

IN_PRINT

This month's books cover information privacy, criminal law, sentencing and civil litigation.



Information Privacy Governance and Regulation in Australia

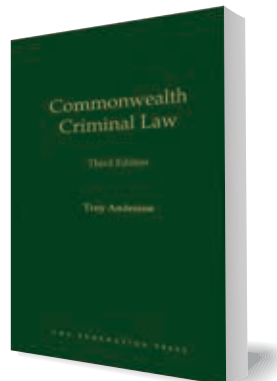
Thilla Rajaretnam, LexisNexis, 2022 pb \$142

The recent Optus and Medibank data breaches have raised the profile of privacy law issues and heightened the attention of regulators to the data security practices of Australian organisations. This mirrors a pattern of increasing privacy regulation around the globe, with many nations having followed a General Data Protection Regulation (GDPR)-style approach to privacy laws in the past two years, including China. This book makes an excellent contribution to the field.

The book provides a plain language explanation of the technology that is the subject of privacy regulation. It steps through the key pieces of legislation comprising privacy regulation in Australia and provides a helpful summary of significant overseas frameworks, particularly from the EU. It provides a useful guide to the various industry codes currently in operation across Australia and a summary of the various channels for complaints and remedies available to people who consider their privacy rights to have been infringed.

The final section of the book is focused on the theoretical issues that require consideration in respect of privacy law and offers some suggestions for potential reform. The book is an important contribution to the practical application of privacy law in Australia. It is also a valuable contribution to the reflection and reform that will be needed in order for privacy law to keep pace with the rapid reshaping of our society that is being effected by technology.

Sarah Daniell, director, Lextechia



Commonwealth Criminal Law

Troy Anderson, (3rd edn), The Federation Press, 2022, hb \$150

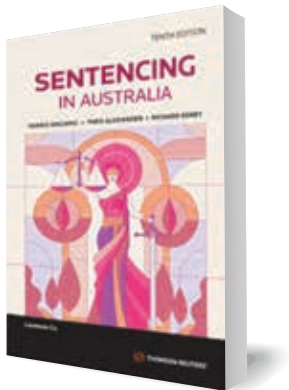
To begin, some observations. First, the Constitutional heads of Commonwealth legislative power results in legislated offences covering areas as diverse as fisheries management, migration and corporations. Though the trend has been to incorporate offences into the Commonwealth Criminal Code, the Code does not contain an exhaustive list of federal offences.

Second, s68(1) of the *Judiciary Act 1903* (Cth) provides a statutory basis for the prosecution of federal offences in the courts of the states and territories. However, the sentencing for findings of guilt in respect of such offences is governed, in the main, by provisions of the *Crimes Act 1914* (Cth). While Victorian community corrections orders, for example, may be picked up by s20AB of the *Crimes Act*, care must be taken not to apply state and territory sentencing legislation to Commonwealth offending particularly where both types of offending are charged on the same indictment. As the Victorian Court of Appeal noted in *Fasciale* (2010) 30 VR 643, an offender must be sentenced separately for such offending. The judgment in *Swingler* [2017] VSCA demonstrates this is not without difficulty when determining non-parole periods.

Third, while the recognisance release order may be an example of a sentence peculiar to Commonwealth offending, it might be less well known that, and as noted by Wigney J in *Khazaal v Attorney-General* [2020] FCA 448 at [66], there is no prescribed statutory procedure that the Attorney-General must follow in considering and determining whether to make a parole order; there is, for example, no equivalent of the Victorian Adult Parole Board. Challenges to such decisions by the Attorney-General (or delegate) are also limited to judicial review.

The third edition of Troy Anderson's excellent book examines this interface between sentencing for state and territory and Commonwealth offences as well as providing a detailed and helpful examination of some of the more significant categories of the latter including terrorism, money laundering and corporations offences.

