and I found it very helpful as a practitioner dealing with considering issues of investigation, charge and sentence for an alleged offence without having to search for each issue in unrelated parts of a text or over several texts.
The third to eighth chapters each deal with a category of offences and the various statutes that cover those categories of offences. For example, the third chapter deals with offences relating to dishonestly obtaining benefits from the Commonwealth and then addresses as subsets of that category offences under the Commonwealth criminal code, social security legislation and taxation laws.
In broad terms, the third to eighth chapters cover the broad categories of offences of frauds, Corporations Law offences, money laundering, counter-terrorism, serious drug offences and child exploitation.
The ninth chapter explores issues of sentencing, imprisonment and release from prison.
The last chapter provides an overview of the laws relating to extradition between states within Australia and international extradition.
The author is a member of the NSW Bar who practises in the Commonwealth criminal field in both prosecution and defence roles. Equally, the text deals with its subject matter in a balanced and factual way.

Overall, the text will provide great assistance to lawyers practising in criminal law. It will also be an excellent resource for those encountering the Commonwealth criminal system for the first time as practitioners or students.
The author has embarked on an ambitious task in writing this text. He has succeeded in producing a text of high quality that I think is a valuable addition to any criminal law practice.

By Tony Di Francesco
BOOK REVIEWS

The Australasian Coroner’s Manual

By Hugh Dillon and Marie Hadley | The Federation Press | 2015

For those who practise in coronial law (on either side of the ditch) or who simply enjoy good research and writing, this elegant volume is an important addition to a discerning library.

Local practitioners will already be reliant on the most recent edition of Waller’s Coronial Law in NSW, of which Hugh Dillon is a co-author. This new addition to the coronial landscape undertakes a necessary and different task to that work.

Here the mission is to provide a comprehensive guide to the coronial process, beyond an analysis of legislation and case law. In his thoughtful Foreword, the Honourable Justice Michael Wigney (himself no stranger to the coronial jurisdiction in a past incarnation) describes this book as ‘a tremendously helpful manual’. I agree.

A novel focus of the Manual is that it proposes material for consideration by coroners as well as by advocates. The usefulness of this is at least twofold. Given the increasing complexity of the work of coroners, this volume will be a useful primer for those judicial officers coming newly to this ancient role.

Beyond that, an understanding of the likely challenges for a coroner conducting the inquiry (both before and at inquest) will provide particular insights for the thoughtful coronial advocate. As we all appreciate, understanding what might be exercising the judicial mind cannot hurt in trying to feed it appropriately.

Apart from the identification of systemic and institutional challenges for the inquisitor within the process, Dillon and Hadley propose a number of possible personal challenges for coroners. This represents a departure from the received practices of ‘how to’ tomes by considering, for example, the questions for one’s mental health raised by working in such a confronting area and particular ethical challenges that arise for coroners in determining what invasive procedures can properly be approved, or not, as part of the autopsy process.

In his thoughtful Foreword, the Honourable Justice Michael Wigney ... describes this book as ‘a tremendously helpful manual’. I agree.

The coronial process, properly executed, requires a particular place of respect for those who are bereaved. Sensitive acknowledgment of the pain the family carries, by coroners and lawyers, means proper forensic work can be undertaken without adding to those personal burdens.

To that end, apart from analysing the effect of grief for those engaged professionally in the process, Dillon and Hadley focus on the effect of death on kin generally and distil understandings of the bereavement practices of a range of racial and cultural groups. This material is illuminating on the simple human level and will appeal to that rare creature in the legal community – the amateur anthropologist. For those working regularly in this area, the insights to be gained from this section of the Manual are immeasurable.

Chapter 8 – Aspects of Advocacy in the Coronial Jurisdiction – is likely to become particularly well-thumbed. Given that one of the authors is a very experienced and highly respected deputy state coroner in New South Wales, the term ‘from the horse’s mouth’ springs to mind when reading and re-reading these thoughts about how to improve advocacy – whether as counsel assisting, or appearing for the family, a person of interest or others seeking leave to appear.

A quote within a quote is a reliable feature of many reviews and, so, consider this; ‘Chester Porter’s sage observation ‘Is it really desired that a particular subject be opened up? Many good advocates say little at inquiries’ has much to recommend it.’ The tip here is ‘less can be more’.

The same might fairly be said about the Australasian Coroner’s Manual. Well researched and comprehensive, it remains a slender volume, pared down to the necessary, like a careful advocate’s questioning. Beyond its disciplined scope, the resonant feature of this work is the humane and considered voices of the authors lighting the way in what can otherwise be a gloomy endeavour.

Reviewed by Warwick Hunt SC
BOOK REVIEWS

Australia as a Good International Citizen

By Dr Alison Pert | The Federation Press | 2014.

After security and economic prosperity, writes Gareth Evans in the foreword, states have a national interest in being a good international citizen. Dr Pert wished to test her perception that Australia had first acquired such a reputation under the Hawke/Keating governments, lost it under Howard and possibly regained it under Rudd. She looked at specific aspects of Australia’s conduct, and tracked Australia’s record on overseas development assistance, environmental protection, human and indigenous rights, and asylum seeker policy.

