

The first chapter on Heritage Law outlines the legal powers of local government in relation to heritage protection and the extent to which these are modified by legislative initiatives at both State and Federal levels. Boer considers the increasing responsibility given to local government in the domain of heritage protection, and highlights the resulting problems through a brief case study. His discussion of the role of local government is essentially descriptive, though he does make some suggestions about how it can play a more effective role in heritage protection.

Donna Craig's chapter on Social Planning considers the extent to which social planning is carried on within the framework of the *Environmental Planning and Assessment Act*, and the legal, institutional and financial weaknesses of this framework. While she discusses the role of local government, and in particular its lack of resources to undertake social planning effectively, she does so only incidentally, approaching the problem from the point of view of social planning rather than from that of local government. She concludes with suggestions about how the issue can be better addressed.

Patricia Ryan's chapter on Urban Consolidation, in contrast, is clearly written from the point of view of local government. Her discussion of the issue highlights the relative roles and powers of State and local government, emphasising the latter's lack of effective control resulting mainly from fundamental problems associated with education, resources and leadership. Her chapter is perhaps one of the most useful in the book, particularly for its discussion of urban consolidation policy, which includes a brief consideration of the more important State Environment Planning Policies. Her chapter also includes an appendix of urban consolidation cases reported in the Local Government Reports.

The chapter on Pollution Control by Zada Lipman is also written from the point of view of local government. She emphasises the important role that local government should and does play in pollution control, and in particular the need for an integration of pollution control and planning processes, and for cooperation between local government and authorities at the level of State government. She ends her discussion with suggestions on strategies local governments can implement to play a more effective role in waste minimisation.

Justice Stein's chapter on Resident Participation in Merit Appeals and Section 123 Applications is somewhat out of place in this book, given that the concern of his paper is the extent of citizen participation in actions before the Land and Environment Court. Local government is mentioned only incidentally, in the context of residents' participation in litigation brought by a local council, and notification procedures in the planning process. Nevertheless, the chapter presents a good summary of the ways that citizens can become involved in environmental matters.

The final chapter, Land Use Control, is concerned with the implications of amendments proposed to the *Local Government Act* by *White Paper: Local Government Act Review* released in July 1990, and the subsequent Discussion

*Paper Reform of Local Government in NSW: Proposals for Legislation* released in August 1991. In a chapter which is essentially descriptive, Pearson focuses on the draft Bills and SEPPs proposed in the White Paper, noting any changes suggested by the Discussion Paper. The proposals contained in these papers have been superseded to an extent by the Exposure Draft Local Government Bill 1992 released as a result of submissions in response to the Discussion Paper in December 1991. Pearson's discussion is therefore not up to date, and although many of the proposals in the earlier papers have carried through to the 1992 Bill, this chapter will be of limited use, except perhaps as background.

The purposes of the book stated by the editor in the Introduction are not completely fulfilled by all of the papers presented in the book. Diverse aspects of local government are discussed, but not in a comprehensive way, and given the difficulty in identifying a common theme, it is difficult to agree that the book sufficiently clarifies the role of local government in environmental control, or that it is essential reading for this reason. With the exception of Justice Stein, all authors make some suggestions about how local government can play a more effective role in environmental control. The book is perhaps most successful in fulfilling its purpose of informing the reader as to basic issues in relation to local government and the environment.

Because of its lack of comprehensiveness in respect of both description and critique of the issues covered, the book is probably of use to practitioners only as background reading. Its discussion of policy issues and suggestions about a more effective role for local government means that it would be of most use to local government officers and councillors. The chapter on Resident Appeals would be of great use to individuals and public interest groups wanting to play a greater role in litigation and the planning process. □

Georgina Hayson

## **Guilty or Innocent?**

### **The Gordon Bennett Case**

**Mark Clisby**

**Allen & Unwin 1992 RRP \$24.95**

Controversy about the fall of Singapore in 1942 was revived last year following the release of hitherto secret reports by General Wavell to the British War Cabinet. In those reports, Wavell was somewhat disparaging about the fighting ability, courage and demeanour of the Australian soldiers in the defence of Singapore.

The simplistic finger pointing by Wavell has done nothing to answer some of the complex historical questions which arise out of the fall of Singapore and the conduct of the entire Malaya campaign. We have yet to comprehend fully why the numerically inferior Japanese force were able to rout and force the surrender of the British Force.

