

BOOK REVIEWS

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True Professionalism: the Courage to Care About Your People, Your Clients and Your Career

by **David H. Maister**

The Free Press, 1997

HC ISBN 0684834669 \$34.95

In this collection of updated articles, previously published in American professional journals, mainly legal journals, David H. Maister covers issues that plague all professionals, not just lawyers. The articles in Part 2, that target "the firm", are useful also to corporate executives who are wondering why their marketing results do not seem to respond to their determined efforts.

In the Introduction, Maister acknowledges that he is not proposing many new ideas but, rather, exploring why well-known and widely accepted hypotheses usually fail in the professional environment.

Clearly, all Managing Partners in Australia should read the book. They should make all their partners read it. They should hold partner seminars to discuss it, have procedures written to enshrine their own solutions in the manuals of the firm (including the Partners Manual). They should include the principles developed in the book in the firm's induction courses for junior professionals and new partners.

For reasons that emerge as you read the book, that won't happen in many firms. As a client, is it too much to hope that it will happen in mine?

Maister starts with the well-worn, unchallengeable homily about the importance of morale, about inspiration, about loving what you do, about doing the

right thing, about *minimising* the bill! The last point will *not* be culture shock to thoughtful practitioners who are fully capable of understanding the long-term benefits generated by efficiency. However, in most firms, they will maximise the bill anyway and take the long-term loss.

We learn later that the professionals will do this because the system measures and rewards *gross earnings* and cannot even tell professionals the comparative *profitability* of matters, let alone monitor excellence or lack of it. In fact, Maister points out that, in typical firms, the system at best requires conformance to only two standards: gross income and professional competence. This means that all the documented visions, missions and client service standards are merely good intentions (of the kind that "pave the road to hell")

"A firm will have functioning values only to the extent that it has an effective management system that is intolerant about deviations from those values"

In an even stronger warning about the business consequences of measuring gross income rather than net income for each matter, Maister points out that it encourages partners to accept all business offered, including bad (unprofitable) business. Although write-offs of WIP and debtor balances or the less visible reluctance to record all time spent on a matter, point to these unprofitable matters, the matters are nevertheless allowed to assist professionals to meet their billing budget.

Calculating net profit for each matter would also expose errors of allocation – high cost partners doing what supervised junior professionals or para-lawyers could do. This is potentially good business made bad by bad management, encouraged by a bad reporting system.

Solving "bad business" problems may be politically difficult (but is even more essential) if bad business is the bulk of what some partners obtain.

Maister discusses these pragmatic issues and many others in support of his title theme: That what is right for the client, what is ethical (truly professional) is also the most satisfying way to live the professional life and, long-term, is the most profitable way to run a practice.

The bravest point Maister makes (and by far the most important—in fact the premier problem confronting professional firms in Australia today) is that in most firms, the governance of the firm fails and, therefore, none of the firm's problems can be solved. In multi-partner firms, this is often because some partners choose anarchy and confrontation (which no firm should ever tolerate) when partners' entitlement is to democracy and a sensible degree of autonomy in return for co-operation.

Regardless of the eminence of these offending partners and of their contribution to *gross* income, they must be persuaded to adhere to democratically adopted partnership values and operational procedures. If they cannot they must leave. Otherwise, the firm can never be truly professional, or truly client-focussed. In the long term, it cannot maximise profitability.

"I'll vote for a system with strict accountabilities in areas that I agree are important. How about you?"

For each problem that he identifies, Maister suggests positive solutions. His solutions are, necessarily, broad-brush and require a considerable investment of partner and executive time to convert them to "firm-specific", amendments to procedure. Maister's presentation is learned, logical and optimistic. He hardly ever admits to cynicism about the ability of professionals to accept the changes involved.

For the sake of being critical, I found Chapter 13 "What kind of practitioner are you" altogether too hypothetical. The described blacks and whites seen in practice types and in practitioner competencies did not remind me of the real world where matters and professionals are commonly grey. Nevertheless, it was a useful analysis to highlight the complications of designing an all-embracing administration system if not a common professional management system.

