

service provision to consumers by means of radiocommunication transmissions which might use television broadcast channel allocations are believed to require a regulatory regime different from that set out in the Broadcasting Act. Therefore, it is proposed that a specific Part B module be created to

specify the terms and conditions for the conditional access of radiocommunication services carrying television programs for leisure viewing and entertainment, currently governed by the regime VAIES.

If video sale and hire is to be included in the legislation, a statement to the effect that

the delivery of videos is totally unregulated, except for Part A conditions.

It is envisaged that a separate Part B module will be required for regulation of the television services provided to consumers over guided (wired) media. It is anticipated that a regulatory regime very different from that of existing Acts will be required.

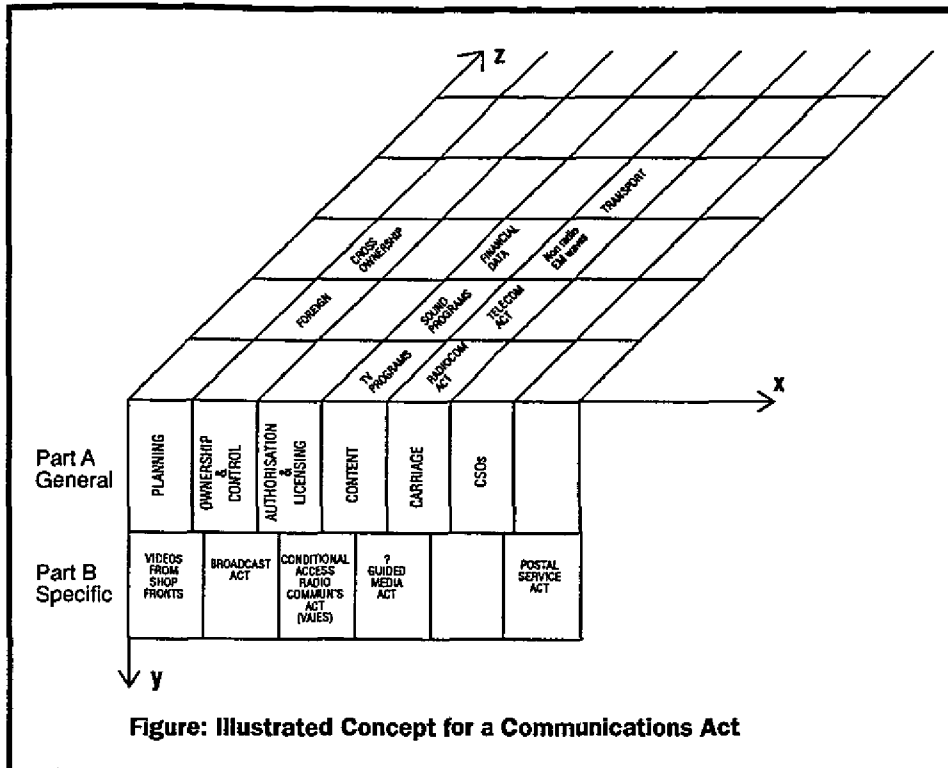
The x-z plane shows the component parts or subsets of the Part A modules.

For example, the content module might be seen to include: television programs, television program services, sound services and financial data services.

The content module might also be subject to Federal laws in respect of violence, pornography, etc., whereas more stringent content rules might uniquely apply within the Broadcasting Act.

A further example shows that the carriage module might consist of: a radiocommunications Act, a telecommunications Act, and physical transport.

It is envisaged that the integration of the several different Acts into an integrated Communications Act will enable anomalies to be eliminated, and lead to simplification of the regulations applicable to individual modules or Acts.



"The Law of Journalism in Australia"

Bruce Donald, Manager of Legal & Administrative Services, ABC,

reviews this useful new text written by Sally Walker

The worst aspect of the common law system based on a mix of judge-made and statutory law mix has always been that discovering the law on any subject is something of a lottery. The passionate hopes of Jeremy Bentham for the gathering and codification of English based legal systems, readily intelligible to ordinary people as well as to professional lawyers, remains a twinkle in his embalmed eye which was wheeled out annually at the University College, London.

