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Commonwealth Criminal Law

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Subject: Criminal law

***330** Readers who do not practice in Australia may not appreciate that Australia has two parallel systems of criminal law. There is the criminal law of the particular State or Territory that an offence occurs in and that is prosecuted by that State's or Territory's Director of Public Prosecutions, but there is also a national criminal law that is created by the Australian Government and prosecuted by the Commonwealth. It is the latter that is the subject of this book.

The distinction between the jurisdictions of the State's/Territory's criminal law and the Commonwealth's is that Commonwealth crime focuses on international and national issues offences, for example, the importation of border-controlled drugs, offences under the Corporations Act and fraud perpetrated on Commonwealth entities, such as the Australian Taxation Office or Department of Human Services.

There are two key pieces of legislation that comprise the Commonwealth Law, (sometimes referred to as Federal Law); the Crimes Act 1914 (Cth) and the Criminal Code Act 1995 (Cth). The Explanatory Memorandum for the Criminal Code Bill described the then draft bill as "one of the most ambitious legal simplification programs ever attempted in Australia". The Code came into effect on 1 January 1997. While the Code generally creates the offences and how the elements of those offences are to be understood, the Crimes Act sets out the mechanics of an investigation, bail, mental illness defences, sentencing and matters pertaining to parole. It should be noted however that the Code and the Crimes Act represent only a small percentage of all offences created under Commonwealth Legislation.

In recent years there has been a significant expansion of offences captured under the Commonwealth Criminal Law, particularly in the area of terrorism and what the author refers to as "child exploitation".

In the preface, the author, who is himself a practicing barrister, warns what the book is not intended to do: it does not discuss shortcomings or gaps in the Commonwealth's legislative scheme for criminal law, nor does it provide a detailed commentary or historical analysis of the law's development. Rather it is intended to be a relevant and highly practical summary of the legislation and cases such that it allows practitioners to provide appropriate advice and to prepare matters for their clients. This information is further supplemented by references for further reading if so required. The striking factor that sets this text apart from others is the breadth of the task it undertakes by covering the whole of the Commonwealth Criminal law as opposed to one discrete part of it. In this regard the author successfully manages to succinctly deal with complicated areas in a practical, logical and easily understandable manner.

This latest edition capably meets the aims of the author as it provides an up-to-date, comprehensive and relevant reference to practitioners and students in dealing with this complex area of law. The book has 10 chapters. There is an ***331** introductory chapter concerning an overview of the Commonwealth's jurisdiction, followed by a chapter that analyses the Code's unusual terminology and approach to analysing an offence and a chapter on extradition. The other seven chapters deal with the offences the Commonwealth most commonly prosecutes, such as fraud, drug importation and money laundering.

The relevancy of the material is a real strength of this book. Previous decisions and discussion on superseded sections have been removed leaving a reference that is compact and easy to navigate.

Each chapter of this edition has been updated to account for current trends, which is particularly important and especially so in respect of sentencing. One of the unique features of the book is that while there is a chapter devoted to Commonwealth sentencing principles, the chapters dealing with offences will discuss not only the most commonly prosecuted offences, but also important cases to do with sentencing considerations. As discussed later in this review, while all chapters have been updated, some have been completely rewritten to reflect legislative changes.

The increased use of investigatory tools by authorities are extensively considered in Ch.1 including Pt 1AA of the Crimes Act 1914 (hitherto referred to as "The Act"). The increasing importance of powers to regulate searches, information gathering and arrest is discussed, providing an analysis of the source of these powers and the reasoning behind the powers. An excellent example of the benefits of the text is a short discussion, including legislation and relevant caselaw, on s.3LA of the Act. That section provides that a person may be ordered to provide such material as the password to a mobile phone in order for authorities to access data from said devices. The Act has several such provisions that are likely to be unknown to the occasional practitioner in the field and are discussed in the text.

Also included in this chapter is a discussion of the increased use of surveillance devices and telecommunications interception and access warrants empowered by their relevant legislation. An uninitiated practitioner may be surprised to learn that the investigative authorities have the ability, in certain situations, to obtain a "data disruption warrant", which allows the modification and deletion of material or the "account takeover warrant", which allows the control of a person's online account to gather evidence about criminal activity.

