THE LIBRARY ASSOCIATION OF AUSTRALIA

BOOK LAUNCH OF THE AUSTRALIAN LIBRARIAN'S MANUAL

VOL II, EDITED BY DAVID J JONES

21 FEBRUARY 1984, STATE LIBRARY, SYDNEY

LIBRARIANS COPING WITH THE LAW

February 1984

THE LIBRARY ASSOCIATION OF AUSTRALIA

BOOK LAUNCH OF THE AUSTRALIAN LIBRARIAN'S MANUAL

VOL II, EDITED BY DAVID J JONES

21 FEBRUARY 1984, STATE LIBRARY, SYDNEY

LIBRARIANS COPING WITH THE LAW

The Hon Justice M D Kirby CMG
Chairman of the Australian Law Reform Commission
Member of the Library Council of New South Wales
Member of the Australian National Commission for UNESCO

BOOK LAUNCHERS EXTRAORDINAIRES

You will forgive me if I read this book launch. I spent this morning launching on its way another book. It dealt with The Impact of Publicity on Corporate Offenders'.[1] I must be careful, as I enter the ranks of professional book launchers, that I do not get my books mixed up. Your concerns, in this elegant Gallery, are a long way removed from the naughtiness of corporation officials and the unequal efforts of law to bring them into line.

In fact, I have great diffidence in entering the book launching brigade. I have written elsewhere[2] that there are really only two Australians worthy of the book launchers' accolade. The first is Dame Edna, who normally launches books with a few copious notes written ostentatiously on her sleeve cuff. She reads these notes furtively — a latter-day remnant of schooldays' impropriety during exams. She chooses her books with exquisite care. She restricts her repertoire to those books you would be proud to see on a coffee table in Moonee Ponds. She recently gave an enormous fillip to the sales of a serious work on bioethics (The Body As Property[3]) by saying that she keeps it by her bed.

Well, the editor of this work approached Dame Edna but she was in the midst of celebrating a birthday I am too delicate to mention. Gazing into the waters at Bondi, she said with uncharacteristic loss of glamour:

'Oh, hang the Oxley Memorial Library of Queensland Act 1946!'

The other book launcher extraordinaire who would undoubtedly have been up to the task I have assumed tonight is Gough Whitlam. He would have laid claim to a great part of the legislation in this volume and told us, with due modesty and in exquisite detail, of the speech he made relevant to the Copyright (International Protection) Regulations back in 1969. Unfortunately, Gough launched one book too many. Within days of the launch, the book sold out, the government changed and he was appointed to an Embassy in Paris. There I found him, at the UNESCO General Conference, surrounded by elegant restaurants, superb wine and a seemingly endless coterie of abject admirers.

I cannot believe that I will be similarly rewarded for my two efforts today.

DANGERS LURK

No-one would be more conscious than David Jones, the editor of this volume, of the dangers that lurk between the covers of a book like this:

- The first is that some horrible gremlin will have entered the word processor to transpose a vitally crucial subsection — or worse still to drop it from the page. Every author knows Kirby's first rule of proof reading. The more you read; the more typos you miss. Well, he appears to have protected himself adequately against such an error by declaring, in almost tedious repetition, that every effort has been made — all care; but no responsibility.
- Secondly, there is the problem of 'characterisation'. The laws made by parliament normally apply to all of us — as citizens and even as librarians. Which legislation is so specific that it will be chosen for a book like this; which omitted? For example, in Canberra today, there is a statute that is all the rage — yet it has not 'made it' to this volume. I refer to the Administrative Decisions (Judicial Review) Act 1977. People in the Belconnen Mall or the Woden Shopping Centre speak of little else. There is a vital provision in that statute[4] which entitles persons affected by discretionary decisions of Commonwealth officers under the law of the Commonwealth, to be given the reasons for such decisions and certain other material. I have no doubt that some gruff librarian in Canberra will find himself or herself on the receiving end of a demand for reasons under s.13 of this Act.

He will rush to this volume and curse the criteria upon which the entries have been chosen. But in the end, a judgment must be made of the 'core' statutes that affect librarians as such. Few will dispute the choice made here.

. Thirdly, there is the problem of judge-made law. Some people (including some parliamentarians) fondly think that the words of Parliament are plain, simple and will be obeyed. The whole experience of the common law tradition belies this naive faith in language. Words mean what the judges say they mean. As well, there is a whole body of law built up by the judges over the centuries and not yet reduced to statutory form. In most parts of Australia the law of defamation is in this non-statutory category. It supplements and complements the statutory law. As was discovered in a celebrated case in Western Australia, the law of defamation can be vitally important to libraries. A known author published a book of poetry. It was not the sort of work in which you would expect to find defamatory material. The claim was made that a particular poem was defamatory. Letters were sent to libraries threatening them with action if they continued to 'publish the book' by making it available to borrowers. The book was withdrawn.[5] The Australian Law Reform Commission's report on Defamation proposed new protections for innocent publication by libraries. Although a Bill based on that report is very controversial, when it is enacted in its final form, it will clearly find a place in the successor volume to this work. My present point is that there are relevant laws, important to librarians as such, which could not be included because they are to be found in judgments, not legislation.

