

## BOOK REVIEW

### INCOME TAX - A CRITICAL ANALYSIS

S Ross and P Burgess

The Law Book Company, 1991, 230 pages + index.

Given the complexity of taxation law in Australia, it is clear that a text of some 230 pages cannot purport to encompass each of the principles the subject of a tertiary taxation law course. Be it for this reason alone that *Income Tax - A Critical Analysis* cannot serve as an alternative to established taxation law texts. The clue as to its place stems not merely from its title, the critical analysis of Australian taxation law, but from the objective of its authors, that is, 'to fill a gap in the present literature ... to place the basic taxation concepts and the income tax system in a wider social, economic, political and historical perspective'. (p xix).

One would expect a text intended to fulfil this purpose to include a concise, informative and timely discussion of the features and rationales underlying the Australian taxation system. The authors recognise that only when one can answer the question, 'Why is the taxation system as it is?', can one place taxation law in the above perspective.

The strength of the text lies in answering this question. The answer is generally formulated through an historical analysis of the issue in question. Of particular note is the excellent summary of origins of the Australian taxation system included in the first chapter (pp 2-8). Also included are more specific historical analyses of the judicial interpretation of income and the resultant income-capital dichotomy which will augment the reader's understanding of why problems exist with this distinction (pp 31-42). The changing judicial and political attitudes regarding tax avoidance also provide a means whereby one can understand current tax avoidance opinions (Ch 10).

The authors attribute the resultant taxation system, with its imperfections, to the persistent use of income tax as an instrument of political, economic and social policy. Nowhere is this better illustrated than through an analysis of the relationship between income tax law and social security, a subject not discussed at any length in mainstream taxation law texts (Ch 8). Its particular relevance stems from the significance of welfare as a Commonwealth Government expenditure and the current focus of the Australian taxation system on income and profits. Ross and Burgess delve into welfare policy aims and link the levying of taxation to these. The controversial broad based consumption tax is also evaluated from a welfare perspective (pp 160-164, 225-228).

Throughout the text the authors include dollar figures and percentages as evidence to support their view of the taxation system. Often these are included in order to expose the disparity between theory and reality. The attempt to match the ideal qualities of a tax against the present Australian taxation system through the presentation of numerical dollar-figure evidence is an excellent example of the evaluative focus of the text, a focus often ignored in other taxation texts (Ch 2). The historical analysis upon the structure and effect of the progressive tax system contained in Chapter 1 is another useful tool to this effect. A pity then is the comparative absence of figures which would serve to evaluate the role and effect of capital gains tax, a major recent reform in Australian tax law.

Approximately half the text is devoted to a concise analysis of taxation law in Australia, through references to authorities which illustrate the 'wilderness of single instances' pervading the judicial arena (p 55). The proposed audience of the text, first-time tax law students, may, however, find some of the capital gains concepts discussed difficult to comprehend, particularly the comparatively complex references to ss 160M(6) and 160M(7) (pp 73-77). To the other extreme is the apparent cursory treatment of the *Myer Emporium* decision, especially given the authors' note that 'the significance of this decision cannot be over-estimated' (pp 48-49). Further, students are expected to comprehend the subtleties of tax avoidance schemes without being introduced to the manner of taxation of partnerships, companies and trusts.

Ross and Burgess also consider the sensitive and debated topic of professional ethics, and its application to tax lawyers in particular. This focus is a response to a view reflected by the quote below:

Requesting a tax lawyer to discuss the ethics of tax planning will be considered by some as akin to inviting the devil to deliver a sermon on sin. (p 166)

Although that part of Chapter 9 which is devoted to the discussion of the main schools of thought on ethics may appear overly philosophical, it provides a useful framework for the subsequent attempt to provide subject-specific ethical guidelines and justifications for these (p 180-182), guidelines later adopted under the heading of tax avoidance (pp 212-214).

Commendable is the comparative nature of the text. Numerous references are made to approaches adopted in the United Kingdom and the United States to solve or deal with problems facing the Australian taxation system.

Also deserving of commendation are the frequent and extensive references provided as notes to the text which serve the inquiring reader with a means to access further material in his or her area of interest.

*Income Tax - A Critical Analysis* is a welcome addition to Australian taxation literature and would be a valuable tool as either preliminary reading for first-time taxation law students or as a reference text for a tax law course. The authors have succeeded admirably in presenting a work which is largely unique in its field.

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## BOOK REVIEW

### THE AUSTRALIAN SOCIAL WORKER AND THE LAW

by Frank Bates, J.B. Blackwood,  
A.P. Davidson and K.F. Mackie

3rd edition, The Law Book Company Ltd., 1991, 357 pages.

I must first state that, as a mere lawyer, I feel remarkably unqualified to review this work justly. Ideally, the scope and contents of the book should be judged by a practising social worker or, at least, someone more well versed than I in the intricacies and needs of the social work profession. However, having declared my limited knowledge, I am also forced to wonder whether, in fact, the authors of this particular book are truly aware of the information needs of social workers.

There is no denying that there is an abundance of extremely useful legal information given throughout the book generally. From the first chapter, entitled 'Law and the Social Worker: Some Preliminary Observations', through to chapters including basic and important detail about court structures at both federal and state levels; about bringing legal proceedings and the law of evidence; about criminal, family, consumer protection, tenancy, social welfare and employment law; and about the provision of legal services and legal aid, the book covers a wide range of topics that must undoubtedly be of major interest to social workers. The book is also wide-ranging in that it attempts to cover all the Australian jurisdictions, thereby hopefully making it a useful reference for social workers throughout Australia.

