

REVIEWS

AUSTRALIAN LAWYERS

by David Weisbrot; Longman
Cheshire, 1990; \$29.99.

David Weisbrot was an Associate Professor in the Law Faculty of the University of New South Wales at the time of writing this book, and is one of the 'Davids' who authored the pioneering New South Wales text, *Criminal Laws*. He has since moved to the NSW Law Reform Commission. A concern for understanding the social and political context of Australia's legal profession, and the process by which change occurs, underlies much of the analysis in this book.

This is a wide-ranging and critical (in the most positive sense) examination of lawyers and the legal profession in Australia. It provides both an 'inside' and an 'outside' perspective. From the 'outside' lawyers and the profession are examined as objects of sociological analysis — legal culture, the role of lawyers in society, their socio-economic characteristics. 'Inside', the author reviews the current state of legal practice — numbers of lawyers, their distribution, the nature of legal work, the regulation of the profession — and examines developments in legal education.

In his chapter on 'Lawyers in Australian Society', Weisbrot discusses the ambivalence of public attitudes to lawyers, from Keats, Shakespeare and Hitler to the present day. He notes the growing cynicism about the motivation of lawyers, fuelled in recent years by evidence of their involvement in many major political scandals both in Australia and overseas. Surveys indicate a general mistrust of lawyers, and a feeling that they 'run the system'; on the other hand the legal profession usually ranks very highly in surveys of occupational prestige, and 'awe overcomes fear and loathing' when parents state their aspirations for their children, with a 1985 survey showing that law was the profession preferred by the largest group of parents.

In 'Lawyers in Australian Society' Weisbrot delineates the connections between the private legal profession and the private commercial sector. In a system where retainer agreements can lock in most of the leading commercial barristers to a small number of major players in an industry, a small player or individual, or government agency such as the Trade Practices Commission, can have real problems obtaining counsel if they become involved in a dispute, as happened during the takeover battle between Bell Resources and BHP in 1986. Lawyers are increasingly working actively to shape the legal, political and economic environment for their clients, for example by lobbying, and by generally involving themselves in the regulatory process as consultants, commissioners and public commentators. The use of 'tactical litigation' to obtain commercial advantage, including the use of defamation actions is also identified as a matter for concern.

Legal education and practice continue to be extremely elitist. As discussed in chapter 4, disproportionate numbers of law students have parents with professional backgrounds, and come from the private school system. The 'dynastic' nature of the legal profession is underlined by the finding that in NSW about 40% of barristers and 50% of solicitors had legally qualified relatives.

The 'legal profession' being described is still essentially male. Whilst women now make up around half the student intake, there are substantial differences in the occupational profile — and therefore prestige and income — of men and women lawyers (p.87). The Victorian survey quoted, by Hetherington, is probably somewhat out of date now but it appears that more recent studies in other States make similar depressing findings about the paucity of women lawyers in positions of power — partnerships, the bench, professorial chairs.

Chapter 5, Legal Education, deals with the development of law courses, the curriculum (traditionally compartmentalised, and still generally taught

in large lecture groups and assessed by formal examination), control by the legal profession over what is taught in law schools, and the relationship between academics and the legal profession ('the most significant division within the profession'). Many readers will want more detail; fortunately there is now a growing body of writing on legal teaching, some of which is referred to in the text.

The outline of the structure of the legal profession in Chapter 6 includes a fascinating discussion of the phenomena of a formally fused but *de facto* (and very rigidly) divided profession in some States; extraordinary restrictive trade practices; and the appointment of Queen's Counsel and the judiciary. The author gets to the nitty-gritty of personalities and politics to explain how it *really* works. He also looks closely at self-regulation, and at disciplinary structures, subjects of continuing controversy.

The New South Wales orientation of the book shows in a few places; for instance the importance of 'chambers' and 'floors' to a barrister's career is possibly peculiar to that State. It is certainly less relevant in Victoria, where the bar is more 'clerk-driven', a subject which itself warrants discussion.

The last chapter deals with the future of legal practice. Changes to erstwhile monopolies (such as conveyancing and probate work, and personal injury), developing areas such as administrative law, media and communications, immigration and planning law, and the rise of the mega-firms are discussed. Weisbrot points out that '[a] necessary concomitant of the rule of law should be the right to legal representation . . . to support the underlying ethos of equal protection and due process' (p.239). The history of legal aid in Australia is not, however, one of enthusiastic support by the established profession — or indeed by many State governments — and Weisbrot sets out some of the background to a situation which is becoming ever more tenuous.

