

# BOOK REVIEWS

## **Annotated Safety Rehabilitation & Compensation Act 1988, 10th ed** **Peter Sutherland & John Ballard**

The Federation Press  
847 pp \$145.00

Reviewed by Brian Morgan

Anyone who practices in the Administrative Appeals Tribunal will need no introduction to this textbook. Updated editions appear every two to three years. I do not propose to try to identify the changes to the law, identified by this edition, but rather to talk about some trends which have developed over the past 10 or so years and which are reflected in the 10th edition.

In doing so I speak from a position of some experience, having fought many hundreds of cases for Comcare, until 2009.

For many years it was difficult for a claimant to recover compensation as a result of what I will call, mental conditions, ie, stress short of actually suffering from a diagnosable mental condition. We are now seeing claims being accepted for stress causing an aggravation of Multiple Sclerosis, although in an earlier case, stress which aggravated Crohn's disease was not accepted. This changing trend is indicative of a developing recognition that stress of itself, may exacerbate or aggravate a condition.

For the whole time I have been engaged in the practice of the law, journey claims have caused immense difficulty. Several recent decisions have extended the concept of place of work to include army barracks and the like, to which a soldier was required to return on a Sunday night. Similarly, cases involving mandatory attendance at military social events are now being seen favourably, where injury occurred during the trip "home" even though the actual employment had finished many hours earlier.

In considering recent authorities in Ballard, I detect that the Tribunal and the Federal Court are applying the Model Litigant requirements to a greater degree than Comcare have been, and have been critical of their non-adherence to this standard of behaviour. Thus in one case where Comcare treated the filing of a NEL questionnaire in a matter which was on appeal, as a fresh claim, thus trying to avoid liability for costs, the Tribunal held that this was a step in the proceedings before the Tribunal and not a fresh claim. I can only applaud this.

Ballard provides us with an up-to-date, detailed summary of most topical cases which we might need in the AAT. Succeeding volumes are not just a re-hashing of the old, but represent a

new and considered appraisal of where the law is, and where it is going.

I have said it before, but it is worth repeating, that I don't think you can practice in this jurisdiction unless you have the most up-to-date version of Ballard. Finally, John Ballard has given his name to earlier editions, but Peter Sutherland has now assumed that mantle, so perhaps I should correctly call this text, Sutherland!

## **The Mortgagee's Power of Sale, 3rd ed** **Clyde Croft and Robert Hay** **LexisNexis Butterworths** 318 pp \$210.00

Reviewed by Michael Hunniford

This is a great little book for the practitioner or student.

Whilst it deals primarily with New South Wales and Victorian laws it will be easy for Tasmanian practitioners to refer to Tasmanian legislation because of the legislative similarities as regards registered titles.

The book alerts mortgagees to their significant duties and responsibilities in this area of law.

Some of the matters which particularly drew my attention were:

1. The statutory power of sale is not available to equitable mortgagees of registered land.
2. Mortgagees of registered land are merely chargees of the mortgaged property and as such would have no power to sell or pass ownership in the mortgaged property but for statutory provisions which enable them to do so.
3. The statutory power of sale does not affect the mortgagee's right of foreclosure.
4. Depositing the duplicate certificate of title by itself does not grant the statutory power of sale.

The book deals with many aspects of the mortgagee's rights but cautions mortgagees against "self-help". Of particular interest are the following:

1. A person who makes a forcible entry upon lands and tenements renders himself liable to punishment, and he exposes himself to the civil liability to pay damages in the event of more force being used than was necessary to remove the occupant of the premises, or in the event of any want of proper care in the removal of goods.
2. The authors caution mortgagees from taking possession of the

mortgaged land without the aid of the court.

3. Changing locks may be carried out in some instances but the use of force to expel the mortgagor or his or her tenant carries considerable risk of civil and criminal proceedings being taken against the mortgagee. The authors caution mortgagees by the comment: "The mortgagee would be well advised to sue for possession, despite considerable delays, and avoid these risks". Various chapters deal with the mortgagee sale process (including whether the public advertisement should use the words "mortgagee sale"), the appointment of receivers of rent, conduct and order of sale and distribution of proceeds of sale. Emphasis is placed on equitable principles of "good faith" as are referred to in legislation. It is easy for the Tasmanian practitioner to consider the provisions of the *Land Titles Act 1980 (Tas)* Sections 77 and 86 and Section 146 in the context of this book.
4. There are precedents provided to which may be added the Section 146 of the *Land Titles Act 1980 (Tas)* Practice Directions from the Supreme Court of Tasmania.

I wonder if Daryl Kerrigan of The Castle "It's not a house, it's a home" has a copy of this book in his pool room.

## **Cheshire & Fifoot Law of Contract, 10th ed**

**Seddon, Bigwood & Ellinghaus**  
**LexisNexis Butterworth**  
1352 pp \$168 soft, \$290 hard cover  
Reviewed by Tim Tierney

My definition of a classic text book is any text book that has survived since my university days. *Cheshire & Fifoot Law of Contract* is a classic law text book.

*Cheshire & Fifoot* changed my life. After a couple of years away from the law, in idle minutes waiting for a friend to make herself ready to face London's West End, I noticed a copy of *Cheshire & Fifoot*. Still waiting for my friend 15 minutes later, I was surprised to be still reading, not just with interest but also with enjoyment. A little light came on. Perhaps it was time to cease wandering. Perhaps it was time to return to Tasmania and the law.

This 10th Australian Edition is a mammoth piece of scholarship. The text runs 1315 pages and is comprehensively footnoted with authorities.