It is, however, a cause for great celebration that his intellectual tradition remains alive and well in the major academic treatises that collect and organise the law. Sally Walker has established her position in that tradition. This treatise is encyclopaedic yet precise, scholarly yet practical. It is a work which, while principally of use for lawyers, ought to have a place in every news room in Australia as well as in all colleges of communications and media. (I have already ensured that all of

the ABC legal team have a copy next to their bedside telephone for those late night advising sessions where precise law is needed.) In short, Sally Walker has performed a significant public and private service in researching and assembling this book.

Sensibly, the author has been concerned to expound the current state of the law without dwelling too much on the great debates concerning the law of journalism. For example, while naturally referring to the debate over the state of the defamation law in Australia and its weakness in the field of public figures and issues, she concentrates on the law as it is.

Reporting the Courts

The book begins with the Courts. For me it is a depressing aspect of public curiosity and journalistic obsession that so much attention is focused on the matters and people who pass before the courts; it stands beside

ambulance chasing as the cause for the descent of electronic media into tabloid status. Walker covers the field in admirable detail from the fundamentals of the sub-judice rules through the range of often conflicting rules in the various jurisdictions on suppression and restriction of publication. At times she lets some of the judges off too lightly: notably the South Australians in the field of suppression orders. The law has changed dramatically in that State in response to the gross overuse of suppression orders so the book is already out of date in this respect. However, Walker should really have noted that the law in that State had permitted the suppression of the identity of the head of the Drug Squad right through his trial and up to the point of him ultimately pleading guilty on over eighty charges of drug dealing.

Walker appropriately points out the uneven enforcement of the sub-judice rules. In the ABC for example we take a reasonably strict approach stressing our journalists that

the right of fair trial is a fundamental right in a democratic society. Regrettably, this rather lofty position is hard to defend when our competitors get away with outrageous breaches regularly seen on our screens; the most notable being the publication by Channel 7 of the interviews with Paul Mason, the pick-axe murderer, as he was being flown by police to the scene of the crime. The failure of the New South Wales Attorney General to prosecute over this makes it virtually impossible to convince journalists that the law of contempt is worth upholding.

There are some points of detail in the sections of the book concerning court reporting which I believe could be improved in a subsequent edition. When dealing with information obtained from the police, mention could have been made of the growing resort to Police/Media Liaison Units which are unfortunately not as careful as they should be with the laws of contempt. The Blackburn case in NSW is a perfect illustration of how excessive concern with media management and desire to release information can result in a perversion of the criminal justice system. When considering pre-judgement it should have been made clear that accused persons are entitled to protest their own innocence without being in contempt. In the section on juror's deliberations there ought to have been mention of the Western Australian law prohibiting publishing of photographs of jurors which is only noted elsewhere. In relation to suppression, the important provision in Tasmania that there is a prohibition of reports of bail proceedings could have been emphasised.

The work proceeds then to examine reporting Parliament, elections and security matters. While inevitably a shorter section than others in the book, there are some issues that perhaps may have been better dealt with. Comment could have been made on the need for balance in reporting of Parliament to ensure a fair and accurate report; for instance, ensuring that a subsequent denial of a matter stated under Parliamentary privilege is also included in any report. Also, in my view the section on reporting Parliamentary proceedings ought to have given more specific prominence to the Federal Parliamentary Privileges Act 1987. In relation to security matters there could have been some policy analysis of the D-notice issue although it is such a minor area of current media practice that the author can be forgiven for passing over it.

Defamation

The book then turns to the difficult, confusing and troubling area of defamation law, carefully and adequately summarising the complexity of our eight jurisdictions in this area. Given that now most publications

occur in a national market, it is absurd that we do not have one defamation law.

