

The Law of Criminal Investigation by P. Gillies (Law Book Company Ltd, Sydney, 1982) pp. i-xxi, 1-332. Price \$32.50 (hardback) ISBN 0 455 20536 1.

The emergence of sophisticated equipment used to detect criminal offenders has been countered by a judicial expansion of legal doctrine governing police investigation techniques. In addition, the Criminal Investigations Bill 1981 (Commonwealth) which purports to regulate police methods of investigation was introduced into the Senate in November 1981. Gillies' book is well timed and it fills a notable gap in legal writing on the law of criminal investigation in Australia. The principles governing criminal investigation are becoming increasingly specialized and Gillies' book provides a road-map to an understanding of these principles.

The book is divided into eight chapters. In the first three chapters Gillies canvasses and examines the law relating to confessional evidence. The author analyses the common law doctrines governing the procurement of confessional statements and their evidentiary consequences. However, it must be borne in mind that since the publication of the book the High Court of Australia has handed down the decision of *Cleland v. R.*¹ in which broader scope was given to the principles governing the admissibility of voluntary confessional statements. In *Cleland* the court held that where confessional statements had been procured illegally or improperly they could be excluded on the grounds of public policy. The court extended the grounds upon which it can exercise its discretion and thus Gillies' discussion of the discretionary exclusionary rule in chapter three must be read subject to the decision in *Cleland*. This problem may be overcome by the fact that in chapter four Gillies discusses the discretionary rule enunciated by the high Court in *R. v. Ireland*² and *Bunning v. Cross*,³ it is this rule which was applied in *Cleland*. Thus, the discussion in chapter four of the discretionary rule based on considerations of public policy which operates to exclude real evidence procured illegally or unfairly is relevant also in the case of confessional evidence since *Cleland*.

Gillies' discussion of the rule in *Bunning v. Cross* is very brief. He appraises the rule in under five pages, and the brevity of the analysis by implication seriously undermines the importance of this discretionary rule. The author could have analysed the judgments in *Bunning v. Cross* in greater detail, and in particular the joint judgment of Stephen and Aickin JJ., which is the leading judgment. Further, Gillies could have enlarged upon the criteria the court takes into account in determining the exercise of its discretion. By way of contrast the author could have discussed the decision of the House of Lords in *R. v. Sang*⁴ where their Lordships in defining the scope of the discretionary rule stated that it did not operate to exclude evidence on the grounds of entrapment. It is suggested that *Sang* is an important decision because it is open for the Australian courts to adopt the case on the question of entrapment as there is at present no High Court ruling on the issue. It is in this vein that *Sang* is an important decision and warrants more consideration than being reduced to a footnote.

It is surprising that the author dealt with what are considered to be important pre-trial procedures such as finger printing, photographing, police questioning and identification parades under the heading of 'miscellaneous'. The reader may be excused for thinking that because these topics are afforded so little weight by the author they are not important enough issues to be singled out. On the contrary, these acts are important steps in the whole process of criminal investigation, and if the police fail to follow the prescribed procedures set out in the Police Standing Orders or required by the Judges' Rules, their failure to do so may have serious evidentiary consequences. Indeed, the discretionary rule may come into play. Gillies' discussion of the principles governing identification parades is comprehensive, but it is unusual that he did not note the decision of the Full Court of the Supreme Court of Victoria in *R. v. Clune*⁵ in which the principles governing identification parades were elaborated upon. Despite the superficial treatment Gillies affords such topics as the accused in police custody, and entrapment, on

¹ (1982) 43 A.L.R. 619.

² [1970] A.L.R. 727.

³ (1977) 141 C.L.R. 54

⁴ [1979] 3 W.L.R. 263.

⁵ [1982] V.R. 1. In the preface Gillies states that he has 'sought to state the law as it was found in the Australian jurisdictions in March 1982'. The decision in *R. v. Clune* was handed down in July 1981.

the whole he provides a comprehensive analysis of some of the principles relating to criminal investigation such as search and seizure, arrest and confessional evidence, taking into account the evidentiary consequences of a failure to follow proper procedure.

One minor criticism is that the structure of the book inhibits its flow. It is suggested that the issues could have been examined in the order in which they arise in practice, beginning with the pre-trial procedures such as arrest, search and seizure, and police questioning, moving to the trial and the evidentiary problems attached to the evidence obtained from such procedures. It is also suggested that the index could have been more detailed. For instance the index to confessional statements does not include references to factors such as conditions of admissibility, the *voir dire*, the judicial discretion, inducement of confessions, the Judges' Rules and the Police Standing Orders, although these issues are discussed in the text.

Despite the few structural faults in the book, and a failure to discuss some topics such as entrapment in more detail, Gillies has managed to canvass the many aspects of criminal investigation clearly, concisely and analytically. This book will provide informative reading for legal practitioners and students.

POLIXENI PAPAPETROU*

Federal Administrative Law by G. A. Flick (Law Book Company Ltd, Sydney, 1983) pp. i-xxvii, 1-251. Price \$35.00 (cloth), \$27.50 (limp) ISBN 0 455 20448 9; 0 455 20424 1.

In the course of the past decade Australia has come to be regarded as something of an administrative lawyer's paradise. Public lawyers in other common law jurisdictions have been casting envious glances in Australia's direction. The reason is plain enough. In 1968 the then Commonwealth Attorney-General, Sir Nigel Bowen, set in train a series of reviews into federal administrative law. Those reviews, in turn, produced recommendations for fundamental changes in the law. The recommendations were given effect to by three important enactments: the Administrative Appeals Tribunal Act 1975, the Ombudsman Act 1976, and the Administrative Decisions (Judicial Review) Act 1977.

Federal Administrative Law contains the text of each of these Acts and of relevant subordinate legislation. The text, in each case, is annotated. The annotations go well beyond the customary notes of decided cases. Dr Flick has drawn on a wealth of material which includes the reports of the committees whose recommendations are incorporated in the Acts, the annual reports to Parliament of the Ombudsman and the Administrative Review Council, and journal articles and books. There are, in addition, references to comparative materials which may assist in the interpretation and application of this legislation, particularly in its early years.

Not surprisingly, each of the enactments has been beset by 'teething troubles' as unforeseen problems of interpretation have arisen or drafting deficiencies have been discovered. Dr Flick has been careful to highlight the areas which stand in need of reform and to make suggestions as to the direction such reform should take.

A novel touch is added by the inclusion, after each annotated Act, of the Second Reading Speech which introduced it, as a Bill, to the Parliament.

The author has brought to the production of this work the combined experience of an academic lawyer, a practising barrister and a law reformer. The student will find it to be a useful starting point for any research into federal administrative law. Most of the relevant primary and secondary source material is conveniently collected in the places where one expects to find it.

The practitioner will find *Federal Administrative Law* of even more assistance than the budding essay writer. He will find all the relevant decisions in summary form. A random sampling by the

* A student of Law at the University of Melbourne.