

S Bolt, *Rough Deal: A Plain English Guide to Drug Laws in NSW*, Redfern Legal Centre Publishing, 2005.

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The creation of offences for the possession and supply of drugs in NSW and the Commonwealth introduced a new level of procedural intricacy for criminal legal practitioners. It is well acknowledged that the regime of laws prohibiting the use, possession and supply of various narcotic or prohibited substances in these jurisdictions presents a network of substantive and procedural complexity, the interpretation of which is to be left to the more competent of practitioners. It is here where Steve Bolt's *Rough Deal: A Plain English Guide to the Drug Laws of NSW* seeks to intercede. In the second edition of *Rough Deal*, Bolt makes plain his view that the text offers a 'user friendly' read on the complexities of drug prohibition in NSW. In doing so, Bolt makes some ground setting out the types of substances deemed prohibited; the more common offences of use, possession and supply; prohibitions surrounding cultivations, manufacture and importation; and the procedural issues of dealing with the police and the justice system more broadly, including the courts. However, despite the attempt to make clear the convolutions of NSW drug law and practice, Bolt's most significant stance is taken with regard to his arguments for reform, where he advocates the need for extensive albeit metered amendment to the current regime of drug offences tending towards the decriminalisation of possession and use type offences. It is this issue that contextualises the book's objective, seeking to provide clear exposition of drug law for the sake of the minimisation of prosecutions, especially for those toward the possession and use end of the supply

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chain. While Bolt's arguments for reform are significant, enabling a more complete understanding of his inspiration for the production of the text, the book seeks to outline an easy to understand summary of the various offences facing those that use or know people who use drugs. It is with this primary purpose that I will focus the introduction of this review.

The first step in understanding drug law is the identification of the sources of law prohibiting drugs in the first instance. Unfortunately, as Bolt identifies, it is here, at the very beginning, where things get difficult. The three primary sources – the *Poisons and Therapeutic Goods Act 1966* (NSW), the *Drug Misuse and Trafficking Act 1985* (NSW) and the *Customs Act 1901* (Cth) – provide for a comprehensive matrix of offences and processes capturing most known situations in which drugs may be used, possessed or supplied in Australia. However, it is the 1985 Act that prescribes the Schedule listing those substances that will set in motion most drug prosecutions in NSW. And with this, Bolt sets out the law of possession – the most relevant of charges for those in the front line of the anti-drug movement – the police. Relevant not because possession is so serious a problem, but because it is those identifiable communities commonly utilising public space – the indigenous, youth, the homeless – which are most seen by the police, availing themselves to possession type charges. Although the user of drugs may tend towards supply for their own ends on occasion, those possessing cannabis, heroin, speed, cocaine etc will usually do so for their own personal use. In these situations, the amounts held in the physical control of the accused will usually be lower than that prescribed under s 29 and Sch 1, the trafficable quantity. This will mean that most who come into contact with the police, and who are found to have a prohibited substance in their possession, will be charged under s10 – possession. It is here where Bolt makes inroads into the provision of basic advice assisting those thinking of purchasing the book.

The law of possession is complex. *He Kwa Teh*² tells us that possession must be established by knowledge and control, that is a knowledge that the substance is a drug, and control which places the substance in the dominion of the accused, whether or not it is on their person. However, subsequent High Court authorities have extended upon this definition of possession. Knowledge as to possession may be inferred from the circumstances of the offence: *Pereira v DPP*.³ This inference must be a rational one and thus not principally informed by wilful blindness as to the substance possessed. Suspicious circumstances and failure to make inquiry may sustain an inference of knowledge. However, inferences from the facts on whether a particular accused has a knowledge that the substance was prohibited is essentially an evidentiary one. *Bahri Kural*

² (1985) 157 CLR 523.

³ (1988) 63ALJR1; 82ALR217

*v R*⁴ provides that it is sufficient to establish intention if the accused realised there was a likelihood that the imported substance in possession was a prohibited drug. Actual knowledge or awareness, however, does not have to be an essential element of the guilty mind: *Saad v The Queen*.⁵ Though *R v Filippetti*⁶ reminds us that possession must be exclusive, joint exclusive possession is also possible, and where raised by the evidence, dominion or control over the drugs to the exclusion of all others or the possibility that the accused might share dominion or control with another by way of implicit or explicit agreement is relevant. Herein lies the catch. The knowledge of drug law and, in particular, inference making from a set of facts as to requisite *mens rea* may be such that, despite Bolt's intention to enlighten his audience as to the threats and risks they face in possessing drugs for personal use, any message will be lost due to the specific interplay of required tests. However, this is not to underestimate the audience to which the text will appeal. Bolt makes a clear contribution to the clarification of this area of law and provides it in enough detail to give a non-lawyer an idea as to what will need to be established before a court, if required.

