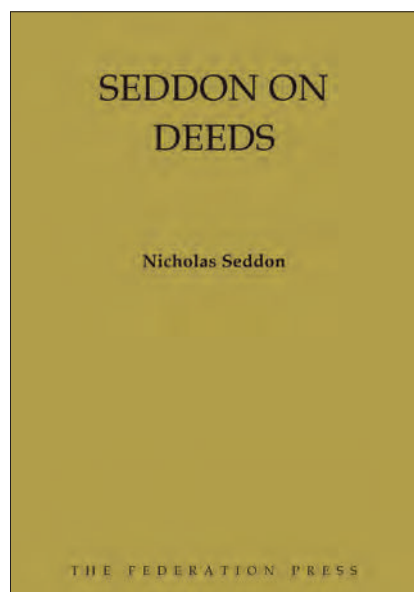


## Seddon on Deeds

By N Seddon | Federation Press | 2015



The topic of deeds has not attracted standalone academic text writing. As the Hon Michael Kirby AC CMG points out in his foreword, the standalone (in some senses of the word) text is *Odgers on Deeds*, whose second edition was published in 1928 and is not replete with Australian authority. Yet a glance at Nicholas Seddon's footnotes shows that there is a rich ore of Australian authority to mine, much of it recent.

This is possibly because what is viewed by academics as a fusty document shackled by its feudal and earlier origins, ossified, tricky for the unwary and obsolete with the modern law of contract, enjoys a different perspective in lay perception, leading to continued use in commercial and property transactions. A deed is possibly perceived as giving a deal a solemnity and certainty from its formality and long tradition of use. The perception may be misplaced in many instances, but is strong. The author examines that 'gravitas' in the first chapter and clearly sees it as outweighed by the risks of non-compliance with complex formalities. He

sees the solution in a uniform model law on deeds Australia-wide developed by a law reform commission.

There are areas of current practical advantage, for instance in limitation statutes. There are areas of self-evident necessity in gifts of some legal property and gifts of equitable property particularly when writing is required, from the absence of contractual consideration (although the author points out the wisdom of including at least nominal consideration for the purpose of equitable enforcement). Statutes, including land title by registration, import the status of a deed in some situations, which requires an understanding of what is being imported, although as the author points out one must be careful that a unique statutory creature simply given the label of 'deed' has not been created: *MYT Engineering Pty Ltd v Mulcon Pty Ltd* (1999) 195 CLR 636, [1999] HCA 24. Any reform would need to include policy decisions on preserving or removing practical advantages and dealing with an alternative for the areas of necessity. The latter would require difficult and detailed examination of Australian statute law to avoid unintended consequences, which may be a bridge too far and make an improvement of the existing law a more practical option.

The foregoing is the range of matters discussed in Chapter 1. Chapter 2 is the bulk of the book. It examines the complex requirements to create a valid deed, not just the formalities of execution, but also what is required for intention. The discussion of execution of deeds by company officers and governments, the validity or otherwise of virtual execution and exchange, and the ways to 'save' some legal consequences from an invalidly executed document

are of great practical benefit as well as intellectual interest.

Chapter 3, again quite long, tackles the vexed questions surrounding delivery (intention immediately to be bound) and escrow (which is not the opposite but merely one alternative to delivery). Chapter 4 critiques the even more vexed rule in *Pigot's Case* concerning material alterations to deeds, the attempts to circumvent or ameliorate it, and the worthwhile effects in some jurisdictions (NSW alone within Australia) of abolishing it.

*...a glance at Nicholas Seddon's footnotes shows that there is a rich ore of Australian authority to mine, much of it recent.*

Chapter 5 outlines the same interpretation principles for deeds as for contracts, then focusses on the place of recitals in the interpretation and operation of deeds (including a brief discussion in relation to releases in compromises by deed), the unique doctrine of estoppel by deed and its distinction from estoppel by convention (where the recitals replace the implicit reliance shown by a course of conduct giving rise to the common assumption), statutory provisions concerning receipts and other matters, and curing of discrepancies in counterparts. A suggestion: the discussion of 'privies', an obscure but important concept, could have been slightly more fulsome, even by reference in footnotes.

