

Recommendations and Reviews

Government Contracts (7th Ed) – Nicholas Seddon

Nicholas Seddon's *Government Contracts* (7th Ed) is in its 28th year of publication. The author has comprehensively reviewed the sixth edition of his work, last published in 2013. The book, in Chapter 1, examines the complex interaction between what the author calls, variously, 'public management', 'devolved government' and 'new contractualism'. The seventh edition continues the analysis of these concepts that Seddon identifies in his preface as controversial, but 'to a large extent, irreversible'. Governments using contracts to achieve their policy objectives is not new but new issues continue to arise.

The new edition is an invaluable guide to practitioners who are operating practically, or have an academic interest in, the way in which governments contract and the intersection of private and public law that attend the various manifestations of government. Seddon does not shy away from examining these issues at every level: including by reference to the many words that are used to describe 'the government' in public law: whether it be 'the Crown', 'the Commonwealth', state and territory governments and even local governments and statutory authorities.

The power, particularly of the Commonwealth, to expend money and enter into contracts was a point of significant interest following the High Court's judgments in the two Williams cases in 2013 and 2014.[1] As Seddon notes, the considerable consequences that the Williams cases portended has largely faded away. He identifies that there have not been any cases, since 2012, where a contract has been found to be unconstitutional. Since *Williams (No 2)* (2014) 252 CLR 416 has been decided, and of the over 1000 programs listed in regulations made under the *Financial Framework (Supplementary Powers) Act 1997* (Cth) s 32B, there has been no disallowance to a regulation on constitutional grounds.

The interaction between the largely 'private' law principles of contract and the 'public' law principles by which governments are bound is at the very heart of Seddon's work. The seventh edition has been updated to include Clive Palmer's litigation against Western Australia. Chapter 3 of Seddon's work shows, by reference to Edelman J's judgment in *Mineralogy Pty Ltd v Western Australia* (2021) 393 ALR 551, that contracts with government sometimes operate in a hybrid space between being pure 'inter partes' agreements and the terms of the contract also having the force of statute.

Seddon continues to criticise governments at all levels from exempting themselves from much of the operation of the *Competition and Consumer Act 2010* (Cth) and the Australian Consumer Law. Chapter 6 of his work is devoted an analysis of how that Act applies to governments and the consequences of significant parts of the Act being inapplicable to governments.

[1] *Williams v Commonwealth (No 1)* (the School Chaplains Case) (2012) 248 CLR 156; *Williams v Commonwealth (No 2)* (2014) 252 CLR 416.

In the domain of government procurements, Seddon challenges readers to provide a principled justification for why the government should be permitted to engage in misleading conduct or anti-competitive arrangements in their procurement processes.

Seddon's work is illuminating and a comprehensive treatise on the specific issues that arise in government contracts. It is a must-have for any practitioner practising in this area.

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