Accordingly, I have no quarrel with the legal information *per se* contained in this book. Being the third edition, much of the previous edition has been rewritten to bring it up to date. Unfortunately, and through no fault of the authors, the information contained in Chapter 8: 'Social Welfare Laws', relating specifically to social security legislation, is already out of date, given the enactment of the *Social Security Act 1991* (Cth) which came into operation on 1 July 1991. Nevertheless, the bulk of the book remains a valuable and relatively easily read summation of major Australian laws, considered in the context of Australian society as a whole.

My reservations about this book relate exclusively to its usefulness specifically for *social workers*. Certainly, social workers, like others, should find the book of general utility. But is there any reason why *social workers* should consult *this* book rather than any other general text on law or, indeed, rather than any more specific text (in relation to both jurisdictional and subject coverage)?

Apart from the first chapter, 'Law and the Social Worker', and apart from generally being about 'the law' and, more specifically, about the law that is likely to affect the clients of social workers, the book appears to have no direct relevance to what I imagine to be the day to day work of social workers.

Certainly, Chapter 1, as well as containing a brief overview of the legal system, discussion of the relationship (and conflict) between the legal profession and the profession of social work, does include discussion of the legal position of the social worker in relation to her or his clients. As the authors state (at pp 11-12), '[t]he legal position of social workers is somewhat amorphous', having not yet been tested in the courts, and especially given that first, 'the scope of much welfare work is not clearly delineated' and secondly, 'by definition, the people with whom social workers deal are, in one way or another, in a disadvantaged position in a general social sense and, especially, in regard to the law and its administration'. Accordingly, 'the ascertainment of relevant standards of care is made more difficult' than in the cases of, for example, doctors and lawyers. However, as the authors continue (at p 12), 'it is impossible to imagine that no client in Australia has suffered damage as a consequence of welfare work being improperly performed ... and it is important for both social workers and their clients to know of the possibility of legal redress and the forms which it is likely to take'. There follows a discussion specifically of the effect of inaccurate and misleading advice in the context of social security payments, and more generally of liability in negligence, including liability for negligent misstatement. The chapter goes on to discuss the social worker's professional duty of confidentiality, noting (at p 19) that, in fact, 'there is no general duty of confidentiality laid down in respect of all social workers in Australia [although] there may be specific duties arising out of particular employment and a moral and professional obligation is, of course, recognised and respected'. Importantly, it is also noted (at p 21) that there may be occasions 'where confidentiality must, or may, be breached', for example, under compulsory reporting laws, eg, the *Child Protection Act 1974* (Tas); or where the client consents to disclosure of confidential information; or (but more unlikely) where a charge of misprision of felony<sup>1</sup> is brought against a social worker.

It is clear that such information is (or should be) of importance to social workers in their dealings with clients and with the legal system. Presumably, it is information of this sort (amongst others) that social workers seek to discover from law books that purport to relate to their profession. This chapter could thus probably have gone further in detailing the legal responsibilities and liabilities of social workers. However, a number of useful references are given for further reading.

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<sup>1</sup> 'Misprision of felony' is the criminal offence of concealing one's knowledge of a serious crime committed by another person.

It is as the book progresses that I have difficulty specifically relating it to the profession of social work. Undoubtedly, social workers require a generalised knowledge of the law and, again, undoubtedly, this book provides a good basis for that knowledge. But is there any real need to address this book specifically to social workers? There is no real (as opposed to token) attempt made to incorporate or explain the actual day to day experience of being a social worker who is working in (or against) the Australian legal system. Rather, the chapters provide a (good) overview of 'the law', albeit 'the law' that is seen by the authors to be relevant to the clients of social workers. However, I would have thought that, in a book purporting to be about *social workers* and the law, more was necessary. That is, I would have thought that more *practical* legal information was necessary. For example, Chapter 4: 'The Family: Its Creation, Subsistence and Dissolution' contains (at pp 100-110) a good overview of the various laws relating to domestic violence. Was it beyond the scope of this book to have also included some discussion, for example, of the practical assistance which a social worker could give to a client who has been battered by her husband? That is, given the existing law, what is it that a social worker can specifically *do* within the confines of that law? What are the practical steps that a social worker and her or his client can take to obtain some form of redress or relief? Apart from generalised information relating to commencing legal proceedings in court (pp 33 and 34), this book does not provide the answers.

Accordingly, I view this book with mixed feelings. I have no hesitation in recommending it as a general and comprehensive overview of a wide area of law, and, as such, it has value to all potential readers, both legal and lay. I do hesitate to recommend it as a book specifically for social workers, although acknowledging the usefulness of parts of Chapter 1. It is not enough, I think, to say, as the authors do (at p 1), that '[t]he areas dealt with in this book are those which are of greatest relevance to the social worker ...'. The areas may well be of the greatest relevance to the social worker, but there are many other texts which deal with the same areas separately in a similar fashion and which may well be of more relevance to social workers in particular jurisdictions.

I have three other quibbles in relation to the book. They relate more to aspects over which the publishers have control. First, the authors note (at p 2) that 'in many areas of law with which the social worker is concerned, the predominant source of the law will be Acts of Parliament'. Why then is no table of statutes included? Certainly, there are many references to legislation throughout the book. There is a table of cases; why no corresponding table of statutes? Secondly, why has no bibliography been included? A considerable number of important and informative books, articles and reports have been referred to throughout the book. It is extremely annoying and time-consuming to be forced to shuffle through the pages again to find such references. Thirdly, I would think that it would have been useful, especially for lay readers, if a glossary of terms could have been included. Legal terms and concepts are used

frequently throughout the book. Sometimes they are accompanied by an explanation, but not always. Even if all terms were adequately explained in the text, it would still be useful to have a separate section of the book as a glossary for easy reference.

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