

# REVIEWS

## VICTORIAN CRIMINAL PROCEDURE State and Federal Law

by Richard G. Fox; 7th Edition,  
1992, Monash Law Book Co-operative  
Limited; \$30.00

With all the recent State and Commonwealth legislation affecting criminal procedure in Victoria, particularly the *Sentencing Act* 1991, the *Children and Young Persons Act* 1989, the *Magistrates' Court Act* 1989 and numerous amendments to the Commonwealth *Crimes Act*, you might think an up to date guidebook had become necessary. Fortunately, with the timely publication of the 7th edition of Richard Fox's *Victorian Criminal Procedure*, we have been given one.

The great virtue of this publication to a practitioner is the clear and concise explanation and drawing together of provisions in the relevant legislation. If nothing else, it provides a means of checking that you have not missed anything when trying quickly to come to terms with the new and sometimes complex provisions. There's something reassuring about confirming that you did get it right, especially by consulting the work of one of the leading experts in the field.

An extensive table of contents, which at first sight is a bit overwhelming, makes it easier to find one's way around the book, especially once the logic of its structure is appreciated. The inclusion of diagrams on the prosecution and various appeals processes together with samples of key documents is an added advantage, particularly for those who are less experienced in the jurisdiction.

The first three chapters provide a general introduction to the operation of the criminal law system which is of use to students and practitioners alike. Many topics of practical importance

are covered such as: persons who may be proceeded against, territorial jurisdiction, time limits, disclosure of witnesses' identity and statements, payment of legal costs and the jurisdictions of the various courts.

From Chapter 4 onwards, the book progresses in a chronological fashion from the stage when a prosecution is merely a twinkle in a police officer's eye until a convicted defendant's last hopeful tilt at an appeal. On the way it covers arrest, investigation, the laying of charges, bail, the various hearings and sentencing.

The emphasis on logically following through the criminal process is reflected in the way that federal law is covered topic-by-topic alongside the equivalent State law rather than in a separate block. So, instead of dealing with federal sentencing law in one go, it is covered under each type of disposition. While this would assist someone dealing with a combined State and Commonwealth prosecution, the novice to federal criminal prosecutions may find it more difficult to gain an overview of the Commonwealth provisions.

The coverage of this very broad area of law is astonishingly comprehensive. As one example, while most of us would have been amazed to hear that a person successfully challenging Phil Cleary's qualification for office could retain all or part of any penalty imposed on him, anyone who had read pages 37-38 of Richard Fox's book would have not been surprised.

While its coverage of the legislation is one of this book's strong points, the references to case law are less comprehensive. It provides a useful starting point for research but cannot be solely relied on for relevant cases.

However, this is not a significant drawback and, at a recommended retail price of \$30, anyone who practices in the criminal jurisdiction would be crazy not to buy a copy.

**DENNY MEADOWS**

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## CHILDREN AND THE STATE Social Control and the Formation of Australian Child Welfare

by Robert Van Krieken; Allen and  
Unwin, Sydney, 1992; \$19.95.

What people think and what people do are important — and this must be acknowledged by those researching and studying child welfare systems. This is one of the main messages of Robert Van Krieken's new book *Children and the State*.

The book provides a short history of child welfare in Australia up to 1940. In doing so, it explores and evaluates various perspectives on the character of State intervention in children's lives — and provides an empirical history of major turning points in the development of child welfare from 1800 to 1940. The aim of the book, therefore, is not to simply set out the 'facts' of child welfare history; it questions both the selection of relevant 'facts' and the role of established theoretical frameworks in sociological and historical work of this nature.

The book is divided into two main parts. The first part outlines the work of writers who are critical of the operation of power in the welfare state — such as Platt, Lasch, Donzelot and Myer. According to Van Krieken, mainstream sociological and historical approaches to the development of State regulation of family life have been dominated by the 'social control' perspective. This perspective, it is argued, exaggerates the role that State action has played in constituting the social order. It also tends to reduce human beings to the status of 'objects' who are acted upon by the State, rather than 'subjects' who contribute to their own history. Instead of seeing history as a straightforward relation of dominance between the State and the family, the author wants us to deal with

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more complex questions. What were the responses to State intervention in families affected by child welfare agencies (and also those not so affected)? What was the active role they played in this process?

