

## BOOK REVIEWS

*Zabra and Arden's Drug Laws in New South Wales* (The Federation Press, 2016)

accused's wealth and lifestyle, intercepted telephone calls relating to the purchase of drugs, expert evidence on drug 'code' words, the finding of multiple mobile phones and evidence of the possession of firearms. There is also a summary of the penalty provisions relating to NSW drug laws.

The authors then deal quite extensively with the law of Conspiracy, always difficult to deal with in practice, including the relevant state and federal laws as they apply to conspiracy offences. There is then detailed sections dealing with all the Commonwealth

narcotic offences, the main one being importation and offences under the *Poisons and Therapeutic Goods Act 1966* (NSW).

Part B deals with the law of evidence on admissions particularly as they apply in drug matters as well as laws in relation to search, seizure and investigation of drug matters, both in relation to NSW and Commonwealth drug matters. There is also detailed consideration of evidentiary issues in drug prosecutions such as analyst certificates, weighing and sampling of drugs.

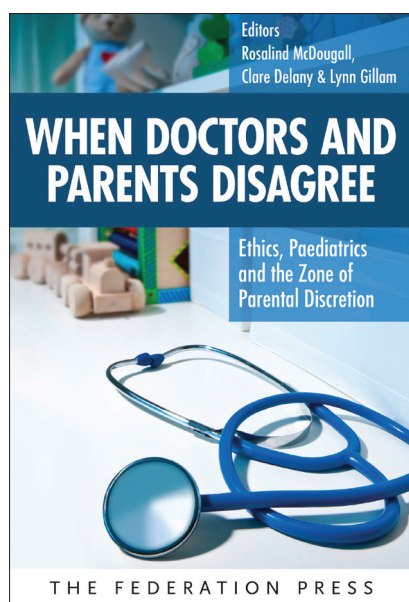
Part C deals with sentencing in both NSW and Commonwealth drug matters and helpfully includes recent NSWCCA decisions.

This is one of the best books in relation to drug matters, which every criminal law practitioner should have.

**By Caroline Dobraszcyk**

## When Doctors and Parents Disagree: Ethics, Paediatrics and the Zone of Parental Discretion

By Rosalind McDougall, Clare Delany & Lynn Gilliam (eds) | The Federation Press | 2016



This small volume contains thirteen articles by medical professionals practising in various paediatric specialties. Its intended audience is the community of medical practitioners generally, and its stated aim is to raise an important ethical issue – in what instances should a medical practitioner override a parent's decision about their child's medical care – and to provide an ethical tool to doctors faced with such situations.

As the title of the book suggests, the editors and authors focus on a concept of the 'zone of parental discretion' acronymised as ZPD throughout the book. Two of the thirteen chapters attempt a definition of the concept, which is probably best described as

being situations of serious disagreement between clinicians and parents with respect to the treatment of a child, in which clinicians can accept parental decisions which they believe to be suboptimal, but which do not likely involve causing harm to the child.

The volume is said to be designed to perform four functions. The first is to provide the reader with an accessible theoretical foundation to be used as a tool for balancing a child's wellbeing with a parent's right to make medical decisions for his or her child. Indeed, the first two chapters of the book helpfully discuss the concept of ZPD in detail in an effort to educate readers about the complexity of that theory.

The second stated function is to provide

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examples of disagreements between treating doctors and patients, which are subdivided into several categories. The book sets out twenty-six short case studies in which the issue as to whether or not a doctor ought to override a parent's decision with respect to a child's medical care becomes contentious and results in disagreement. For lawyers, likely the most familiar of these situations is that of the Jehovah Witness parents who refuse treatment involving a blood product for their child, in circumstances where that treatment is likely to be life saving.

The third stated function of the book is to critically analyse the above-mentioned scenarios. Each scenario is materially different, and an important distinction is made by the authors about the content and nature of the disagreements, and the possible different responses in each set of circumstances. The disagreement may be about whether or not surgery should be performed, whether or not a (heroic) treatment ought to be commenced, whether or not a diagnostic test ought to be conducted, whether or not an optimal management plan ought to be instituted or the extent of information which ought to be conveyed to parents to ensure compliance with treatment so as to ensure a desired (or desirable) health outcome. It is an understatement to say that the editors present concise factual scenarios to which, like almost all ethical dilemmas, there is no easy or correct answer.

The fourth and final stated function is to contribute to the ethics education of the medical community. In this the editors and authors easily succeed. The

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discussion in the volume contributes much to the emerging literature on ethical practice in the professions generally.

While the book is no doubt useful for those in medical practice, its utility for those in legal practice is less certain. Most lawyers have been trained at law school to recognize ethical issues as they arise in their practice as part of their formal legal education, and in particular as they arise with respect to what are sometimes conflicting duties they owe to their clients and the court. As was suggested to me many years ago by a wise senior counsel, it would be unusual if the average barrister did not encounter an ethical issue that required serious consideration once or twice a year in the course of their everyday practice.

The variety of dilemmas of which the authors write often sound differently in the practice of law. In addition to power under statute, the Supreme Court has inherent *parens patriae* jurisdiction which might be invoked in many of the circumstances described by the authors. As is well known to barristers, a judge sitting in the Protective Division of the Supreme Court of New South Wales is frequently called upon to act as Solomon in situations similar to those that are described in this volume.

As Gzell J succinctly said in *Re Bernard* [2009] NSWSC 11, a case in which *parens patriae* jurisdiction was exercised in a dispute between parents and medical

practitioners about the administration of blood transfusions to a child of Jehovah Witness parents:

There is ample authority for the proposition that under the *parens patriae* jurisdiction, the court may supplant parental right and authorise hospital staff to perform a transfusion upon a child. What is critical is the welfare and the best interests of the child.

The volume omits to make any mention of the supervisory jurisdiction of the court when there is a deadlock between medical practitioners and parents with respect to medical treatment thought to be in the best interests of a child. It may be that the authors purposefully left out this avenue of ultimate determination, so as to concentrate on the resolution of conflict at the clinical level. This is, of course, understandable, as an approach to the Supreme Court should be made only in exceptional cases. However, perhaps a doctor's formal ethical education ought to include the knowledge that should an intractable dispute occur, the institutional dispute resolution mechanism provided by the courts is available, and will absolve medical practitioners from making decisions in the most difficult and challenging medical contexts where they find it impossible to accede to decisions they perceive to be outside the zone of parental discretion.

**By Richard Weinstein**