. Fourthly, there are the problems of amendment and the enactment of further legislation. These problems are acknowledged early in this volume by the publication of the Archives Bill. It is not yet a statute and its final form may be different from the form reproduced here. Mention is made also of the Wilenski Report and the promise of freedom of information legislation in New South Wales. A Bill has been introduced since this volume went to press. Furthermore, there have been significant amendments to the Federal and Victorian Freedom of Information Acts that are reproduced here. In the age of mass production legislation, there are dangers in assuming too much stability in the law. Things change rapidly. Federation is legalism. And each State has its own moving quicksand of legislation just waiting to trap the unwary judge and lawyer — let alone the innocent librarian and ignorant citizen.

- Fifthly, there is the changing technology. Most of the problems I have mentioned will be overcome in a generation or less by the advance of informatics. The provision of a constantly updated legislative data base, doubtless supplemented and cross referenced with every judicial pearl of wisdom, will come to the rescue of all of us. Meanwhile, this volume is offered and despite the limitations that are acknowledged, it will prove very useful. I do not believe, for example, that there will be a great deal of change in the basic statutes establishing the Libraries of the Commonwealth and the States. The changes are likely to come elsewhere:
  - as for example where questions of high policy are involved, such as freedom of information; or
  - where important technology changes are taxing and testing the law, such as occurred in the recent case involving Wombats and Apples and the legal protection for software under the present Copyright Act.[6]

CROWN COPYRIGHT

Only one aspect of the book mildly irritated me. This is no fault of the editor. I refer to the constantly repeated claim of Crown copyright in legislation. I make no comment as to whether such a claim is justifiable in law. Perhaps it is; though it does seem to be a remarkable assertion by the Crown — only one unit of our legislatures — to the exclusion of the Houses of Parliament themselves and the representatives of the people. I can understand the desire of responsible public officials to ensure that laws — whether made by parliaments or courts — are faithfully and accurately presented to the community governed by them. But if mistakes are made, there will normally be avenues of legal redress. What has to be weighed against the contribution to accuracy inherent in Crown copyright over legislation is the restriction this places upon bringing the law to the people. It is, after all, the people's law which they are deemed to know and obliged to comply with. It does not belong, ultimately to the Queen or to the Parliament. Certainly, it does not belong to the bureaucrats and officials whose solemn authority must be obtained to reproduce the legislation.

Recently attending an OECD symposium in London on trans border data flows, I listened with embarrassment to a criticism of Australia as one of the few countries that had already engaged in limiting the free flow of information across borders. The case related to the automatisation of our legal information and the effort to create a monopoly in Australia to the exclusion of others. Reliance was had in this endeavour upon Crown copyright in legislation. I do not wish to enter the controversy. I simply point to the fact that in most countries, including countries of our tradition such as the United States, the notion that the law by which the citizenry is governed is somehow owned and controlled, in practice, by administrators in the bureaucracy, would be regarded as an offensive one.

The kind of people who reproduce legislation are not generally making a pitch for a mass circulation market. With all due deference to our legislatures, their prose can rarely compete with Barbara Cartland. The average Mills and Boone reader will go to the grave blissfully unaware of the Public Records Act 1973 of Victoria. The time may be coming, if it has not already arrived, when the bold claim by the Crown to copyright in the laws of the land has to be reconsidered and reassessed. Not the least consideration in the reassessment will be the advent of new instantaneous technology that promises to spread information and bring it to the people, in libraries and in homes.

THE COFFEE TABLE

I do not think that the editor of this volume would claim that it is a coffee table book — whether in Moonee Ponds or Balgowlah. Yet the history of our libraries can be gleaned from its pages. The association with the Institutes of the late 19th century can be seen here.[7] So can the proud boast of free library service[8] and the changes of name that made the public libraries the State libraries.[9]

I congratulate the editor and the Library Association for persisting with this series. I caution about the need for ongoing attention to the various problems I have mentioned. I urge the interest of the Library Association of Australia in the question of Crown copyright in our laws. I applaud the printers for an elegant production. And I have much pleasure in launching it on its way.

FOOTNOTES

1. B Fisse, J Braithwaite, The Impact of Publicity on Corporate Offenders, Albany, 1983.

2. P Adams, The Inflammable Adams, Melbourne, 1983 (vii).

3. R Scott, The Body as Property, New York, 1981.

4. Administrative Decisions (Judicial Review) Act 1977 (Cth) s. 13.

5. The reference is to the case of Dorothy Hewart. See The Law Reform Commission, Unfair Publication : Defamation and Privacy (ALRC 11), Canberra, 1977.

6. Apple Computer Inc v Suss, unreported decision of Justice Beaumont (Federal Court), noted [1984] Reform 9.

7. See eg Libraries Act, 1982 (SA), s.26(1) in D J Jones (ed), The Australian Librarian's Manual, Vol II, Legislation, Sydney, 1983, 458.

8. See eg Free Library Service Board Regulations 1950 (Vic) in Jones (ed), 565.

9. See eg Libraries Act 1943 (Qld) and footnote 1 in Jones (ed), 411. Note the interesting mistake in the number of the verb in the preamble to the same Act (ibid, 409). Such mistakes are not expected in a statute, let alone one protesting its object to advance 'National Education'!