

BOOK REVIEWS

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Antarctic Environmental Protection: a Collection of Australian and International Instruments

by **D.R. Rothwell** and **R. Davis**

The Federation Press, 1997

ISBN 1862872716 \$125.00

Developments within the Antarctic Treaty System since 1989 were the catalyst for *Antarctic Environmental Protection*. In 1989, Australia and France announced that they would not sign the recently negotiated Antarctic mining regime. Since then the world has seen the abandonment of the *Convention on the Regulation of Antarctic Mineral Resource Activities* and the adoption of the 1991 *Madrid Protocol on Environmental Protection to the Antarctic Treaty*. One may perceive a current trend in the Antarctic Treaty System towards an emphasis on environmental protection, hence the need for a comprehensive collection of international and national instruments on the topic.

This book is divided into two main parts. Part one provides a short analysis of the Antarctic Treaty System and each of the main treaties developed for the purpose of environmental protection. It also contains a collection of the international instruments developed for the protection of Antarctica and the Southern Ocean. Particularly useful in this part is the provision of Recommendations adopted at Antarctic Treaty Consultative Meetings in relation to environmental matters and the Conservation Measures adopted by the Commission for the Conservation of Antarctic Marine Living Resources. The book presents these sometimes hard to get documents in a user-friendly way so as to provide a good overview of all relevant

documents on Antarctic environmental law. It does not limit itself to the main treaties as is otherwise often the case.

Part two of the book deals with the Australian response to the various international instruments described in part one. It begins with a short description and analysis of the legislation applicable to the Australian Antarctic Territory followed by a compilation of the relevant Acts and other documents. *Antarctic Environmental Protection* thus helpfully outlines the Australian implementation of international environmental law in relation to Antarctica.

The main purpose of the book, as can be concluded from its title, is to provide a collection of Australian and international instruments in relation to Antarctic environmental protection. The analysis of these instruments is therefore short and limited. However, such analysis has already been a subject of many articles and books on the Antarctic Treaty System in general, whereas a collection of Antarctic environmental law and related Australian instruments was much needed. *Antarctic Environmental Protection* fills this void and is therefore a welcome addition to the legal literature on Antarctica. The materials covered in the text are essentially legal in nature, but the book should nevertheless be a useful reference for anyone interested in Antarctic environmental protection.

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It's Your Constitution: Governing Australia Today

by **Cheryl Saunders**

The Federation Press, 1998

ISBN 1862872449 \$16.95

Professor Cheryl Saunders has written a readable and well-organised introduction to the Australian

constitutional system which demonstrates her evident experience in explaining the Constitution to those unfamiliar with it. Unlike other introductory works, *It's Your Constitution* is a well-balanced book which admirably avoids over-emphasising particular aspects and descending into unnecessary detail.

The organisation of the book is a model of clarity, structured around three basic questions concerning Australian government: What kind of a say do I have? How are decisions made? What are the limits on what governments do and how they may do it? (p 6). In this respect, the book focuses on democracy as the central organising idea of our constitutional system. The democratic aspects of our system therefore take pride of place. Professor Saunders aptly traces the formation of the Constitution in the conventions of the 1890s, the idea of the people as sovereign, the nature, composition and processes of parliament, and the means of altering the Constitution itself.

Due to this focus on democracy, which takes up about half of the text, other essentials of our constitutional system seem to be relegated a secondary place. But on the contrary, ideas such as the rule of law, the separation of powers and federalism are central to the Australian Constitution. It is not so odd that the Constitution should say so little about democracy, the people and citizenship (pp 18, 25, 159). For instance, in Saunders' exposition, the people are defined in terms of the criteria of citizenship alone, and the federal breakdown of the people into constituent states receives only passing comment. Likewise, the distinction between the legislature and executive is generally presented as a means to efficient democratic government, rather than an ideal of parliamentary control of administrative discretion. Again, the way in which tenure sustains the independence of the federal courts could have been more fully explained when first discussed (p 109), although a clearer explanation appears much later (p 128).

Overall, however, Professor Saunders' book is impressively impartial. Divisive issues, such as the monarchy-republic debate, the external affairs power, direct democracy, indigenous issues, individual rights, the referendum record, districting, the role of the Senate and the reserve powers, are handled accurately,

sensitively and even-handedly. The book exhibits a judicious balance of accurate description, commendation and criticism (eg, p 55, ch 27).

