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**Workplace Health & Safety Law in Australia, 2<sup>nd</sup> ed.**

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**710 pp**

**Reviewed by John McDonald**

The first edition of this worthwhile text was reviewed several years ago; thankfully, there have been no radical changes made in this second edition.

As before, the layout is designed for the safety practitioner (and students in this field), rather than the legal practitioner. Part 1 deals with the Australian legal system, focusing on sources of law and statutory interpretation. The latter in particular has been updated to include recent caselaw (however the further appeal relating to the *Gaynor* case was decided a month after the text date). The discussion in the area of statutory interpretation is of sufficient standard as to be of utility to a legal practitioner.

Part 2 is entitled “workplace safety and civil law”. This part first discusses the common law of employment, with emphasis on the protection of workers. This chapter is very comprehensive, includes discussion of caselaw from other jurisdictions (here, Canada and the UK), but is becoming a narrow area of practice given the reach of the Fair Work legislation. The employee / independent contractor distinction is covered succinctly, and developed by considering a variety of alternative methods of engagement. The strict dichotomy of employee or independent contractor, following the dicta of *Fair Work Ombudsman v Quest South Perth Holdings* [2015] FCAFC 37 is considered. “Working in one’s own business”, mooted as a modern test in the first edition, is developed with citations of recent caselaw.

Negligence and duty of care forms the next chapter of the Part, with a further chapter on breach, causation and damages. Breach of statutory duty, and the availability (or otherwise) of civil actions on this basis, is considered in some detail. This is an area of potential benefit to plaintiffs seeking to avoid the exclusionary provisions of the model Act (see section 267). The consequences of the various state civil liability acts are also discussed.

Part 3 is entitled “workplace safety and criminal law”, and 3 of the 4 chapters deal with the Work Health and Safety Act 2011 (NSW version, which has little variance from the harmonised model Act – significant differences with legislation enacted in other States are highlighted). The 4<sup>th</sup> chapter covers regulations, past and present, again NSW only so discussion on the former is moot for Tasmanian practitioners.

Despite those limitations, this is the most valuable Part for legal practitioners. After an historical discussion, commentary on the Act is comprehensive, with the very useful addition of tables in the text; for example, a table of major safety duties sets out the person bound, the recipient, the nature of the duty, the place and other circumstances.

The final Part 4 has 3 chapters dealing with workers’ compensation, anti-discrimination in the workplace, and the process of safety litigation; all NSW-based. The first chapter is interesting from a comparative perspective; the second is quite detailed and full of recent caselaw.

Relevant extracts from cases are kept brief and on point; the discussion is considered and often extensive in exploring alternative approaches. The author is well versed in his subject, as

witnessed by the significant caselaw cited. References / further reading lists at the end of each chapter are extensive, and well worth perusing for a more detailed analysis of particular issues.

There are a few criticisms. The table of contents is still too broad, as the lack of subheadings makes re-finding of particular paragraphs difficult. Problems with topical referencing can be ameliorated to some degree by cross-referencing with an index to the model Act. There is an overwhelming reference to NSW industrial caselaw, perhaps ameliorated to some degree by the fact that that state seems to generate a disproportionate share (the Industrial Court of NSW is listed as having similar status as the NSW Supreme Court). Other significant statutory safety laws, for example the comprehensive NSW and Queensland mining safety and coal mining safety Acts, are not covered; the Queensland Acts are particularly important as the general (harmonised) safety Act does not apply to mines in that state. Some internal paragraph referencing is out-of-step with the text (eg a reference to the *Deatons* case at 3.120 should read 3.119).

None of these matters detract in any significant way from this valuable text.