In a couple of places, bracketed asides (one containing an aside to the aside) caused me to completely lose track for a moment. These trivialities were only minor impediments to a fast and enjoyable read of the exciting content.

I also felt that comparing unethical professionals to prostitutes was very unfair — to the prostitutes.

Ted Young

Ted Young Management Services



Sale of Businesses in Australia

by S A Christensen and W D Duncan

Federation Press, 1997

HC ISBN 1 86287 273 2 \$75.00

Sale of Businesses in Australia was written as a result of a perceived need for a truly national text dealing with the sale and acquisition of small businesses. The authors have provided a useful overview of the processes involved in buying or selling a small business, from precontractual negotiations through to settlement.

Although it is conceived and written primarily with lawyers in mind, the text should be useful for anyone involved directly or indirectly in buying or selling a small business. For example, the authors consider the specific roles to be played by a variety of qualified professionals in the transfers of businesses. The authors explore the statutory and common law obligations of solicitors, real estate agents and accountants as well as the disclosure obligations of the vendor and the agent during precontractual negotiations.

There is also a useful and practical segment on the factors which need to be considered by a vendor regarding the information provided to a purchaser in the precontractual disclosure period, as well as the possible repercussions of providing incorrect information or withholding relevant material.

The topics are well structured and the authors have taken the initiative of annexing the standard contracts for the sale of businesses in each State, thus providing the reader with a quick and easy point of reference.

It also looks at some of the differences between the terms common to the standard contracts available in all of the mainland States. Although the text appears to simplify some of the more complex aspects of buying and selling businesses, it contains many helpful citations for those who may require a more detailed analysis. The use of plain language rather than legalese makes it easy to follow the authors' more complex discussions and results in a highly readable text

It should be noted that the scope of the book has been intentionally restricted to the transfer of the assets and undertaking of a small business, in particular family businesses, partnerships or private corporations. Issues normally not associated with the sale of small businesses, such as share transfers are not discussed.

Other considerations about the sale of a business which are notably absent include any serious discussion of stamp duty or how liquor and gaming machine laws add greatly to the technicalities and complexities of buying and selling small businesses in the entertainment field

In conclusion, this text is highly recommended as a useful reference tool for legal practitioners and indeed, for other professionals involved in the acquisition and sale of small businesses. The breadth of issues covered, albeit in a simplified way, is an impressive achievement. *Sale of Businesses in Australia* successfully achieves its goal of filling a gap in the body of works currently available regarding the sale and acquisition of small businesses in Australia.

Eleanor Mak

Solicitor, Deacons Graham & James



***The Australasian Labour Law Reforms :
Australia and New Zealand at the End of
the Twentieth Century***

edited by **Dennis R. Nolan**

Federation Press, 1998

SC ISBN 1 86287 276 7 \$45 00

The Australasian Labour Law Reforms Australia and New Zealand at the End of the Twentieth Century is a collection of essays which detail labour relations

reform in Australia and New Zealand at both a national level and on a state by state basis. The book explains the nature of the move from compulsory conciliation and arbitration to today's enterprise focus in the workplace and the consequences of and reasons for that move. Dennis Nolan also provides an insight into labour law reform in the United States and contrasts it with the moves that have occurred in Australia and New Zealand.

The collection of essays describes various aspects of labour law reform in Australia and New Zealand and provides a very brief and useful summary of the industrial relations history of each of the jurisdictions considered. Further, many of the essays detail the political and other motivations behind many of the reforms and consider the current legislation in detail, particularly the enterprise bargaining elements of the legislation

In his consideration of New Zealand industrial law, AL Geare provides a useful summary of the background to the industrial relations system in New Zealand and discusses the content of the most recent legislation. Greg McCarry outlines the basis for the Australian industrial relations system at a national level and provides an overview of the enterprise arrangements introduced by the 1993 and 1996 amendments to the legislation.

