

# inprint

Child abuse, the High Court under Chief Justice Mason, the changing relationship between Australian states and the monarchy, and labour law are discussed in this month's reviews.

## Child Abuse and Family Law

Thea Brown and Renata Alexander, *Child Abuse and Family Law: Understanding the issues facing human service and legal professionals*, 2007, Allen & Unwin, pb \$39.95.

“That fact that much of the professional intervention in the family law service system for this problem is still based on myth is troubling. This book is a step in a long journey to support children caught up in this family and societal problem.”

The first paragraph of the book demonstrates the authors' concern that there is no other reference to assist professionals dealing with this complex area, which affects a significant number of Australian families.

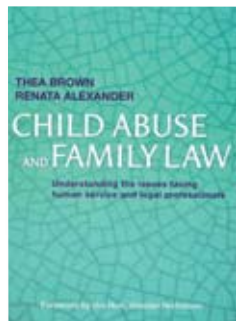
The statistics are frightening. The best study, although dealing only with women, showed that 54 per cent of the respondents had experienced some sexual abuse before the age of 18 and about 16 per cent had experienced incest.

About 90 per cent of child sexual abuse perpetrators are male, whether or not the child is in an intact family. When sexual abuse is alleged in parenting disputes and substantiated by child protection services, 73 per cent of the perpetrators are fathers. However, there is a disproportionate representation from step-fathers and step-mothers. Fathers are the most common perpetrators of non-sexual child abuse in the context of parental separation and divorce. In other contexts, mothers are the most common perpetrators.

Unlike most books dealing with separation, this book is written from both legal and social science perspectives. Between them, the authors have considerable academic and practical expertise. The book is well researched, fully referenced and comprehensively indexed.

There are clear explanations of the law, including the recent changes to children's disputes.

The subject matter makes it difficult to use case studies to illustrate the issues. The authors try to compensate for this by



using reported judgments and fictitious case examples. The case examples are excellent. They illustrate common situations and the difficulties faced by all professionals, including independent children's lawyers, teachers, doctors etc., and preferable strategies.

The strong relationship between domestic violence and child sexual abuse is explained. The different forms of child abuse are defined and the factors contributing to their causes are discussed. The attitudes of professionals are covered as well as the complex relationships between the legal system and social services, the effects of abuse and ways for professionals to work with victims, perpetrators and partners of perpetrators.

This excellent book is a comprehensive reference for a broad range of professionals who are looking to better understand and deal with allegations of child abuse.

JACQUELINE CAMPBELL  
FORTE FAMILY LAWYERS

## Inside the Mason Court Revolution

Jason L Pierce, *Inside the Mason Court Revolution: The High Court of Australia transformed, 2006*, University of Dayton, hb US\$50.

The High Court of Australia made many ground-breaking decisions during the late 1980s and early 1990s. The *Mabo* decision in 1992 immediately comes to mind. In that case, the High Court overturned over 200 years of English and Australian cases which denied Australia's original inhabitants any legal rights to land under their customary law. The period during which Sir Anthony Mason was Chief Justice also saw the emergence of implied constitutional rights, in decisions such as *Theophanous* in 1994.

Compared to the US, little has been written on the politics of our highest court.

Brian Galligan's excellent book, *The Politics of the High Court*, was one of the first popular works to analyse the High Court as a political institution. Jason L Pierce, an American political scientist, takes this analysis even further in *Inside the Mason Court Revolution*.

Rather than the usual legal analysis, Pierce's work is based on extensive statistical data and analysis, and interviews with more than 80 of Australia's most senior judges.

Pierce argues that the High Court made significant changes, not only in the content of the law during this period, but also in legal technique.

The Court openly considered the social, political and economic values underlying the law, and sought to develop the law and achieve justice in individual cases. Long-cherished doctrines were often modernised or discarded. The practice of rigidly adhering to previous decisions took a back seat.