Cahal Fairfield, barrister, Victorian Bar

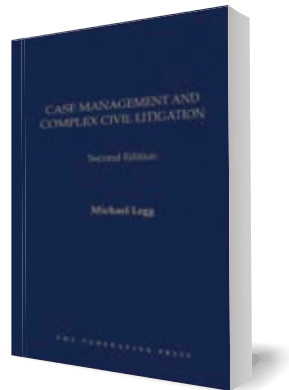


Sentencing in Australia

Mirko Bagaric, Theo Alexander, and Richard Edney, (10th edn), Thomson Reuters (Professional) Australia Limited, 2022, pb \$195

Now in its tenth edition, *Sentencing in Australia* provides a welcome update to this difficult and complex area of law. It is applicable to all state, territory and federal jurisdictions and includes updated content relating to the objectives of sentencing, aggravating and mitigating factors, the principle of proportionality and criminal sanctions. It includes analysis of key appellate and High Court sentencing judgments. Sentencing law plays a role in the daily work of every criminal lawyer. For defence practitioners, the weight of responsibility in the plea and sentencing process cannot be underestimated. For prosecutors, the criminal law reposes in them responsibility in ensuring the proper application of principle. Unfortunately, although the times are changing, sentencing law was never a traditional inclusion in university legal studies leaving many criminal lawyers to learn on the job. Therefore, this book must play two roles: as an academic treatise (and critique) on the principles and operation of sentencing law and, importantly, as a practical companion for criminal law practitioners. In this context, the excellence of this text is revealed. One practitioner might start in the sections about foundational principles like general deterrence or rehabilitation, or dive directly into chapters about sentencing for specific categories of offending. Another might look at chapters on sentencing appeals and analyse case law about manifest excess or inadequacy.

Liam McAuliffe, barrister, Victorian Bar



Case Management and Complex Civil Litigation

Michael Legg, (2nd edn), The Federation Press, 2022, hb \$195

This is the second edition of Professor Michael Legg's comprehensive tome on the case management of very large cases with a new chapter on costs and sanctions which looks to the lessons of the US and UK.

At its core there is a tension here between an adversarial system (a "hands off" approach) and court management ("hands on" approach) which must be resolved. Efficiency and control over costs, delays and running of matters must not override procedural fairness and impartiality.

"Vigilance as to this balance is recognised and must continue. More may be needed in evaluating the effectiveness of case management through quantitative analysis so as to move beyond anecdote and provide further guidance as to effective techniques."

Perhaps most important for Victorian practitioners will be the chapter on managing class actions, including litigation funding.

In 2020 the *Justice Legislation Miscellaneous Amendments Act 2020* introduced s33ZDA group cost orders (GCO). If practitioners are interested they should see Professor Legg's excellent "Class Actions Fee Shakeup" (2020 Jan/Feb) *LJ* 68. Although there are more recent cases such as *Allen v G8 Education Ltd* [2022] VSC 32 and *Bogan v The Estate of Peter John Smedley (Deceased)* [2022] VSCV 201 that followed publication.

Although this is an academic text it provides practical examples and also indirectly gives a good legal history of complex litigation, with an excellent focus on matters arising over the past 10-20 years. ■

Tasman Ash Fleming, barrister and accredited mediator



LAW BOOKS

Miller's Australian Competition and Consumer Law Annotated 2023 e45



Russell V Miller
Member: \$166.50
Non-member: \$185

This essential resource on the *Competition and Consumer Act 2010* combines the full text of the Act with Miller's expert insight into how its sections operate.
www.liv.asn.au/MillersAnnotated23

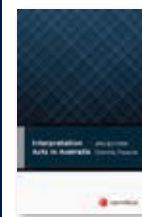
The Appellate Jurisdiction of the Courts in Australia e2



Dean Mildren
Member: \$162
Non-member: \$180

This well-regarded work outlines the history of Australian appellate courts and examines the principles of law and practice that guide them.
www.liv.asn.au/AppellateJurisdiction

Interpretation Acts in Australia e2



Dennis Pearce
Member: \$166.50
Non-member: \$185

This essential resource for legal practitioners provides clear, precise and practical guidance to the Interpretation Acts of each Australian jurisdiction.
www.liv.asn.au/InterpretationActs

www.liv.asn.au/LawBooks

Level 13, 140 William Street, Melbourne
lawbooks@liv.asn.au