

BOOK REVIEWS

NATIVE TITLE/ RICHARD H. BARTLETT

Sydney: Butterworths, 1994 \$295.00 p.a.

The publication of this single volume looseleaf service, along with its companion newsletter *Native Title News*, could be said to signify the arrival of 'native title' as a distinct field of legal practice in Australia. The service consists of, firstly, the text of both judgments of the High Court in *Mabo and Others v The State of Queensland* as reported in volumes 83 and 107 of the *Australian Law Reports*. One might have wished for the *Commonwealth Law Reports* versions. Further, the arrangement of the reports contained in the service does not correspond with that in the ALR reports, nor is the ALR page numbering inserted. Citing the page numbering of the report in the service will not aid uniformity or comprehension. Users will still need to refer to the CLR, ALR or ALJR reports of the judgments. Inserting recognised report page numbering would require replacement of both judgments which constitute a major portion of the existing service.

Commentary on each judgment has been provided by Richard H. Bartlett (Bartlett cites both the ALR and *Native Title* reports of the judgments in his commentary). This includes a brief history of the *Mabo* action, analysis of the judgments and discussion of some of the implications of the judgments. Bartlett's analysis is extremely useful in obtaining a broader picture of native title than the judgments alone provide. Bartlett's reputation in this field of law is well established in Australia and the commentary is both authoritative and perceptive.

The service contains the 'Native Title' Acts of the Commonwealth and all states and territories, including the invalid *Land (Titles and Traditional Usage) Act 1993* (W.A.). The replacement for this Act will presumably be provided once it is

available. The availability of this legislation in a single volume, updated regularly, is a major attraction of the service, although practitioners may have little need for legislation other than that of the Commonwealth and their respective jurisdiction in practice. Annotations to legislation contained in the service will also apparently be provided in future updates.

Apart from the Commonwealth *Native Title Act* the service also contains a number of instruments that have been issued pursuant to that Act, including the *National Native Title Tribunal Regulations*, the *Native Title (Prescribed Bodies Corporate) Regulations* and determinations of 'representative Aboriginal/Torres Strait Islander bodies'. Practice directions for the National Native Title Tribunal, issued by Justice French on 16 May and 12 September 1994, and Federal Court rules on native title are also included. These are essential in practice and their inclusion is most welcome. Also most welcome would be reports of determinations made by the National Native Title Tribunal and reports of relevant court decisions other than those in *Mabo*. Casenotes on some of these are provided in the service and reviews of such determinations and decisions are also provided in *Native Title News* (see, e.g. 'Extinguishment by Pastoral Lease', *Native Title News*, vol 1 no 4, at 54-56 which examines the determination of Justice French rejecting the Waanyi application). Although these casenotes and reviews are useful, full reports of the more important determinations and unreported judgments would be invaluable. Some determinations have now been reported in 129 ALR.

The service also now contains a 'Practice and Procedure' title that covers a number of other matters, including a list of Tribunal registries and Tribunal members and a table of applications lodged with the Tribunal and their current status.

There are also reproductions of the relevant application forms and Tribunal guidelines issued in respect of these forms

Having worked as a researcher for a 'representative Aboriginal/Torres Strait Islander body' I know there is a need amongst such bodies, where resources are limited, for a comprehensive reference source on native title law. The *Native Title* service is almost certainly essential for those commencing practice in the field. The service provides ready access to items from a variety of sources (High Court judgments, Commonwealth, state and territory legislation, determinations of ministers, directions of the National Native Title Tribunal) and will save a great deal of time and effort otherwise required to obtain these items. The service will also be updated regularly. Whether the *Native Title* service is value for money will depend on whether this time and effort is less or more valuable than the subscription price. Certainly the materials it contains are essential, but all are available elsewhere. My major criticism is that the irregular reporting of the *Mabo* decisions detracts greatly from the service's utility.

Richard Leahy

High Court of Australia

STUDYING LAW / CHRISTOPHER ENRIGHT

5th edition, Sydney: Federation Press, 1995 \$45.00

CONCISE LEGAL RESEARCH / ROBERT WATT

2nd edition, Sydney: Federation Press, 1995 \$25.00

Enright's 600 page text is written with a genuine desire to explain the elements basic to law and techniques for the critical examination of law in its application to fact. The author regards the development of learning techniques to be even more important than what is learnt and to that end endeavours to inform the reader on the strategies necessary for the study of law. In contrast, Watt's "concise" work traverses the field of legal literature, offering a reasonably comprehensive cross-jurisdictional approach which encompasses not only the Australian legal system but the United Kingdom, New Zealand, Canada, India, the United States, Europe and the international domain.

A critical comparison of the two would seem somewhat unfair given their differing aims, not to mention size, but each work deals fundamentally with the tools of legal research. To this end they serve a similar purpose if you bear in mind that Watt looks at the research tools whereas to Enright they are but one part of the entire research process.