Chapter 1 considers the concept of ‘good international citizenship’, for which no agreed or comprehensive definition exists. The concept has a dynamic quality which involves exceeding international obligations, demonstrating leadership and raising international standards. Two particular attributes are selected: engagement with international law (compliance, treaty participation, responses to the findings of international bodies) and active support for multilateralism (primarily through international organisations such as the United Nations (UN)). Such features she says are more relevant to an international lawyer than a foreign relations scholar.

Evidence of these attributes was sought in Australian policy since 1901. Chapters 2 to 8 are divided chronologically. Before the 1920s Australia had no independent international legal personality. Good international citizenship was not demonstrated at the 1919 Peace Conference where Australia pressed Germany for reparations. There was no significant engagement with international law during the inter-war years. After 1945 Australia had a low treaty participation rate and committed some international legal violations (such as conscripting aliens and racial discrimination) but its participation in the Vietnam War was not inconsistent with international law. Then Evatt demonstrated ‘evangelism’ during the UN’s formative years before Australia dropped to a neutral status under Menzies notwithstanding peacekeeping contributions and development assistance.

Whitlam’s ‘vigorouls internationalism included greater treaty participation, combating racial discrimination, recognising Aboriginal land rights and environmental protection. Fraser demanded a federal clause be inserted into new treaties, eschewed reliance on the external affairs power, sought to end Rhodesian apartheid and received Indochinese refugees. Hawke and Keating pursued a bill of rights and native title, and Evan’s energetically contributed to nuclear disarmament and the Cambodian peace process.

Good international citizenship for Australia reached its nadir under Howard. He oversaw many ‘egregious’ violations of international law and actively opposed multilateralism through mandatory detention for asylum seekers, offshore processing, invading Iraq, climate change scepticism and criticising human rights committees. Rudd/Gillard presented a schizophrenic picture: adhering to the Kyoto Protocol, Aboriginal reconciliation, the whaling case against Japan and Australia’s seat on the Security Council but also lethargy on carbon emissions trading, anti-terrorism legislation and asylum seeker policy.

Dr Pert concludes that Australia has been and is a good international citizen. Three themes emerged. Good international citizenship arose from the activities of particular individuals who lifted Australia’s standing internationally or promoted internationalism within Australia. Second, the concept varies with context: the White Australia policy.

‘good international citizenship’ ... has a dynamic quality which involves exceeding international obligations, demonstrating leadership and raising international standards.
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*Australia as a Good International Citizen* (The Federation Press, 2014)

is admitted. For example, Australia’s recognition of Indonesian sovereignty over East Timor, its reservations to the International Covenant on Civil and Political Rights (ICCPR), mandatory asylum seeker detention and adverse findings from the supervisory bodies of the International Labour Organisation are of insufficient weight to negate good international citizenship. Failing to domestically implement the ICCPR was not an egregious violation of international law, and one government was ‘forgiven’ for not implementing the Genocide Convention. Instances of poor international citizenship include offshore refugee processing and excluding maritime boundary disputes from the International Court of Justice’s remit.

This book is short, lively and accessible. Both international context and domestic policies are painted broadly. Her review is necessarily brief, simplified and selective. It does not delve into some uncomfortable problems or paradoxes, including electoral support for Howard’s refugee policies, why incoming governments might abandon or perpetuate a predecessor’s policies and the complex interaction between international decisions and domestic policies across consecutive governments. But given the paucity of existing literature, the desirability of clarifying the concept and establishing a comparative standard to assess future conduct, good international citizenship is a worthwhile subject of scrutiny towards which Dr Pert has made a valuable and timely contribution.

Reviewed by Stephen Tully.

*Inside Australia’s Anti-Terrorism Laws and Trials*

By Andrew Lynch, Nicola McGarrity and George Williams | NewSouth | 2015

Lawyers who come to this piece expecting a detailed reference on existing National Security legislation and related precedent will be disappointed. The book is not, and does not pretend to be, a text. In fairness, neither its length (approximately 200 paperback pages) nor its title suggests this. To the extent the title is evocative of an exposé on the political machinations associated with the laws’ enactment or intrigue surrounding subsequent trials, purchasers at airport gate-lounges are likely to end up a little downhearted as well. If, however, one seeks a comprehensive, digestible and critical rundown of the Commonwealth Parliament’s response to the emergence of the 21st century terrorist threat post September 11, 2001 then this book provides it.

Time is spent at the outset examining the statutory definition of a ‘terrorist act’. While a little dry, covering this territory is necessary. The definition is foundational as most, if not all, of the legislative response to terrorism includes, or is contingent upon, it. From there the book reviews new terrorism-related crimes and their prosecution as well as the expanding powers of law enforcement and intelligence agencies in the name of investigating terrorist activity, gathering information on emerging risks, and monitoring or controlling identified threats.