The range is appropriate. It is fitting that the complexities of the Australia Acts (Cth), for example, are not discussed in any detail (p 23), vital as they are to the republic debate and the issue of constitutional alteration. The most recent High Court interpretations are reflected in Saunders' explanations (eg, freedom of speech: p 51, and duties of excise: p 119), although with good reason in an introductory work, she declines to cite them (p.v). Her knowledge of other constitutional systems often serves to provide an appropriate sense of perspective (eg, p 88). It seems trifling in this context to quibble with the infrequent infelicity of expression or to cavil at the odd misleading statement (eg, on monarchy, Diceyan theory, votes of no confidence and the conventions of responsible government: pp.33, 36, 50, 95).

All in all, this a very useful, basic introduction, written in straightforward language, which will no doubt help many Australians better understand our constitutional system of government.

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Effective Legal Research

by **Irene Nemes and Graeme Coss**

Butterworths Sydney, 1998

ISBN 0 409 31158 8 \$48.00

The authors suggest that any legal practitioner above the age of 30 is suspect in regards to their legal research skills. The fact is, however, that there would be many lawyers who do not fully appreciate the recent developments in legal research tools and, in particular, the increasing reliance on electronic and online sources enabling quick access to vast amounts of information.

The target audience for this text could be anyone from a first year law student to a senior practitioner, although postgraduate students will find it inadequate to answer

many of the questions they may have about primary research and sourcing more obscure references. Generally, this book provides tips on being effective within a linear process for simple research projects and then provides some detail in regards to the most common sources of information. However, a fundamental flaw of this text for some legal researchers is the dearth of material on international legal resources.

The book is divided into seven substantive chapters canvassing legal citation; research strategy; electronic searching; Internet sources; primary and secondary sources. From the outset, much is made of the need to be proficient in both "paper" and "electronic" legal research, but it is quite clear that the emphasis of this book is on electronic research skills.

The citation chapter can be recommended for providing clear explanations and plausible reasons for the author's citation preferences. Electronic citation is of course problematic and the authors make an attempt to deal with the various issues which generally involve the differences in pagination between electronic sources (particularly Internet) and authorised reports.

The chapter on research strategy and techniques provides a good basis for mapping out an efficient, time saving and non-repetitive approach.

The chapter on electronic research canvasses the advantages and disadvantages of electronic versus paper research but plainly implies the significant advantage of electronic over paper. A table of boolean operators for easy reference would have been useful.

Legal content on the Internet is the subject of other publications and this one does not pretend to provide more than an overview. It lists some popular legal sites in Australia including the important "Austlii" site.

The chapter on secondary sources deals more with CD-ROM rather than online sources of information, and regard is also given to "paper" sources. Of particular note is the reasonably in-depth description of the operation of several software packages, with the

authors pointing out the problems with using one source of information over another.

The final chapters on Primary Sources are comprehensive and also provide basic tables useful in finding domestic case law and legislation. The authors set out the different routes to successfully sourcing and updating primary materials in a manner which promotes confidence for the researcher.

Some of the limitations of this book include an almost exclusively domestic focus although some useful Queensland sources are absent. The one conspicuous flaw is common to books such as this which list Internet sites. I found links to web sites in several chapters were already out of date (despite the age of this book) which can present a problem to the novice user.

Overall, this book lives up to its title by providing an effective guide to sources of, and access to, the plethora of legal research materials now available. It is a credible and comprehensive source, certainly much better than some of the guides already on the market. Students and practitioners will find themselves well served if they use this text to found or update their research skills in a quickly changing research environment.

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Australian Legal Citation – A Guide

by **Colin Fong**

St Leonards: Prospect, 1998

ISBN 1863161171 \$25.00

Background

I have always been rather ashamed of my dogmatic interest in legal citation formats as perhaps demonstrating a fatal flaw in my personality, a concentration on the minutiae rather than the bigger picture. So it was with great relief that I have discovered that others share my enthusiasm and longing for an accepted Australian legal citation standard that might incorporate incremental updates,

and so take account of modern electronic formats. Colin Fong, in his introduction to *Australian Legal Citation: A Guide* voices similar concerns, but demonstrates a more realistic attitude to outcomes.

Contents and Scope

Fong's text is in two parts. The first part consists of seventeen separate sections discussing citation styles for the various legal genres including cases, acts, delegated legislation, parliamentary materials, codes, treaties, administrative and quasi judicial material, media releases, books, digests and encyclopaedias, journal articles, looseleaf services, and conference papers. The list of Australian Authorised and Unauthorised Law Reports in the Appendix to Chapter One deserves special mention as a handy practical tool. Three broader chapters deal with electronic materials, citation styles for overseas materials and citation reform. The second part includes an alphabetical citation guide for common Australian caselaw, legislative, governmental and journal sources with the main entry to the full name of the series followed by the dates and accepted abbreviations. A brief methodology page reflects the academic beginnings of the book which originated as a research project for the Master of Legal Studies course at the University of Technology, Sydney. This is followed by a useful select bibliography of the major international legal citation resources and a few Frequently Asked Questions.

