

# Fertilising the Mainland

Three Tasmanian lawyers Messrs Lillas, Szramka & Cross throw some light on the evidence statutes of all States in their book *Tasmanian Annotated Evidence Act 1910*.

*Bar News* received for review, a book, published by the authors, annotating the Evidence Act 1910 of Tasmania. The Tasmanian Act is, perhaps, most directly comparable with the Western Australian Evidence Act, but the process of legislative cross-pollination between the evidence statutes of all States has produced much common ground.

The authors have addressed themselves to a particular goal in annotating the Tasmanian Act — namely to produce a handbook of real practical use to those who need quick, reliable access to up-to-date judicial statements on the Evidence Act.

In this aim, I think, they have largely succeeded. They do not pretend to have written an evidence text. I doubt if they would claim as their "target audience" advocates at the coal face of day-to-day litigation who might be expected to keep themselves up to date with developments in the law. This is not to say that the book is not of some use to those people, but rather to suggest that its real utility is to the less specialised practitioner faced with a question of admissibility of evidence, who has neither the time nor the library resources to examine the matter.

For the NSW practitioner, there are some limitations of the book's usefulness. There is in the front a very handy table of comparable sections of the Evidence Acts and Ordinances of the States and the ACT. If one knows the relevant section of the NSW Act, it is the work of a moment to find the corresponding section of the Tasmanian Act and go to the annotations thereon. However, some areas covered by the NSW Act do not appear in the Tasmanian Act, and vice versa. For example, the Tasmanian Act has no equivalent of section 14B of the NSW Act, a section the subject of frequent judicial notice in this State.

In a book intended to be severely practical, there might here and there have been a little more effort to identify the latest discussion by the High Court of

Australia on a given topic. For instance, in the annotations to section 98 of the Tasmanian Act (approximately the equivalent of section 53 of the NSW Act dealing principally with hostile witnesses), there is no reference to *McLellan v. Bowyer* 106 CLR 95. There is nothing like citing a strong statement by the High Court to end arguments on evidence.

On the other hand, the annotations to the "business records" provisions now common to the Tasmanian and the NSW Acts are an excellent collection of up-to-date judicial interpretations of the sections. One of the features of the annotations generally is that the authors, while refraining from almost all commentary of their own, have set out the most telling passages from many of the authorities cited, particularly in such new areas as that of "business records." This has the tremendous advantage for the advocate that even if he or she lacks access to reports, a useful submission may be made based upon the extracts from the leading cases. I think the authors have shown nice judgement in striking a balance between merely referring the reader to authorities with a very brief statement of their effect, and setting out extracts from judgments. They have tended to use the latter approach in areas which they have identified as being commonly met with in Court, or where the matter is new to the law of evidence.

There are inevitably some typographical quibbles and the occasional citation error (such as the intended reference to *Albrighton v. Royal Prince Alfred Hospital* where the case name spelling, the citation and the page number in the volume is wrong in the Table of Cases and at p.100). It has to be said that in a book designed for the person in a hurry, special care must be taken to ensure citations are correct.

Nevertheless, the work is a useful one and is likely to come to find a place on the shelf of many practitioners beyond the shores of Tasmania.

C.G.G.