Pierce intelligently analyses the reasons for the Court's activism during this period, such as the passage of the *Australia Act* 1986 and Australia's growing legal independence, the introduction of compulsory retirement for High Court judges, and the requirement for leave to appeal in virtually all cases.

This excellent work cogently analyses the criticisms made of the Court during this period that it was too "activist" and "political" for an unelected body. It also demonstrates the return to a more conservative or "legalistic" approach by the Brennan Court, and even more so by the current Gleeson Court.

BILL SWANNIE  
VCAT ASSOCIATE

## The Chameleon Crown

Anne Twomey, *The Chameleon Crown: The Queen and her Australian Governors*, 2006, The Federation Press, hb \$49.95.

**T**he *Queen and her Australian Governors* is an intriguing text that examines the changing nature of the relationship between the states of Australia,

the various state governors and the monarchy.

It discusses the role of the Queen in Australia and puts the difficult question as to whether the Queen is the Queen of Australia and also Queen of each state.

It cites instances where the Crown has been requested to use the power to deal with Australian governors, including the circumstances in which badly behaving governors have been dismissed. There is also the rather amusing anecdote of the then Premier of Tasmania, who at 70 years old proposed that he retire as Premier and requested that the Crown appoint him as state governor.

It is noted that the relationship of the Premiers was not, as they often considered, one of direct access to the Crown, but merely access via the British government which retained its right to provide its own advice to the Crown, even though such advice may have been different to that of the Premier.

The text deals with the long and convoluted proposals for cutting the links with the UK and the type of access the Premiers would then be entitled to have to the Queen – directly, via the British government or

via the commonwealth government as occurs in Canada.

The eventual passing of the *Australia Act* led to the Premiers having direct access to the Queen with regard to the appointment of governors.

A fascinating insight into Australian history.

MARK HARRICK  
HARRICK LAWYERS PTY LTD

## Labour Law and Labour Market Regulation

Christopher Arup, Peter Gahan, John Howe et al (eds), *Labour Law and Labour Market Regulation*, 2006, The Federation Press, hb \$125.

**O**ne of the things that initially struck most industrial relations/employment relations practitioners about the WorkChoices legislation was its size. While we had been told that a simpler system was needed to meet the needs of a globalising world, the legislation was more prescriptive than most of us had ever seen. At the same time as the traditional industrial relations institutions were being dismantled, the amount of regulation was increasing. While this is not a book about WorkChoices specifically, it is with this apparent paradox that the publication attempts to grapple.

Edited by prominent Melbourne-based labour law academics, this is a collection of articles that continues a strand of scholarly inquiry started by Richard Mitchell and others about a decade ago. It suggests that the focus on core institutions of the contract of employment, bargaining and industrial arbitration is no longer adequate. Instead, labour law can only be understood in the context of other laws which regulate employment and construct the labour market. The collection thus includes analyses of social security law, taxation law, non-employment based forms of working relationships and the

laws and policies that construct the borders between work and family life.

While the emphasis on these “non-traditional” areas of regulation offers food for thought for labour lawyers, the book is equivocal on the key question of why the traditional structures of labour law are being replaced by external regulation. Some authors appear content to take this shift for granted and then analyse it; others appear to accept the need for more

detailed regulation to match a more sophisticated economy. The more critical contributors, however, point to the negative consequences. For example, as the rights that attached to being an “employee” began to increase in the later half

of the 20th century, so grew the attempts to escape beneficial legislation by means of independent contracting and other similar arrangements.

The book provides a rich sense of the context in which labour law occurs. Perhaps the next step in this line of research is to begin to discern the pattern beneath the growing mass of regulation.

ADAM BANDT  
SLATER & GORDON



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## Lawbooks Book of the Month

**The Accountant as an Expert Witness: A basic guide to forensic accounting**

By Hoffman, Finney, Cox, Cooper. CCH 2007 \$65

*The Accountant as an Expert Witness* is an insightful new book on forensic accounting. It is a practical guide to help prepare any qualified accountant who may need to appear as an expert witness in a court or before a tribunal or forum.

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