

Accident Compensation in Australia: No Fault Schemes by Mark A. Robinson (Legal Books Proprietary Limited, Sydney, 1987) pages 1–94. Price \$19.95 (soft cover). ISBN 0 94955 3 31x.

This work is an invaluable introductory source for those interested in learning about the nature and operation of a number of accident compensation schemes that have been implemented in various Australian jurisdictions. In a very short space, the author has managed to canvass, and critically evaluate the most significant features of these plans. As Robinson notes at the outset, his work is intended to be an overview of the Australian situation, and a discussion of the possible directions that future reforms may take. Notwithstanding the fact that the subject of no-fault accident compensation schemes, and the problems inherent in the fault system, have been well-trodden areas of interest for academics, Robinson does offer new insight into particular issues within this field of study.

Chapter 1, entitled 'A Critique of Fault', summarizes and synthesizes the arguments advanced by some of the most widely-read and authoritative sources who have previously investigated the problems of a fault-based system of compensation. The views propounded by Atiyah, and Ison, as well as the conclusions of the 'Australian Woodhouse Committee' and New South Wales Law Reform Commission 'Report: A Transport Scheme For New South Wales' are discussed in a succinct, efficient fashion. Having referred to the most pertinent comments contained in these works, the author concludes that the fault principle 'is . . . no longer a useful criterion to determine eligibility for compensation. A new system is needed' (p. 14). Although this conclusion is not particularly novel, it logically follows from the survey and assessment of the tortious basis of compensation that he has developed throughout this chapter. Further, it establishes the foundation on which the rest of his book can rest.

The second chapter, 'Compensation Schemes and Proposals', is particularly useful to readers who want to quickly develop a basic understanding of the schemes existing in Australia as of the date of the book's publication. However, as the title suggests, this chapter does not restrict itself to a description of existing schemes, for the author also analyses the significant features of various proposals that have been advanced, yet not implemented.

For example, Robinson discusses many of the recommendations contained in the Australian Woodhouse report, and also documents their fate. In doing so, he has identified and expounded upon the struggle experienced by the Commonwealth government in its attempt at rationalizing this area of the law: the result is intriguing, for the reader is thereby exposed to the world of political machinations, inseparable from attempts at legislative reform. The description of the political hurdles faced by the Whitlam Government, and the pressure exerted by disparate lobbyists, including the legal profession and insurers, is enlightening. Certainly, students of tort law can now plainly see how the legislative process is one that does not operate in isolation, or a vacuum; in this way, the broad social context in which the law operates is revealed. Descriptions of this type are not limited to Robinson's analysis of the Australian Woodhouse proposals, but are also fundamentally important to his analysis of other attempts at reform, including the reaction to the New South Wales Law Reform Commission's recommendations, from 1984–1986, and the Victorian Government's attempt at reform — countered and criticized by the Law Institute of Victoria and other interest groups — throughout 1986.

There are certain flaws in chapter 2 which merit attention. The author describes and evaluates New Zealand's comprehensive accident compensation scheme, and, in doing so, refers to a number of commentators' assessments of the scheme; however, he neglects to offer the reader his independent analysis of the successes and failures of that programme. In view of the fact that a major theme of his book is the need for Australia to implement and enact a national comprehensive no-fault compensation scheme, one would have hoped for, and expected, a more detailed personal evaluation of New Zealand's unique system of compensation.

One other problem is the organization and structure of this chapter. The author discusses a number of matters: the Australian Woodhouse proposals — and their fate — the New Zealand scheme, the Victorian scheme, the Tasmanian scheme, the Northern Territory's scheme, the New South Wales proposals, a new transport accident scheme for Victoria, a post script, and finally, a reaction to no-fault proposals. It would have been more sensible to have discussed each jurisdiction, one after another, whether or not the analysis is of an enacted scheme in that jurisdiction, or an unimplemented

proposal; rather than doing so, the discussion jumps around from jurisdiction to jurisdiction, and then back again. This is particularly irksome with respect to his descriptions of the situation in Victoria, and the New South Wales Law Reform Commission proposals. For example, in his discussion of the Commission's report, once the author had described its recommendations, he should have immediately considered their 'fate' rather than doing so after discussing Victoria's new transport accident scheme. The structure of the chapter simply does not flow in the way that it should.

Of more importance, perhaps, is the misguided emphasis allocated to various schemes within chapter two. What is particularly jarring is the fact that over eight pages are devoted to a description and evaluation of the Cain Government's 1986 proposals for a new transport accident programme, and the reaction to these proposals. Only one page is added, as a postscript, to describe what the Government in fact implemented. It is recognized that this is a hazard inherent in all legal scholarship, with judicial decisions and legislative action competing with printing and publication deadlines. Obviously, one can *only* write about what the state of the law is at a given date; however, Robinson was able to include a postscript concerning Victoria's Transport Accident Act 1986, consequently making his description of the Government's proposed package seem inordinately lengthy and unnecessary. The emphasis should have been shifted somewhat, with a more detailed analysis of the compromise that had actually been reached.

Unfortunately for the author, a similar fate has befallen the New South Wales Law Reform Commission's proposals, and his discussion of these recommendations. The Unsworth Government has enacted legislative reforms. However, these are *not* along the lines envisaged by the Commission, as they involve the retention of the fault principle, without any provision of no-fault benefits. Once again, this is merely a recognition of the fact that it is extremely difficult to write prophetically about an area of the law as volatile and politically vulnerable as that concerning compensation.

'The Philosophy of a New Scheme' — chapter 3 — includes the author's examination of the principles upon which he believes a properly-enacted comprehensive no-fault compensation scheme should rest. He then focuses on the unique problems of non-earners, including homemakers, children, students, people on leave from employment, long-term and short-term unemployed who are actively seeking work and those who are unemployed but not actively looking for employment. This is a refreshing analysis of the special problems plaguing a numerical majority of the population, which is often times ignored in discussions revolving around the implementation of compensation schemes. Robinson quite properly devotes a great deal of attention to non-earners in this chapter, having repeatedly noted their particular plight in other portions of the book.

This work is of great use to the law student, legal practitioner, and all members of the public who wish to learn about the issues behind the 'fault/no-fault debate', and what problems remain to be addressed. It is a well written, clear analysis of the area, with a serious theme developed throughout: how can society equitably and justly provide care to those individuals suffering personal injuries as victims of accidents? Robinson concludes with a plea, which he hopes — perhaps naively? — will not fall on deaf ears and closed minds:

The legal profession, the unions, the insurers and other groups must reassess their positions and look towards the future. They must shed their legacies of the past and give the unfortunate victims of accidents a new and better start. (p. 79)

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