The second part of the book explores these questions empirically. The development of Australian child welfare history is divided into four periods. The initial chapter deals with the role of children in the first period, colonial Australia, and the official response to 'neglected and destitute children'. In the second period, 1840-1890, the book examines how developments in working class culture and politics helped to found a State social policy of producing 'good and useful men and women'. The third period examined is 1880-1915, and here the beginnings of a rationalisation of child welfare are explored. This chapter also examines the State's response to Aboriginal child welfare, a treatment which indeed fits the classical 'social control' model. The final empirical chapter outlines the development of a more scientific approach to child welfare, and the reliance on psychological and psychiatric ideas to explain the causes of and solutions to problems among children and young people.

*Children and the State* is a challenging book in a number of different ways. It is directed at two audiences — those interested in child welfare issues and welfare state practices, and those interested in key debates in historical sociology. The sophisticated language and argument, however, mean that, particularly in the theoretical sections, the casual reader may have some difficulties in assimilating the central ideas. On the other hand, the grounded historical sections do offer interesting information and interpretations of the role working class people played in child welfare.

Of special interest is Van Krieken's argument that the majority of working class men and women had their very own good reasons to be committed to sobriety, cleanliness, punctuality, orderly behaviour, etc., without the

coercion of middle class reformers. In other words, elements of working class culture affecting large sections of the working class proper overlapped with the values and sentiments of middle class reformers. This argument directly challenges some of the 'social control' perspectives which view the relationship between the classes as basically one-sided.

A second contentious issue addressed by the author is that of the character of the child welfare system itself. Rather than seeing it solely or primarily as a 'negative' form of 'social control', Van Krieken suggests that the effect of the extension of State involvement in family life very much depends upon the specific issues (e.g. Aboriginal children) and the specific circumstances within which policies are designed and carried out (e.g. the push to de-institutionalisation).

This book has much to commend it for those who want more than simple descriptions of child welfare. It offers a sophisticated analysis of the construction of child welfare policies and institutional practices. Furthermore, it critically discusses the theoretical underpinnings of mainstream child welfare research and provides new conceptual insights into this area of social analysis.

The main reservations I have are to do with the presentation of the material, and the overall direction of the alternative analysis provided by Van Krieken. While the theoretical discussion is welcomed, the technical language in which it is couched may be offputting for some readers. It is not a 'light read' by any stretch of the imagination.

*Children and the State* is nevertheless a stimulating and solidly argued book which provides valuable insights into the history of child welfare in Australia. It is also a book which needs to be read carefully; for the complexity and subtlety of the argument used to support a view of society which itself warrants further critical attention. This is particularly the case for issues surrounding the reproduc-

tion of inequality, oppression and exploitation over time, and the structures of Australian society which create the conditions for the injustices in child welfare that do occur.

**ROB WHITE**

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## **ADOPTION AUSTRALIA** **A comparative study of adoption legislation and policy**

by P. Boss and S. Edwards;  
National Children's Bureau of  
Australia, Mulgrave, Victoria, 1992;  
\$35 (plus \$7 p&p).

Adoption of children has existed since structured society began, although the motivation has varied from society to society as have the methods and consequences. In English and in early Australian colonial society *de facto* or informal adoptions were not uncommon, although the motivations were often mixed and at times highly suspect by modern standards. The law was slow to regulate these delicate relations. Western Australia led the way in 1896 but, broadly speaking, the other States did not follow suit until the 1920s. They then followed a fairly uniform pattern and the accepted principles and the social background remained relatively static until the dramatic changes of the 1970s. Then with the availability of supporting parent pensions, changes in contraceptive knowledge and in general social and religious attitudes, fewer children became available for adoption and there has been a dramatic challenge to the concept of secret or closed adoptions and a strong but uneven movement toward 'open' adoptions.

Consequently, this work by Professor Peter Boss and Ms Sue Edwards of the National Children's