In setting out their essential detail, the authors provide a critical appraisal of the laws. The reader’s sense is that the mere recitation of that detail is, itself, productive of much critical analysis. Reading this book, and thereby understanding the reach of the federal anti-terrorism laws, is to appreciate that central aspects of it have re-drawn the boundaries of state intrusion into an individual’s private life as well as the historically accepted limits of the criminal law. An example is ASIO’s power to now detain and question people not suspected of any involvement in terrorism. Such action merely requires that questioning could provide ‘information’ about a terrorism offence. Another is the new ‘preparatory’ offences. Whereas previously the law of ‘attempt’ required proof of acts of perpetration rather than mere preparation, now an act preparatory to a terrorist act is a criminal offence punishable by life imprisonment.

The book’s coverage of the detail is complemented by reference to
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Inside Australia’s Anti-Terrorism Laws and Trials (NewSouth, 2015)

Reading this book, and thereby understanding the reach of the federal anti-terrorism laws, is to appreciate that central aspects of it have re-drawn the boundaries of state intrusion into an individual’s private life as well as the historically accepted limits of the criminal law.

numerous of the resultant prosecutions, commissioned reviews of the legislation, observations by important stakeholders (including agencies such as state and Federal Police), as well as the content of political debate (or consensus) at the time of enactment, amendment or mooted repeal. Use of these references develops the book’s critique of the laws without that critique ever becoming emotive or academic. To take an example, to learn that state police themselves advised a COAG review that they were unlikely to use the preventative detention powers, one can’t help but question whether the continued existence of such powers is necessary.

The authors accept the necessity for a specific legislative response to the terrorist threat but raise (and grapple with) important questions of their reach and, in some aspects, utility. The result is a book that provides not only a timely insight into the laws but also an objective, hugely informative, and readable one. It can only be hoped that those who are contemplating entering the ongoing (and recently heated) debate about further reform might take time to read this piece, as a reading will no doubt contribute to how informed that participation is.

Reviewed by Ian Nash

Admiralty Jurisdiction Law and Practice (4th ed)

By Damien Cremean | The Federation Press | 2015

The fourth edition of this work, a necessity for those practising in admiralty and maritime law in Australia, has been long awaited. It deals with all of the essentials of admiralty jurisdiction in Australia and also other common law jurisdictions in the Asia-Pacific (Hong Kong, Singapore, New Zealand, and for the first time in this edition, Malaysia).

Admiralty Jurisdiction is a true practitioners’ text: its author is a leading academic and a practitioner in the field and was involved in the Australian Law Reform Commission reference that produced the legislative basis for admiralty jurisdiction in Australia, the Admiralty Act 1988 (Cth). Previous editions of the work were regularly cited in argument in the admiralty courts and in the judgments of those courts.

The structure and content of the book are appropriately well-structured and well written – the text follows the principal provisions and concepts of the Admiralty Act as they relate to the characterisation of admiralty jurisdiction, the circumstances in which a right to proceed against a ship in rem are engaged, and the practice and procedure of commencing and maintaining claims in admiralty.

Reviewed by Damien Cremean

The international approach of the book is essential for modern maritime practice.

Deploying this structure in this way is extremely accessible: should one, for example, wish to investigate the treatment of salvage as a head of general maritime jurisdiction, one will find set out together the relevant provision in the Admiralty Act and the cognate provisions in each other jurisdiction (as well as references to similar provisions in other common law jurisdictions), followed by commentary that encompasses the English law history of the law of salvage, the application of international conventions modifying the salvage rules, and analysis of the scope of jurisdiction conferred by the relevant provisions.
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The international approach of the book is essential for modern maritime practice. In the words of Chief Justice James Allsop, who wrote the foreword for the fourth edition, '[t]he work reveals the existence of an harmonious and consistent common law maritime security regime in the Asia-Pacific region.' The approach of Australian courts to construction of the jurisdiction provisions in the Admiralty Act typically makes reference to decisions of courts of cognate jurisdiction, in the Asia-Pacific and elsewhere. This text facilitates that approach.

Despite the expanded scope of the jurisdictions covered in the fourth edition, the book remains compact, at less than 300 pages. At times, that comes at the cost of detailed analysis of some areas. Coverage of the case law of some jurisdictions is not as comprehensive as for others. Some areas of the law in respect of which there have been no decided cases would benefit from analysis based on the author's experience, particularly in relation to the ALRC reference, the report of which (ALRC 33, Civil Admiralty Jurisdiction) is a recognised aid to interpretation of the Admiralty Act.

Nonetheless, the book is a detailed and concise reference and provides a base for more detailed research as well as an excellent introduction into this interesting and complex area of law.

Reviewed by Catherine Gleeson

POETRY

Judicial error, corrected
By Orbiculus

This barrister has no idea!
His words just don't make sense
Perhaps I should provide some help--
My own munificence?

'Forgive me please, young Mr Smith
But could it be you mean
That if one tries it this way round
The answer can be seen?'

'Your Honour is of course correct
That sublime thought's quite right
There's nothing more that I could say
My mouth is now shut tight.'

Well, first impressions can be wrong
I should not judge with speed
This barrister is very wise!
And knows the law indeed.