Chapter 6 contains detailed discussion of enforcement, remedies and defences, in

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*The writing is crisp, clear, propositional. The book has, as a consequence, brevity without loss of comprehensiveness and lucidity.*

some cases common with contracts, in other cases unique to deeds, sometimes unique to deeds poll. There is a useful discussion of privity in that last context, and of the characterisation of deeds *inter partes* and deeds poll which throws light on the circularity of reasoning between characterisation and outcome. There is a pithy but equally useful discussion of accord and satisfaction within the discussion of deeds of compromise. The rights and burdens of multiple parties are analysed. The need to provide consideration if equitable remedies are to be attracted in aid of common law rights is stressed in the course of indicating where equitable relief is or may be available. Chapter 7 shortly describes the parallels with and distinctions from

contract law in relation to the discharge of deeds.

As the author says in his preface, 'in the main, there is no need to refer to old English cases'. This is a precedent which it would be beneficial to follow in some chapters of Australian legal encyclopaedias which, in distinction to the title of the work in which they appear, sometimes significantly repeat the leading overseas authority rather than display an Australian exposition or application, which may not be as well known but would thereby become so.

The writing is crisp, clear, propositional. The book has, as a consequence, brevity without loss of comprehensiveness and lucidity. The argument is in the text,

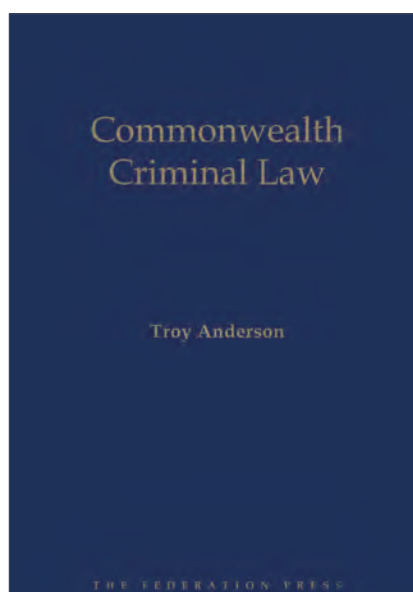
with the footnotes being useful but not intrusive. The index is thoughtfully constructed and also useful. In areas of difficulty or controversy, the competing lines are discussed, authority critiqued and difficulties discussed with respectful rigour, and a reasoned conclusion and preference posited. The quotations at the start of each chapter are apposite and add verve.

It should be clear that I like this book; if I had not been given a review copy I would have gone out and bought it. It will be of interest and use to academic and practitioner. It is overdue. If its theme of law reform is taken up, then any subsequent edition may require a new start and the '1<sup>st</sup> and only' edition will gain added value from becoming a collectors' item!

**Reviewed by Gregory Burton SC FCI Arb**

## Commonwealth Criminal Law

By T Anderson | The Federation Press | 2014



The Australian Federal criminal justice system is a complex meshing of various Federal statutes, the effects of the Australian Constitution, Federal and state investigative bodies, prosecutorial bodies and courts and state prisons. It is not always obvious what law regulates the elements of a criminal offence, its investigation, the right to silence or its abrogation, trial procedure, extradition and so on.

This new text successfully takes on the difficult task of drawing together this lacework of legal threads and presenting them in a studied and practical manner.

The text adopts a structure that is accessible to experienced practitioners and strangers to the Commonwealth criminal law.

Each chapter addresses defined issues in a logical manner and pinpoints key authorities and legislation. The text is very helpful to practitioners wanting to find a succinct discussion of issues and the main cases relating to them.

The first chapter provides an overview of the legislation that applies to the Commonwealth criminal law and how these interact with each other and state laws. This includes an explanation of the