Perhaps the greatest utility of the essays comes from their consideration of labour law reform in each of the Australian States. Ronald McCallum considers the background to the *Industrial Relations Act 1996 (NSW)* and outlines its major provisions. He provides an insight into the political motivations behind labour law reform in New South Wales and profiles the *Industrial Relations Act 1991(NSW)*. Loretta de Plevitz and Greg Bamber provide an extremely useful summary of the *Workplace Relations Act 1997 (Qld)* and the political background to that legislation, including a summary of the 1985 Queensland Electricity Dispute.

Labour law reform in South Australia is reviewed by Andrew Stewart who provides the reader with a useful summary of the political motivations behind the current legislation. He concludes that a second wave of major changes to the 1994 legislation in that State is not too

far away. Jim Garnham provides an overview of the Tasmanian legislation which he believes has provided a "fair and flexible alternative in the regulation of working conditions". Little has been written about the Tasmanian system and Mr Garnham's essay thoroughly explores the background to the industrial relations system in that State. Marilyn Pittard gives the reader an insight into the deregulation of the Victorian system which ultimately resulted in the Victorian government handing over its industrial powers to the Commonwealth. The Western Australian system is reviewed by Nii Lante Wallace-Bruce. The article is a useful starting point for anyone interested in Western Australian labour law reform but is not extensive in its content.

Finally, the book contains two essays that critically examine the consequences and prospects of Australasian labour law reform.

The one caveat that may be put on the text is that the authors are not supporters of labour law deregulation, individual contracts and enterprise bargaining. Dennis Nolan recognises this in his Acknowledgments.

In summary, this book may not be a "research tool" in the strictest sense but it does provide the reader with an extremely useful overview of the development of the industrial relations systems in Australia and New Zealand. Further, the essays detail the history of labour law reform and analyse the reasons for and consequences of the reform. This work is highly recommended.

Sonya Greaves

Solicitor, Blake Dawson Waldron



Power, Parliament and the People

edited by **Michael Coper** and **George Williams**

Federation Press, 1997

SC ISBN 1 86287 2473 \$25 00

This book contains a collection of essays from a diverse range of contributors, most of whom presented their papers at a conference organised by the Australian National University's Faculty of Law and Centre for

International and Public Law that was held in the Senate Chamber of Old Parliament House on 9-11 November 1995. The focus of the essays mostly concern the events of 11 November 1975 and are collated within seven chapters.

The theme of the essays contained in Chapter One explore constitutional change in the legal, political and psychological contexts. Brian Galligan's article in particular, provides a useful summary of Australia's referendum record in comparison to other democracies. The essays grouped in Chapter Two discuss the role of leadership and the Head of State. George Winterton's paper, comprehensively covers the arguments for and against a popularly elected Head of State – the most topical major issue arising from the recent Constitutional Convention.

Chapter Three examines the judicial branch of power focusing upon three topics: the separation of powers, the role of the Chief Justice as adviser to the Head of State and what is justiciable under the Constitution. Chapter Four discusses the concept of "the people". Within this chapter, Helen Irving's article makes interesting reading by relating some of the history behind the peoples' movement towards federation in the 1890s.

Chapters Five and Six provide reflections on the events of November 1975 from a number of commentators, most notably, former Prime Ministers Gough Whitlam and Malcolm Fraser, and David Smith, former Official Secretary to the Governor-General Sir John Kerr.

Chapter Seven is entitled "Australian Democracy: The Way Ahead". There is little discussion however within these articles as to what our constitutional future could or should be and summarising what constitutional change is desirable and why. Beyond the implied theme that a repetition of the events of 1975 is considered undesirable there is little discussion of any alternative impetus for constitutional change.

To some degree there is perhaps too great an emphasis placed upon debating the past legal rights and wrongs of the events of 11 November 1975 rather than discussing the current role of the Senate and how its influence has greatly altered and developed since the

events of 1975, in addition to the importance of the High Court in the context of promoting constitutional change.

Overall Power, Parliament and the People does achieve its intended purpose in making a contribution to the debate about our Constitution and Australian democracy in the 1990s.

Lucy Turonek

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