One of the strengths of the text is its potted history of legal publishing in Australia as it has affected citation and the sources. It provides a context for the current debate on electronic citation. Another strength is its recognition of the role of the publishers in updating citation style. Fong takes a broad view of the issues, though for the most part, limiting comparison to the U.S. jurisdiction. In the comparative process, he generates a scattered list of reforms, some of them original in relation to the Australian debate. Take, for example, the suggestions for judicial consideration of cases to be tied to numbered paragraphs in the headnotes as per the Shepard's model. I would have liked more expansion of the discussion there. How reliable a reflection are headnotes of the text of the

case, for example, and would the catchwords be a better reference point? Another major difficulty in terms of accuracy of legal reporting and referencing hinges around pinpoint citations. Fong touches on this but without any real resolution. In the chapter on recent developments, however, the January 1998 High Court approval of the use of a medium neutral citation was previewed. The final format chosen by the Court was slightly different from the one Fong suggested, being (the parties) [the year of the decision] (the Court abbreviation) (the sequential number of the judgment).

Future

This text is the first of a range of legal citation guides being published for the Australian market and in that sense it marks the beginning of the debate. It lays the basis for future discussion but it is certainly not the last word, nor does it truly profess to set a dogmatic citation style guide. This is not the Australian Blue Book. However, it will be of practical use for those trying to come to terms with some of the basic difficulties in Australian legal citation.

Terry Hutchinson

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Voir Dire Law: Determining the Admissibility of Disputed Evidence

by Kerry David Stephens

Criminal Law Publications, 1997

HC ISBN 0646317032 \$135.00

A new publication examining the legal issues and arguments concerning admissibility of evidence is now available. *Voir Dire Law* by Kerry Stephens is an extremely thorough and comprehensive look at the scope of *voir dire*s and the use that can be made of them.

Stephens is a barrister and solicitor of the Supreme Court of Victoria, and a Superintendent in charge of the Victorian Police Prosecutions Division. His book has obviously been a labour of love, with every possible category relevant to his topic covered, each

exhaustively footnoted with the appropriate case law and legislation

The publication deals not only with *voir dres* in the strict sense, but with the concept of legal arguments as to admissibility and procedure generally. As one would expect, significant coverage is devoted to such topics as the competence of witnesses and the admissibility of alleged confessions. Stephens also looks at the parties' rights in having a *voir dire*, the duties of the judicial officer in conducting a *voir dire*, and the availability of appeals from decisions on *voir dres*. The book is more a reference source (a "manual") than a text book for study. It is obviously aimed at practitioners rather than students, having been written in a practical, concise manner.

Some of the topics covered may surprise. The author has demonstrated a determination to bring within the scope of a *voir dire* every conceivable topic of legal argument. For example, he suggests at one point that a *voir dire* is the appropriate procedure for establishing the ability of a witness to refresh his/her memory from contemporaneous notes. However, in practice the procedure is normally carried out, for convenience sake, very quickly, without the jury retiring. Perhaps then the title *Voir Dire Law* does not do the book justice, as it covers many issues falling outside the traditional definition of a *voir dire*. This will be particularly so now as various jurisdictions, including Queensland, have legislation providing for the pre-trial determination of various issues, including admissibility. Whilst the text is primarily concerned with the position in Australian jurisdictions, the author also refers in parts to the Canadian, English and New Zealand approaches.

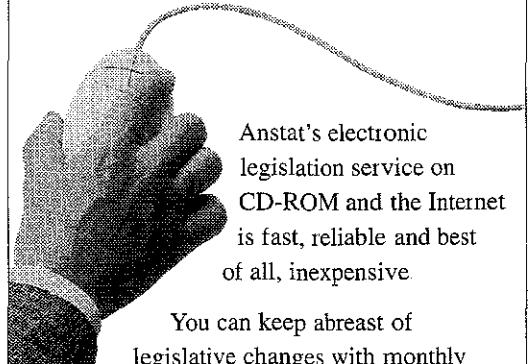
The book is likely to be very handy to practitioners in the preparation and presentation of points of law in summary hearings and trials. It provides a concise, easy to read analysis of the law in Australia and is sufficiently well annotated and researched to allow further enquiries to be made as required.

Glen Cranny

Associate, Gilshenan & Luton



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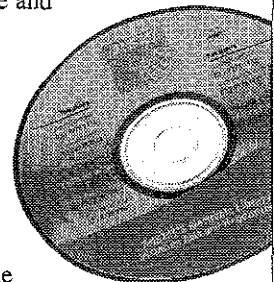


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