Supply offences are of equal importance. Though not charged as often as possession, supply is rendered a serious offence by the penalty it attracts. Bolt again provides some useful advice on the supply of prohibited substances and the ways in which the 1985 Act is set up to deem as supply certain non-supply possessions. It is here where the intersection of Bolt's thesis on law reform engages his provision of advice. Valuable advice is offered regarding the nature of drug use in a social context. It is the social use of drugs, sharing amongst friends, that lends many to the more serious supply charges where the police could only otherwise establish possession. Deeming provisions are also covered in which non-prohibited substances may be passed off as drugs. The social context of sharing amongst users is addressed in *Dentic*,⁷ where the court ruled that a genuine intention, regarded as genuine by the offeree, must be shown such that circumstances of supply encompass an offering to supply notwithstanding that there is no intention of actual supply. This point is appropriately demonstrated via case studies and examples, allowing the reader to grasp first, that supply may be incidental to the use of drugs amongst friends, and secondly, that even where an accused does not intend to supply drugs to another for some reward, simple admissions as to social use or sharing may leave the accused with a charge for possession and supply. However, it is where the accused admits to or is found supplying on three separate occasions within a 30

⁴ (1987) 162 CLR 502.

⁵ (1987) 70 ALR 667.

⁶ (1978) 13 A Crim R 335.

⁷ (1987) 34 A Crim R 40.

day period that they are most at risk of a serious term of imprisonment. Prescribed under s 25A of the 1985 Act, supplying drugs on an ongoing basis is a new offence that seeks to capture those that seek financial or material reward for the supply of drugs. However, there is real potential that those that supply to friends will be captured by the terms of this section, especially where money is handed over for the supply of drugs at a club or party, lending such a person to a very serious penalty. It is here where the text could provide some clearer advice, especially in terms dealing with situations of police entrapment, as considered in *Ridgeway v R*.⁸ Deemed supply under s 29 also provides to sanction those who may possess drugs for personal or social use but not for wider distribution or sale. Despite the provision of a defence on the basis that the substance was possessed otherwise than for supply, the text could provide more advice on the various defences available where an accused is found with more than the trafficable quantity: cf *R v Carey*.⁹

Though not confined to matters of drug misuse and trafficking, the provision of advice on the police and court processes strengthens the text's goal of minimising prosecutions for lower end use. As is wisely noted, admissions to the police in an attempt to diminish the seriousness of possession or use may yield evidence for a supply charge under s 25. Bolt thus advises that each person should exercise their right to silence, putting the police and prosecution case to proof. Bolt also importantly touches upon inappropriate practices by the police, specifically the tendency to give false promises or statements goading an accused towards a confession. This is a significant and helpful aspect of the text, allowing the audience to more comprehensively understand the nature of drug-based policing, and the need for police to gain a confession in most matters, especially where supply is on the agenda.

The thesis of the text, however, provides its underpinning and direction. The need to reform drug law in NSW is evident in the fact that most prosecutions, an overwhelming 80 per cent, are brought for use and possession – offences at the lower end of the scale of seriousness. This means that it is the users of drugs that are the target of the 1985 Act. The suppliers and traffickers of narcotics, despite police claiming the occasional 'bust', go unencumbered, while those most available to the police are subject to increasingly strict stop and search laws, providing police with ready access to the drug using community. Clearly, with arguments in favour of harm minimisation over abject prohibition, an approach which history tells will fail, Bolt provides solid ground from which he moves his argument for the decriminalisation of prohibited substances.

Rough Deal brings together the complexities of drug law and

⁸ (1995) 129 ALR 41.

⁹ (1990) 20 NSWLR 292.

procedure, police procedure, sentencing information and advice, and arguments for policy reform in a succinct way. Further, the text links, at times in the most subtle of ways, Bolt's thesis on decriminalisation with the provision of advice in a fair and impartial way that demonstrates how the current system of laws unfairly targets various communities, levelling punishments that simply do not fit the threat of the seriousness of the offence. To this end, Bolt necessarily questions whether the conduct itself, the personal use and possession of drugs, should be demarcated offensive in the first instance. *Rough Deal* makes an important contribution to the provision of accessible legal advice, and, perhaps most importantly, to the ongoing debate as to the status of drug offences and their policing towards decriminalisation. Bolt is to be commended for it.