

Environmental law and local government in NSW

by Zada Lipman (ed.); Federation Press, 1991; paperback \$35.

When originally set up, local government authorities were little more than road building organisations. The role of local government has since undergone tremendous change. Community expectations and modern legislative requirements now place environmental planning and protection high on the local government agenda. A council's environmental services are no longer restricted to improving and protecting ratepayers' property, but must serve the wider community, and indeed the environment itself. However, in New South Wales, at least, local government is hampered by a legal regime which is fragmented, complex and problematic. The text under review goes a significant way in critically exploring aspects of that regime.

The book arose from a seminar on *Local Government and Environmental Control* conducted at Macquarie University in September 1990. As a result, it is essentially a series of six separate conference papers on related topics. It is far from being a comprehensive descriptive text on New South Wales environmental law in the local government context. Instead, it provides insights into problems and opportunities in selected aspects of the law and associated policies concerning local government. For this reason, I believe the book will have most appeal to those directly involved in local government, both lawyers and non-lawyers. It will also cater for a wider audience of people interested in effective environmental management at the local government level, although some chapters will be less accessible for those unfamiliar with the legal intricacies of the area and associated terminology.

The chapters are disparate. They differ in style, tone, approach and depth of analysis. There is little cross-referencing. Not all meet the objectives articulated in the *Introduction*. For example, the relationship between State and local government in relation to environmental management is not consistently examined throughout the book. While these point

to a lack of strong editorial direction, they do not detract from the worth of the book as a set of six well researched and insightful essays by experts in the field.

The first chapter, by Ben Boer, focuses on heritage law. It spans federal and State legislation but sensibly emphasises the interface between the State planning and heritage protection systems at the local level. Boer's warning against compartmentalising heritage from the overall environmental debate is telling. Recommendations are effectively made for a stronger local government role.

Donna Craig explores the concept of social planning and its legal framework in Chapter 2. Social planning often receives little more than lip service in local government circles. While highlighting legislative opportunities for social planning activity available to councils, Craig examines the root of the problem and calls for a more 'coherent and effective social planning process'. A regional approach to social planning is urged.

In Chapter 3, Patricia Ryan tells the story of urban consolidation. This story of State/local government interplay embracing law, politics and ideology, makes fascinating reading. The chapter is packed with perceptive commentary and impressive critical analysis. Ryan demonstrates how there is 'no consolidated policy on urban consolidation' and examines local government's poor record in urban environmental management.

The book's editor, Zada Lipman, systematically draws together a vast amount of material on councils and pollution control in Chapter 4. The chapter stands out in that its tone is refreshingly optimistic. It identifies various opportunities available to councils in pollution management but also calls for sweeping reform. Much of the material should inspire those committed to improved practices.

Chapter 5 was prepared by the Land and Environment Court's Justice Paul Stein. It examines community access to the court in the resolution of environmental disputes. This chapter is out of step with the others in that it does not focus on local government practice. Nevertheless, it provides a valuable insight into the practical operations of the law and contains thoughtful suggestions for future developments.

In the final chapter, Linda Pearson critically studies the proposed New South Wales local government legislation. The current *Local Government Act 1919*, devised in an era of municipal yesteryear, is only now being overhauled. The draft legislation has been revised since the book's publication so some of the material is now out of date. Despite this, much of the text is still relevant. It contains clear explanations and incisive comment. No doubt this chapter will be made redundant by Pearson's forthcoming text on New South Wales local government law.

In summary, *Environmental Law and Local Government in NSW* is a welcome addition to a dearth of books in a significant area. There is still important research to be done in other sub-areas, such as the protection of natural resources and local government structural reform. More attention should be given to the desirability of a fully integrated approach to environmental management at the local level. Nevertheless, as a collection of separate essays on selected aspects of local government law and policy, the book works well. The essays bring together good information with perceptive commentary and suggestions. The book makes a positive contribution to better environmental management at the local government level.

ANDREW KELLY

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Travesty! Miscarriages of Justice

Kerry Carrington, Maryanne Dever, Russell Hogg, Jenny Borgen, Andrew Lohrey (eds), Pluto Press; Leichhardt, 1991; 277 pp; softcover, \$19.95.

The 12 chapters of *Travesty* consider the central theme of the 'wrongful conviction of individuals, and the legal and political processes and practices which lead to such a result'. The cynic may claim the authors have only identified an inertia in the legal system, that is, it is ultimately easier for the criminal justice system to continue with a prosecution

than to admit mistakes and stop. This conclusion, however, would be a misunderstanding of the valuable and detailed analysis provided by the authors in their evaluation of the criminal justice system.

This book is divided into three parts, each adding to the cohesiveness of the work. The first part examines the broader issues of the miscarriages of justice in the criminal justice system. The second part locates the highly publicised Hilton bombing case within these issues. The final part suggests reforms and new strategies to avoid future travesties.