REVIEWS

The legal world is always changing; the forced amalgamation of tertiary institutions and pressures of the profession have already produced a different academic scene from that discussed in this book, with four law schools in Victoria in 1992 where previously there were two. Accountability of the legal profession continues to be an issue, with recent calls for independent regulatory structures. On the other hand, there are still no women members of the Victorian Supreme Court, and recent demands for immediate consideration of women candidates have produced the mealy-mouthed response that no-one is senior or experienced enough, but that there may be someone acceptable in the next ten years or so.

Australian Lawyers is undoubtedly a very useful book; it fills a considerable gap, providing analysis and information not otherwise readily available. It is rather ambitious to aim to deal fully with all States in a book of this size, and the detail is not always there; New South Wales seems to be the jurisdiction most fully covered. Some of the data will obviously also become out of date fairly quickly. Weisbrot has, however, also written an extremely interesting book, pertinent and important for all lawyers (in its broadest meaning) and for anyone interested in the practice of law in Australia.

BRONWYN NAYLOR

Bronwyn Naylor teaches law at Monash University.

SENTENCING IN TASMANIA

by Kate Warner; The Federation Press 1991; 503 pp; \$75 (hb).

In the short time since its publication this book has become an invaluable reference for the Tasmanian legal profession and judiciary. Without doubt the author has succeeded in her aim of providing an exposition of sentencing law in Tasmania and so contributing to the development of the common law of sentencing in Australia.

The author acknowledges that Fox and Freiberg's *Sentencing: State and Federal Law in Victoria* (Oxford University Press, 1985) has provided the inspiration for the structure of the book. As a result, the arrangement of the material is easy to follow and no time is wasted attempting to find the principle or subject being explored.

The width of sentencing discretion is a predominant feature in Tasmania. Compared with other Australian jurisdictions, Tasmanian courts are not confined by legislative requirements as to the factors and principles to be taken into account, maximum and minimum penalties, or the need to consider, except in rare cases, the imposition of minimum parole periods. For students and lawyers, *Sentencing in Tasmania* amply describes the variety of factors and principles which influence courts, but at the same time emphasises that the exercise of the sentencing discretion depends on the circumstances of the offence and the offender. It is difficult, particularly for students, to understand why in one case a particular principle is applied but, in another case, the same principle is seemingly ignored.

The author has undertaken considerable research. She has surveyed not only reported decisions of courts such as the Tasmanian Supreme Court, Court of Criminal Appeal and Full Court, and the High Court, but also all unreported written judgments of the Tasmanian courts from 1960 to 1989, all available unreported High Court decisions in sentencing appeals, sentencing statistics kept by Crown Law, and Supreme Court judges' comments on passing sentence in individual cases from 1983 to 1989 (as well as significant other cases outside those years). She also obtained statistical information for summary offences from Courts of Petty Sessions records and from Supreme Court files for lower court appeals.

The range and organisation of subjects covered is clear from the chapter titles: Introduction (Ch.1); Procedure (Ch.2); Appeals (Ch.3); Fines (Ch.4);

Restitution, Compensation and Costs (Ch.5); Forfeiture and Disqualification (Ch.6); Unsupervised Release (Ch.7); Supervised Release (Ch.8); Custodial Orders (Ch.9); Other Sanctions (Ch.10); General Considerations (Ch.11); Specific Crimes (Ch.12); Specific Summary Offences (Ch.13).

Chapter 10, dealing with general considerations, is comprehensive. It includes the variety of circumstances which may be presented to a court and the principles they may invoke. Beginning with a summary of judicial statements about the aims of punishment, including general deterrence, retribution, denunciation and rehabilitation, it then deals with the nature, gravity and prevalence of the offence and the nature of the offender. It is particularly useful as to the relevance of prior criminal conduct, the aspect of youthful offenders, the aspects of age, gender, mental disorder, low intelligence, and the effects of alcohol and drugs. Remorse and the mitigatory effect of guilty pleas and confessions are well covered.

In the last two chapters dealing with specific crimes and summary offences, the author has referred to a considerable number of cases, both reported and unreported, to illustrate the courts' attitudes when dealing with particular offences and the relevant factors tending to aggravate or mitigate. Included are detailed sentencing statistics for a large number of offences, which display the range of sentences and general tariffs.

For Tasmanian students and practitioners in the field of sentencing, the book is essential. Much of it will prove useful elsewhere in Australia. It is a text book of high quality.

E.C. CRAWFORD

Justice E.C. Crawford is a Tasmanian Supreme Court Judge.