To draw attention first to the similarities between the two works: in broad content both cover the institutions of law, sources of law, and legal research skills. In his chapter on secondary source material Watt provides some research exercises together with tabulated information on the *Australian Digest*, how to update an Act and how to find case law. These serve to provide an easy ready reference and checklist. However Enright provides the more detailed exercises at the end of every section complimented by elaborate instructions on how to break down a legal problem including, for example, how to structure the facts, the legal issues involved and how to flowchart the research process, whereas Watt only makes passing reference to these processes. Each begins their chapters with an outline of the content; Watt

provides a detailed and well laid out plan whereas Enright's more general outline is repeated in the table of contents, lending it a wider contextual use. Similarly, each adopts a liberal use of headings and sub-headings throughout which draw the eye but in Enright's case this is not always self-explanatory nor particularly necessary given the occasional dearth of content following a heading in upper case bold type. For example, Enright gives a one and a half line expose under the heading "European Economic Community Law". Enright's work is very much one not to be "dipped into" for these reasons whereas Watt's work, with the more self-explanatory headings, favours this approach.

Comprehensive indexes are absolutely vital for these types of books. Although only Enright provides a comprehensive Table of Legislation and Table of Cases, both provide subject indexes with Enright's offering being clear and reasonably thorough; for example you can find "Crests" (heading legislation) and Latin terms in common legal usage. Unfortunately, however, Watt's index is an inconsistent amalgam of titles of works, in addition to subject entries, neither comprehensive in content nor consistent in typescript, which I found to be somewhat disconcerting.

The differences between the two vary in both content and style. In addition to the institutions and sources of law and legal research skills, Enright canvasses the issues of legal reasoning and study/writing skills. Enright claims to offer information, theory, criticism and techniques for the study of law. His is very much a critical essay-style analysis in a strikingly empathetic writing style which I found extremely appealing. It is not peppered with reference to legal materials, although he does refer to them, but instead Enright is more comfortable drawing upon legal principles such as independence of the judiciary, the role of juries and the issue of justice. Notwithstanding the almost personal viewpoints espoused it is still very much a careful text and an excellent student resource for information on such topics as the process of legal reasoning, the relation of policy

to the development of legislation and case law and the topical question of the making of the common law. He is mindful that detail can be lost in a textbook narrative so is careful to itemize the points he makes wherever possible. Given the interrelated nature of his subject however, there is some repetition although he prefers to cross-reference.

Enright's section on sources of law is again both detailed and critical in its approach. In illustration, he covers the nine Australian territories whereas Watt makes mention of only the ACT and the NT; he refers to such creatures as 'executive instruments' and 'theses' and analyses the problems of determining the status of an act or statutory instrument, the issue of ultra vires in respect of delegated legislation, and judicial review. The section on legal research is extremely detailed giving for example, lists of Australian and state reports in chronological order and by subject, or the component parts of an entry from *Federal Statutes Annotations* (Butterworths). What would help the student even further perhaps would be facsimile entries from the actual legal publications so page layout and entry details are clear and sight familiar to the reader. This works well in Watt's text to illustrate such material as *American Jurisprudence*, *Shepard's*, *ALMD* and *Halsbury's Laws of Australia*. Enright makes reference to computer aided research but it is comparatively brief and far from comprehensive. Indeed, the reader is advised to consult a law librarian on these matters (the only instance an instruction is given to do so!) I found the section on study skills informative and sympathetically written, liberally illustrated with hypothetical situations. Again, the personal nature of the narrative comes to the fore in Enright's advice on how to work with a badly written legal textbook and even a badly written judgment. He deals in this section with everything from reading, summarising, breaking down the component parts of a statute and law report, the facts and subject discipline to dealing with reading blocks. Fact and statute analysis are diagrammatically represented in the appendix, with well thought out examples. Further

useful appendices include a list of legal abbreviations, a list of journal citations and a list of law report citations. It is an exhaustive work made even more so by comprehensive 'Further reading' lists, chiefly comprising journal articles, at the end of each section. This book is consequently an extremely useful resource for further information on everything from the nature of law, and judicial independence, to the relationship of common law to statute, legal reasoning, statutory interpretation and legal scholarship.

In contrast to Enright, Watt lends an historical approach to his examination of legal publications beginning with a detailed history of Australia's legal system and Constitution, with reference to UK and US influences. He provides a well-written, potted description of the history of legislation and law reports (necessarily English) but also the origins of such publications as the *American Restatements*. However, it should be noted that, like Enright, Watt only canvasses the major legal publications of the jurisdictions, for example there is no mention of some of the smaller private publications like David Solomon's *Legal Reporter* or the John Mancy publications. Essentially, the work covers primary and secondary sources of Australian law with chapters devoted to finding the law in New Zealand, Canada and India, the United States, international law and European Union law. Throughout he provides information on applicable computer databases whether online or CD-ROM versions. The

chapter on the United States describes legislative and judicial structures, both federal and state, often with comparison to Australia. This comparative approach is both interesting and readable.

There is a chapter devoted to international law which canvasses the major works and then focusses on the areas of international environmental law, international human rights and international arbitration. It is a good source for the relative novice, with one pertinent criticism that the layout of the chapter with its differing levels of headings, sub-headings and sub-sub-headings in both italicised and roman scripts is confusing and misleading; it looks as if the law of arbitration is part of human rights law. There is a chapter on legal material of European Union including the Maastricht Treaty, concisely written with emphasis upon its relevance to Australia. Finally, there is an appendix of common case names with full citations, which has its roots in the recently published *Popular Australian and English Case Names*, ALLG, 1994.

To choose between the two would be difficult, I would regard both as useful additions to a librarian's shelf. Watt provides concise information and ease of reference whereas Enright offers a more expansive and critical analysis of the underlying issues of legal research.

Sue Milne

Yeppoon, Queensland