In the chapter 'Miscarriages of Justice in Serious Criminal Cases in Australia', Paul Wilson carefully outlines examples of people held 'in gaol for years with their convictions upheld despite considerable doubt about the validity of the original verdict'. After analysing the circumstances and similarities of their various experiences, he concludes:

Once a decision to launch a prosecution is made, public officials and crown prosecutors do everything possible to make the charge stick. Police verbals, unreliable police informants and distorted records of interview . . . result from this pressure to ensure convictions occur and to 'win' at any cost. [p.12]

Tom Molomby also describes important institutional factors compelling prosecution by focusing on the difficulty of correcting errors once they have been made. In the chapter 'Miscarriages of Justice in Britain: The Guildford Four and the Birmingham Six', Molomby shows that even if there is obvious evidence that confessions of accused people have been obtained involuntarily through beatings, the judiciary, especially in highly publicised cases, is unlikely to acknowledge this. A clear example of a conflict between justice and the credibility of the criminal justice system is whether the Birmingham Six should have been allowed to take civil proceedings against the police for assault with the obvious evidence that the six had been beaten. As Lord Denning candidly acknowledged, to allow civil action would:

mean that the police were guilty of perjury, that they were guilty of violence and threats, that the confessions were involuntary and were improperly admitted in evidence, and that the convictions were erroneous . . . This is such an appalling vista that every sensible person in the land would say, 'It cannot be right that these actions should go any further'. [p.27]

In Part II, Mark Findlay in 'The Justice Wood Inquiry: The Role of Special Branch in the Cameron Conspiracy' describes the Wood Inquiry and how it revealed the highly partial and political approach adopted by Special Branch to get convictions. By identifying the process, and developments, with the Special Branch's recruitment of Seary (also the police informer against Tim Anderson, Paul Alister and Ross Dunn), the author identifies an elite group. This group had extensive powers and, operating within an environment that encouraged corruption, showed little concern with natural justice.

The Academics for Justice examine the Crown case against Tim Anderson (who was convicted of three counts of murder) in 'The Conviction of Timothy Edward Anderson Over the Hilton Bombing: Verdict Unsafe'. They highlight many inconsistencies and anomalies in the evidence presented by the Crown. Jane Mussett in 'Prosecution Duties and the Tim Anderson Trial' poignantly shows that inconsistencies in evidence do not necessarily render the operation of criminal justice unjust, provided the prosecution complies with its general duties of fairness. She makes a compelling case against over-vigorous prosecutors in an adversarial system, especially when they do not follow the spirit of Bar rules, High Court precedents and Department of Public Prosecutions guidelines in conducting cases.

Joseph Pugliese in 'The Rhetoric of Criminality: The Print Media and the Hilton Bombing Case' begins with the problem of how Tim Anderson was represented by the media and the ways in which the 'discourse of journalism' claimed "'truth", "objectivity", and "impartiality"'. Unfortunately I lost the plot here as this chapter is written in highly technical language and is difficult to understand. This itself is not objectionable, but the paper would be more suited to a specialist semiotics journal where readers could appreciate such subtlety. In contrast, Andrew Lohrey in 'A Linguistic Analysis of Evan Pederick's Evidence in the Hilton Bombing Case' uses a much more readable and understandable style. Lohrey identifies a typology of inconsistencies through examining conversation patterns in Pederick's evidence. Using linguistic analysis in this way is useful and important, and the results of Lohrey's analysis

show a consistent trend of police leading witnesses, falsifying information and withholding information.

Robert Brook in 'Raymond Denning's Best Planned Escape' highlights the old adage that 'when deals are offered there are no shortages of profiteers'. Here the profiteer was Denning, who, at the time of publicising Anderson's alleged confession to planting the bomb, was facing several serious charges, including armed robbery. As a result of his evidence concerning Anderson, Denning was pardoned for these charges. This chapter clearly shows the difficult issue of using police informers and inducements, an issue taken up by Brown and Duffy in Part III.

Alan Knight in 'Terry Griffiths: An Inconvenient Victim' relates the stirring account given by Griffiths, one of the police officers injured in the Hilton bombing. Griffiths' treatment in hospital and the revelation that the former Special Branch had phoned to warn of the bomb, added new dimensions to the case. The fact that Griffiths is unconvinced that Anderson was responsible for the bombing needs to be taken very seriously, especially given his extensive experience in the police force.

The Academics for Justice conclude Part II with the question that had to be asked: 'Who Bombed the Hilton? The Great Unsolved Mystery'. They do not offer a culprit. To do so with so many unanswered questions would contradict

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their own thesis. They believe there needs to be a full inquiry into the inconsistencies and a further investigation into who really bombed the Hilton. Their list of 16 unresolved issues about the Hilton bombing (pp.173-180) provides a useful start for this.

In Part III, David Brown and Beverly Duffy in 'Privatising Police Verbals: The Growth Industry in Prison Informants' and Russell Hogg in 'Identifying and Reforming the Problems of the Justice System', explore broader themes for reforming the criminal justice system. This flows on from the specific material in earlier chapters (pp.102-3). Brown and Duffy focus on the issue of prison informants — a central difficulty with the conviction of Anderson. The authors identify factors that make inmates 'particularly vulnerable to pressure' (p.203).

They outline suggestions to redress the dangers of police creating false evidence by exploiting this vulnerability (pp.205-22). Hogg moves beyond specific examples to a broader, more discursive, yet useful examination of the pillars of the criminal justice system. Issues such as comparisons with the English criminal justice system, the role of police in an adversarial system, the role of the media in miscarriages of justice and the process of appeal give a backdrop for Hogg to identify a series of strategies (pp.260-8) aiming to reform the 'key structural defects of the adversary system of justice'.

With such a diversity of chapters I thought the thread of this book would spin off in many directions, resulting in unconnected articles. This was certainly not the case. The use of miscarriages of

justice as a theme provides a coherence to the book that is quite stunning. It allows the book to develop ideas from the UK and Australia covering judicial inquiries, police informers and even linguistic analysis. *Travesty* creates a deep sense of uneasiness (if it did not already exist) by showing just how fragile personal liberty can be, and more so, how difficult it can be to maintain, despite one's innocence. In this sense, *Travesty* plants seeds of discontent with a criminal justice system that has such anti-democratic, idiosyncratic and totalitarian characteristics. Reformers and other people interested in the dysfunction of the criminal justice system will be intrigued by *Travesty*.

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