The analysis is comprehensive and again my criticisms go to points of detail. The author correctly asserts that reasonable people are mindful of the principle of an accused being innocent until proven guilty as the basis for the rule that reporting that a person has been charged does not give rise to defamatory imputation of guilt. However, the author goes on at a later point, in the context of proving truth as a defence, to state that it is usual practice not to name or otherwise identify a person who has been charged with an offence until the person has appeared in court. There is a contradiction here. It is certainly not ABC practice to stop journalists naming people who have been charged until they reach court.

In relation to the defences to defamation, I would take issue with placing the comment defence under the heading "Fair Comment". While later in the section the author points out that the word "fair" is misleading, surely the fact that it is so should have induced her to delete it from the heading. The importance of the comment defence is that in a free society, people are entitled to express their honestly held opinions, even if they are unreasonable and unfair when objectively judged. We in the ABC continue to see the comment defence as alive and kicking. Inevitably the great controversy in the area of defamation defences surrounds the call for a broad qualified privilege defence. Journalists yearn to have a "public interest" defence along the lines of the US Sullivan v NY Times defence; some point to the recent Morgan case in NSW under s.22 of the NSW Act as opening up a broader scope for qualified privilege in this State and to the decision of the Federal Court in Comalco as showing that it may not be altogether dead in the common law word for practical purposes. However, these cases are of very limited use in ordinary media reporting and this remains the principal point at which reform should take place.

As to remedies for defamation, the major problem remains that damages are at large and that there are no sensible criteria available for juries in selecting them. This produces both in Australia and in the UK quite silly results which are thankfully often remedied by appeals; for instance, as in Australia in the Comalco case and in the UK in the recent Yorkshire Ripper's spouse case. As this is one area where reform may well be possible, some further policy analysis perhaps might be considered by the author for a subsequent edition.

Broadcasting standards

In relation to obscene, blasphemous and racist material the author has collected the

relevant law. Of course this is fundamentally unused and outdated law except in the area of racism; here the States are looking again at the area with NSW having recently enacted its law and in WA the draft law having been produced. I feel the author should have cross referred para. 4.14.13 (which is curiously entitled 'Sedition') to the Australian Broadcasting Tribunal standards in this area which, while not creating criminal offences, nevertheless give rise to an obligation on commercial broadcasters (and one accepted as relevant to the ABC as well) to avoid gratuitous racial vilification. While for myself I am not sure these laws really work, they do need to be taken into account by journalists.

Moving to the area of broadcasting regulation, the author sensibly again declines to deal in detail with the whole commercial licensing system because this book is really about the content of the work of journalists. On the other hand the sections dealing with the Australian Press Council are of particular value as indeed are the careful analysis of ABT program standards.

Part Six of the book deals with gathering of the news, and in this area, apart from dealing with the normal rules of trespass and listening devices the author chooses to make reference to the freedom of information laws. As a practical matter the author does perhaps not draw sufficient attention to the absurd cost of these laws and how that can often effectively frustrate their use by journalists working on small budgets and short deadlines.

In writing this book Walker has obviously had the benefit of the pioneering work of one of the most notable Australian academic lawyers, Professor Geoffrey Sawer, whose work A Guide to the Law for Journalists now in its third edition provides a fundamental reference point in this area. Nevertheless, the merit of Walker's new work is that it expands the material considered and, while following in many respects the organisation of Sawer's book, Walker has taken a significant scholarly step. The book should form an essential part of the library of every person involved in media and communications law. Practising lawyers and hard working journalists should take the opportunity to let Sally Walker know that they appreciate what she has given them. From an author's point of view, it is only regrettable that the fees many lawyers will be able to charge for giving advice directly from this book are not returned by way of some royalty to the learned author! But that has always been the lot of the dedicated academic writer of professional treatises in this country.

"The Law of Journalism" (1989) is published by the Law Book Company Ltd.