

BOOK REVIEW

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**R Watson, A M Blackmore and G S Hosking, *Court Advocate's Handbook* (2nd ed, Lawbook Co 2001)
1574pp**

This weighty volume contains an annotated collection of the key New South Wales criminal statutes – *Crimes Act 1900*, *Drugs Misuse and Trafficking Act 1985*, *Criminal Procedure Act 1986*, *Justices Act 1902*, *Summary Offences Act 1988* and *Bail Act 1978* – and is up-to-date as at 30 March 2001. It has been extracted from the larger, more comprehensive, two-volume looseleaf publication, *Criminal Laws* (NSW). While this latter fact might account for the *Handbook's* lack of introduction and index, the absence of these standard features detracts considerably from the *Handbook's* usefulness as a resource for its intended user – the ‘Court Advocate’. In Queensland terms, the *Handbook* is a *Carter's Criminal Law of Queensland*, a volume now in its 12th edition, published by Butterworths that similarly contains an annotated compilation of relevant Queensland criminal legislation.

Given the ready availability and absolute currency of legislation now accessible to practitioners via any number of internet sources, the usefulness of this volume in terms of an up-to-date treatise alone is questionable, particularly taking into account the notorious volatility of the criminal law in the current political and social context. Nevertheless, the publishing concept is still viable in terms of the text's value as a “ready for court” expert commentary: its authors are highly regarded and the notion of a comprehensive single volume that the criminal practitioner may take to court, confident of being assisted by fulsome annotations in the heat of court room battle, is undoubtedly appealing. However, it is in this area that the text is quite vulnerable. Perhaps if the *Handbook* were utilised in conjunction with the excellent Federation Press publication, *Criminal Laws*, now in its 3rd edition, it might prove useful to the court advocate, but absent some additional or alternate commentary, in many instances the *Handbook* falls short of fulfilling the promise of its potential.

The strength of Federation's *Criminal Laws*, is precisely the Achilles' heel of this publication. While *Criminal Laws* delivers an extensive critical commentary – a wide-ranging doctrinal exposition set within a contextual approach that draws on secondary materials and highlights for the busy practitioner the fertile areas for argument and debate with legal precepts - the *Court Advocate's Handbook* provides merely a terse,

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up-to-date, strictly doctrinal exposition of certain parts of the criminal law in NSW only.

While a number of court advocates might otherwise forgive the *Handbook's* lack of a broader approach to the criminal law and not be looking for explanations and resources to stimulate argument, a perhaps more fundamental difficulty with this publication is the unreliable nature of the commentary that the text does provide by way of statutory annotation. Some offences and provisions are broken down into very comprehensive commentary: for example, the annotation accompanying *Crimes Act 1900* s 344A 'Attempts' is quite excellent and covers, in a well structured discussion, the nature and rationale of the offence, the meaning of 'attempt', what does and does not constitute an attempt, the vexed issue of impossibility, the role of the judge and the jury, together with a fulsome discussion addressing the verdicts available. Similarly, the discussion of arrest powers under the *Crimes Act 1900* and the fifteen page treatment of double jeopardy and the pleas of autrefois acquit and autrefois convict under the *Criminal Procedure Act 1986* are two of the most lucid examinations of these topics any criminal practitioner is ever likely to come across.

Unfortunately however, these instances are more isolated examples of excellence than the norm for this text. The treatment of critical sections of the various Acts is by no means uniformly reliable. As has been mentioned, little regard is had to any aspects of contextual analysis. This approach to the annotations extends to a complete lack of reference to extrinsic parliamentary material that might aid in the interpretation of various sections where no other commentary is provided. In the absence of doctrinal or primary source commentary, allusion to jurisdictional approaches outside NSW and the citation of influential Law Reform Commission Reports would also be welcome and appropriate. This strict adherence to a doctrinal methodology is disappointing to say the least and in the result fails Court Advocates by not providing them with the tools they need to address new and difficult areas of criminal liability. Further, where it otherwise might, the *Handbook* gives practitioners no guidance as to where, as Advocates, they might legitimately push the boundaries of statutory interpretation.

The deficiencies described above and the uneven commentary of legislative text become most apparent when the Court Advocate looks for assistance on the "newer" offences. Should s/he go to Part 15A *Crimes Act 1900*, for example, seeking guidance on Apprehended Violence Orders and the stalking-type offences, the practitioner will go over 50 sections and almost 40 pages of text with minimal to no commentary. Similarly ignored in terms of the provision of explanation are the 'Offences Relating to Computers' under Part 6 *Crimes Act 1900* while, by way of further example (though there are many), there is no assistance offered in relation to s 80A *Crimes Act 1900* 'Sexual assault by forced self-manipulation'. In these instances, reference back to extrinsic legislative materials at least would seem in order, while more useful still might be some canvassing of comparative provisions in other jurisdictions. In certain instances, the annotating discussion in the *Handbook* is almost misleadingly brief: the cursory discussion of the definition of consent for the purposes of sexual assault is a sufficient example. While some rare exceptions do present themselves to this complaint, such as, for example, the quite useful treatment afforded to the new s 105 *Criminal Procedure Act 1986* 'Admissibility of evidence relating to sexual experience', the section which replaces the troubled s 409B, to a certain extent this makes the text a frustrating one to use. If the new s 105 *Criminal Procedure Act 1986* and, to take

another example, s 48E *Justices Act 1902* 'Direction to witness to attend' are deemed deserving of a full historical analysis, discussion of their legislative genesis and a comparative analysis with predecessor law, why not the computer sections or the AVO provisions?

In brief, if the intended application of this *Handbook* is to provide Court Advocates with an authoritative answer under the pressure of a Court appearance, it cannot be relied upon for this purpose. The lengthy text is difficult to navigate without the benefit of an index and unless Advocates know exactly what they are looking for they will not find it quickly. Even should they find their section, the *Handbook* may still not help greatly unless the particular issue is one that the *Handbook* has treated in any depth.