We have yet to come to terms with the responsibility to be borne by Wavell and Percival, the British commanders, let alone the British War Cabinet. What also of the Australian government's knowledge about the way the war was being conducted in Malaya?

All of these questions are raised by one of the more intriguing incidents in the whole campaign: the escape from Singapore by Major-General Gordon Bennett. The propriety of Bennett's escape and the circumstances surrounding it are addressed in Mark Clisby's recent book about 'The Gordon Bennett case'.

Should Bennett have stayed with his men and gone to Changi with them? Was his escape justified because it was his duty to escape as a POW? Or was his escape justified in the national interest, Bennett being the only senior Australian commander to have faced and fought the Japanese in the jungle?

The controversy surrounding Bennett's escape was the subject not only of considerable public comment during and after the war. In October 1945, apparently at General Blamey's instigation, Bennett's case was brought before a closed Military Court. Bennett's objection to the composition of the Court was overruled, and Bennett took no part in its enquiry. The Court found against Bennett and ruled that he had, in effect, deserted his post.

After agitation by politicians, the RSL and significantly the 8th Division association (the soldiers under Bennett's command in Malaya) a Commission of Inquiry was established. Mr Justice George Ligterwood of South Australia was appointed Commissioner. The Commissioner held public hearings, Bennett appeared and was represented by Counsel.

The facts are simple. Bennett was a distinguished but ambitious citizen-soldier. He was commander of the Australian forces in Malaya. He was under the operational control of the British Commander in Malaya, Lieutenant General Percival. However Percival did not have complete control over Bennett and the Australians, because Bennett had direct right of access to the Australian War Cabinet.

Percival signed an unconditional surrender with the Japanese at 5pm on 15 February 1942. A ceasefire took place under the surrender instrument at 8.30pm that day. Bennett and a small party including some staff officers escaped at 10.30pm that day. The Australians captured by the Japanese were interned in Changi five days later, on 20 February 1942.

Bennett returned to Australia. He briefed the Australian War Cabinet about the Malaya campaign and the fall of Singapore. He was promoted to Lieutenant General, given a command in Western Australia, published a training manual on Japanese tactics but was not given any further active command during the War. Antipathy and rivalry apparently existed between Bennett and Blamey. Bennett resigned his commission before the end of the war.

Mr Justice Ligterwood found that Bennett had made an error of judgement, was effectively guilty of desertion but with extenuating circumstances. He found that Bennett's honour and patriotism could not be questioned. The pivotal finding

was that Bennett was not technically a POW at the time of his escape, and that he would not have become a POW until he had arrived at Changi with the other Australian troops. As Clisby points out, that technical finding is open to question as a matter of international law and common sense.

The Commission hearings allowed the Bennett case to be aired publicly. However, its findings did little to resolve satisfactorily the question of whether or not Bennett was right or justified in escaping. It is for this reason that Clisby's book holds such appeal and makes very interesting reading.

Clisby is an Adelaide barrister and Army Reserve officer. He presents the facts and the cases for and against Gordon Bennett in a brief and uncomplicated manner. He treats the reader as a jury member. In presenting the cases, he has used anecdotes, historical commentary and transcripts of important evidence presented to the Commission. Both cases are, for the dispassionate reader, presented fairly.

Having read the cases for and against Bennett, and Clisby's summing up, the reader as jury member is invited to make his or her decision. However, in reaching that decision, one is drawn back to the much wider controversy about the fall of Singapore and the conduct of the Malaya campaign. For this reason alone the publication is timely, because on the wider controversy the jury is still out. □ T D Castle

## Observant!

Kirkham DCJ recently presided at the trial of a young man charged with a serious robbery with wounding at a Bowling Club. Two offenders, one armed with a double barrel shotgun and the other a knife, menaced the victims with their weapons. The male victim was stabbed twice in the process (a very vulnerable and sensitive organ). The other victim was asked this question in chief:

Q. "Did you notice anything about the demeanour of the two men?"

To which she innocently answered ...

A. "The one with the knife was the meaner of the two."

(*R v Visser* District Court of NSW)

### FOR EXPERT PRE-SENTENCE REPORTS

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