This is a book big enough to win arguments. If the legal arguments fail, it might make a quality missile.



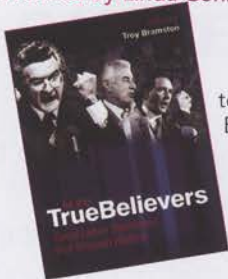
The writing style is clear and normative rather than academic. Some historical and alternative perspectives are presented, but as an aid to understanding a clear exposition of the law rather than academic review for its own sake.

Noting only Tasmania has kept the Statute of Frauds applying to matrimonial settlements, the authors rely on an 1867 English case to resolve debate on settlements partly in consideration of both marriage and mutual promises. The authors go on to comment: "It is to be hoped that this uncertainty in the law will not inconvenience Tasmanians". I am relieved this uncertainty has not disturbed my last three decades of practice.

I look forward to *Cheshire & Fifoot* remaining a good friend, in the decade of practice I dare hope remains before me.

The 10th edition is also available in e-book format. Hard copy and e-book bundle together is discounted 75 per cent off the second copy.

**For the True Believers: Great Labor Speeches that Shaped History**  
Troy Bramston (ed)  
The Federation Press  
480 pp \$64.95  
Reviewed by Linda Connelly



In the preface to this book, Troy Bramston writes: "this book comes at a time when Labor needs to more effectively define and communicate what it

believes in and what it stands for, and is beset by many challenges." I agree with this sentiment, and further, I consider that this book highlights well the values and passion that underpin the Labor party. This is not the sort of book that you would quickly read cover to cover, if you are interested in or even disillusioned by politics, I thoroughly recommend this book regardless of your political persuasion.

Bramston is quick to point out that "a speechwriter is no more than somebody who provides, in a draft form, words, sentences, ideas and arguments arranged in a particular way. The speaker owns the words they speak." I again agree with

Bramston's position and one can really hear the voice of the orator when reading the speeches.

Bramston presents a preamble to each speech, providing context and thoughtful analysis. From a historical point of view it would have been interesting to read speeches from opposing Political Parties on the same issues. The intention of this book however, is to "showcase Labor's achievements".

Bramston draws on speeches from those that you would expect to find in such a collection, such as Gough Whitlam, Kevin Rudd, Paul Keating, Bob Hawke and John Curtin. Mark Latham's speech "The ladder of opportunity" was an unexpected inclusion, and it was prefaced with a comment that "some may disagree with my decision to include this, or any speech by Latham in a book of great Labor speeches... It reflects strong Labor values and promotes many good Labor policies". Perhaps it does, but I was still not convinced that it ought to have been included in an otherwise standout collection.

I do not agree that these speeches "shaped history" as the title claims, as I consider that it is history that shaped the speeches. Nevertheless it is a worthy read. The book is both refreshing and timely, helping the reader experience the hope, inspiration and pride that Australian politics should deliver, in an era where political debate and commentary is dominated by both disrespect and cynicism.

**Interpreting Principles of Equity**  
Malcolm Cope (ed)  
The Federation Press 2014  
362 pp \$165.00  
Reviewed by G Geason

This book is a collection of 14 papers presented at the Annual WA Lee Equity Lecture, a series which began in 2000. The inaugural lecture was delivered by WA Lee himself, and the last by the Honourable Justice Susan Kiefel AC of the High Court. The preface to the book tells us that Mr Lee was for many decades a law teacher, scholar and "law reformer" particularly in the areas of equity, trusts and succession. The publication of the book is at the initiative of the Faculty of Law of the Queensland University of Technology.

Each of the papers is presented in chronological order, with an introduction which tells the reader something of the presenter whose paper follows, and gives a short commentary on the issues

discussed in it, and an outline of reforms which may be proposed in respect of some of those issues. This ensures that that the book offers more than an historical record of the WA Lee Equity Lectures.

Each of the papers is of a high standard. Because they are speeches they have been written for a listener. I found that they read very easily and typically adopt a style which exposes more difficult legal concepts without the same complication exhibited in many text books or judgments. Authors/presenters include William Gummo AC, Professor Malcolm Cope (who is also editor), Michael Kirby, the Honourable Justice Patrick Keane, Paul de Jersey AC, now Governor of Queensland, and the Honourable Justice James Douglas. Subject matter includes, "How equity reached the Colonies", "A comparative evaluation of developments and equitable relief for breach of fiduciary duty and breach of trust", "Unconscionability in estoppel: tribal issue or foundational principle?" and, "Equity's Australian Isolationism". That paper presented by Michael Kirby includes an interesting discussion of the High Court's reluctance to develop or expand the notion of fiduciary obligations (*Breen v Williams* (1996) 186 CLR 71) and the Court's hostility to the restitutionary remedies in particular unjust enrichment, with reference to the Court's reasoning in *Farrah Construction Pty Ltd v Say dee Pty Ltd* (2007) 230 CLR 89. That paper also includes an examination of the role of intermediate appellate courts in adapting the equitable doctrines to meet "new and modern needs".

For those interested in foreign legal systems and a comparison with our own, Justice Douglas' paper titled "Trusts and their equivalents in civil law systems" provides a focus on trusts "and their equivalents in civil law systems such as the French, and proves to be a very interesting discussion of trust law. If a nutshell paper on the law of trusts is your wish, this might be it.

It does no injustice to the quality of the material in this book, to say that none of the papers is a difficult read, and many are entertaining. All of them are enlightening. I recommend this book.

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