The passage of new laws concerning money laundering had the effect of amending a large number of other Acts such that the entire landscape for money laundering offences was changed and this chapter has been completely rewritten and expanded. The goal of this tranche of legislation is to ensure that money and/or property from illegal activity will be forfeited to the Crown in a quicker and easier manner. These amendments support the sentiment expressed by Hank Schrader in the pilot episode of the TV show "Breaking Bad" when he said "It's easy money.... 'Til we catch you'."

This chapter is essential reading for anyone tasked with appearing in a money laundering or proceeds of crime type offence.

Similarly, the material on terrorism and associated offences has evolved substantially since the 2018 edition, which has necessitated the chapter being rewritten. This area of law has grown significantly in the last 20 years with almost 75 separate pieces of legislation designed to address terrorism related concerns. *332 The extent and scope of these provisions could easily be the subject of a separate book on this topic.

Special and extraordinary powers have been given to authorities to prevent and investigate terrorist acts. There are numerous separate pieces of legislation that deal with terrorism, which are all comprehensively dealt with in the text, which skilfully melds them into a comprehensible summary. Coupled with this there is a further range of provisions relating to terrorist organisations and the financing of the same. Control orders, preventative detention orders and continuing detention orders are all dealt with in the author's detailed review. Likewise, sentencing for terrorist-related offending is an ever-expanding field and receives detailed discussion of the major relevant cases.

Computers and the development of the internet in recent years has allowed for exponential growth of child exploitation offending with a resultant similar growth in legislative responses. Since the 2018 edition of this text there have been three major legislative acts concerning child exploitation offences, which has significantly broadened the reach of the Commonwealth Criminal law. Proceedings are now able to be conducted in Australia for offences committed outside the country by citizens or residents of Australia. Numerous new offences have been created, penalties increased in 21 offences, administrative changes relating to

the prosecution of offences introduced and sentencing procedures significantly changed by the inclusion of concepts such as mandatory minimum penalties. Such is the width of change that this chapter has also been completely rewritten from the earlier editions.

Significant attention is given to offences relating to the use of carriage service for child abuse material including the insertion of presumptions, that an accused would need to discharge, that such material was obtained by a carriage service. Sentencing for offences of this type is a difficult task and is discussed in detail with reference to the development of the law in this area, significant governing principles and relevant authorities.

The whole area of child exploitation is now such an intricate and complex area of the law that it presents very real challenges to those who are not regularly engaged to conduct such matters. Fortunately, this text provides a studied and practical analysis of the subject matter with significant reference to further reading.

Finally, there is a comprehensive discussion on extradition under the Extradition Act 1988 (Cth) from Australia to other countries, which may have particular interest to international as well as local readers. Interestingly the "usual practice of extradition" between countries does not apply between Australia and New Zealand, which is governed by a separate regime that is also subject to careful analysis in the chapter.

Extradition is an area that arises irregularly yet may have very serious consequences for the party involved. Another authoritative text that deals comprehensively with this topic from an Australian perspective does not spring to mind, which is surprising given the importance of these proceedings. Importantly the text outlines the situations in which extradition may be granted and alternatively should be refused. The chapter provides a thorough discussion of the applicable stages of the Extradition process supported by relevant case law.

This third edition of *Commonwealth Criminal Law* is an essential addition to the library of any practitioner appearing in criminal matters involving *333 Commonwealth crime. As discussed, the reader benefits from clear, detailed and thoughtful analysis of an extremely wide subject area, which provides a significant head start in the proper representation of clients. For this reason, the text is similarly beneficial to students and academics interested in the area of Commonwealth Criminal Law.

This latest edition was launched by Justice Bellew of the NSW Supreme Court. In his speech, His Honour paraphrased the famous Australian music commentator, Ian "Molly" Meldrum, who, when impressed with a new album would urge viewers to buy it and "Do ya self a favour". His Honour made the same observation with regard to this book. I wholeheartedly concur with His Honour's view.

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