

BOOK REVIEW

By Sally Gearin

"Domestic Violence in Australia - The Legal Response"

By Nicholas Seddon
2nd Edition

The main but not the only advantage of this book is that it is a no nonsense guide to assisting victims of domestic violence to ascertain what their rights are in relation to Social Security, housing, restraining orders and the criminal law. In addition the book provides an analysis on a State by State basis of the protections afforded to victims of domestic violence under the criminal law, the *Bail Act* and the relevant legislation under which protection orders are made.

Mr Seddon recognises the inadequate protection to victims of domestic violence provided by the criminal law and in this sense throws out a challenge to policy makers to find some better solution. As the author says at p.54:

"Although the criminal law looks back to past behaviour. It does this as the crudest level by specific deterrence, that is, the punishment is supposed to deter a recurrence of the violent conduct. There are also mechanisms whereby a conviction or punishment is suspended so long as the offender adheres to specific conditions. It could therefore be said that the criminal law is quite adequate for providing protection to the victims of domestic violence. This conclusion however is not correct. The effectiveness of the criminal law has been found wanting in providing future protection because magistrates and judges

often do not hand out harsh punishments so that specific deterrence does not work. If, instead, conditions are imposed, the breach of such conditions is not generally met with a quick and harsh response. A person who has broken court imposed conditions may get the impression that it is not a very serious matter. Even if the criminal law were effective in controlling future conduct, it still would not be adequate by itself for two further reasons. First it has a low "strike rate" because of the need to prove the offence beyond reasonable doubt. Secondly the criminal law cannot deal with non criminal conduct such as harassment, accordingly there is a need for other legal measures for providing protection to domestic violence victims."

Since the first edition in 1989 there have been extensive legislative changes in most states and Territories. Mr Seddon does not assess the effectiveness of such changes.

An interesting development that Mr Seddon notes is in relation to the battered woman syndrome. He cites a case in the Magistrates Court in Canberra where expert evidence of the battered woman syndrome was used to exonerate a woman accused of defrauding the Department of Social Security. The magistrate accepted that the woman had committed the alleged offences under duress from her

former partner who had threatened to kill her and had been violent. The report of this case is in the *Canberra Times* 21 May 1993.

The identification of the problems for victims in such a succinct way can only assist in the change in societies' attitude which is required before real change can be effected. The correlation between Criminal Injuries Compensation and the rights of victims is also examined and may well be the window of opportunity whereby governments are forced, for economic reasons to look at more creative ways of addressing the problem.

The book is valuable resource of refuge workers, social workers, crisis care workers, lawyers and all helpers who provide assistance to victims of domestic violence. It recognises that the law is a last resort and lays out in clear language the legal framework within which victims of domestic violence must operate.



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