

Much of the material in the collection was written in the 1980s and at times, appears slightly dated. Media coverage of some recent killings of women (and the subsequent passage of 'stalking' legislation in New South Wales and its consideration by other jurisdictions) suggests that some of the worst excesses of slanted coverage and victim blaming found in the British media belong either to the past or were never present here. The short essay by Sandra McNeill 'Woman Killer as Tragic Hero', though based on the British experience, is an incisive criticism of media coverage of femicide, and Australian readers are likely to find it enlightening and thought-provoking.

Jill Radford's criticism of the British legal system's treatment of femicide certainly strikes a chord in Australian jurisdictions. Her well-founded anger and frustration at the insults so frequently meted out to female victims of violence by the legal system's failure to adequately censure their attackers leads her, however, into murky waters.

For example, she says in her article 'Womanslaughter: A Licence to Kill?':

That men charged with murder of their wives be allowed out on bail is, I suggest, quite wrong and is a further indication of the trivialising of violence against women within the legal system.

By making a statement so outrageous from a legal point of view, Radford sets herself up to be dismissed by the legal establishment as an extremist or a lightweight.

The political power of the criminal bar is considerable and has most recently been demonstrated in New South Wales by its spirited campaign for the retention of unsworn statements by accuseds at trial. If change is to be achieved, that power must be either co-opted or circumvented, and it behoves those of us who are legally trained to present the case for change in a way which speaks to the legal establishment.

On the subject of pushing for change, Part 6 of this book is particularly worthwhile reading. Titled 'Women Fighting Back Against Femicide', it presents some individual stories of action which, while they may not be directly translatable to our own situations, are nevertheless inspirational.

It is a pity that this book will probably be read only by feminists because even for those who are resistant to feminist rhetoric, there is much of interest and value in it.

**MARION ROSE**

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## Domestic Violence in Australia

by Nicholas Seddon; second edition, Federation Press 1993; 162 pp; \$25.00.

*Domestic Violence in Australia* is an excellent practical guide to the legislation (current at the date of publication) which is relevant to domestic violence. It also summarises the resources which are available for survivors of violence including directories of relevant services. Most importantly it is written by a lawyer, Nick Seddon, in language that is actually comprehensible to a lay person such as myself; translation of legalese into simple language is truly an admirable feat.

For those who have read the first edition of the book, the structure and content are the same. The only differences I could find are that the second edition updates legislation and research, provides a directory of services, and the colour of the roof and door of the fractured house on the cover have changed! Aside from reviewing the laws, the author explores the social context of domestic violence in the first chapter, including a rather simplistic examination of incidence, causes and patterns. Although the discussion on the latter was necessarily brief, one did feel that certain omissions were obvious. For example, how can one discuss why victims do not leave, and omit any mention of the low self-esteem and other emotional by-products of living in violence? These are mentioned in the next chapter's discussion of battered woman syndrome but would be better introduced in this first chapter.

The relevant criminal law is examined in Chapter 2 and includes: marital rape laws and domestic violence as a defence to a criminal charge, police powers of entry, special powers of detention or arrest, bail, compellability and sentencing. Wherever change has taken place, Seddon reviews the legislation, jurisdiction by jurisdiction. He briefly mentions police and/or prosecution decisions not to prosecute and the leniency of magistrates noting that the criminal law does not provide adequate protection of victims. The remaining three chapters explore the other potential legal remedies.

Chapter 3 looks at the Family Court. First, Seddon discusses the differing

views on whether that forum should consider a history of spouse abuse and concludes that the weight of such assault as a mitigator is extremely variable within the Court in proceedings of guardianship, custody, access, property and maintenance. Next, non-molestation and non-violence injunctions which can be obtained through the Family Court are fully described, with the author inferring that the procedures are too onerous, slow, expensive and ineffective. Further, the Court's ethos of counselling and conciliation may be inappropriate within a context of on-going marital violence.

Entitled 'Other Non-Specific Remedies,' Chapter 4 summarises what sort of remedies were available in each State prior to the introduction of domestic violence legislation and how they continue to be used when someone is unable to gain a protection order. Seddon also provides a description of tort injunctions and damages and criminal injuries compensation and sets out the requirements which tend to discriminate against their successful use by domestic violence victims.

The lengthiest portion of the book is the final chapter which provides an in-depth survey of protection orders. Workers and other interested people can turn to the section on their State or Territory and find a comprehensible synopsis of who can apply, the type of orders available, criteria for obtaining an order, duration, how to vary an order, breaches, procedures, and other details. The interstate legislative diversity of domestic violence legislation is laid out in fine detail and yet the author must be inured to this since he makes little comment or comparison except for a useful summary of research on the jurisdictional differences in the frequency with which police initiate orders.

Perhaps because he is a lawyer and not a social scientist, and due to the purported role of the book as a handbook for workers, Seddon also does not evaluate the available literature in a comprehensive manner nor state his opinion about whether the laws are working. Some comments and evaluation-type studies are included although there is a noticeable absence of a few of the latter.<sup>1</sup> In future editions, I would suggest that these bits and pieces on efficacy that are interspersed throughout the book should be expanded and constituted as a closing chapter to highlight empirical and anecdotal evaluation of all the legislative components. Such information would assist the 'helpers' for whom the book is

written in their potential role as advocates for necessary legal change.

There is one other problem with *Domestic Violence in Australia* that must be mentioned although it is undoubtedly unavoidable to a certain extent. It is unfortunate (for the author) and fortunate (for the victims) that domestic violence is an area of law that is quite fluid. Amendments are often in train to fill the gaps and pitfalls that become apparent over time. For example, in the months after this second edition's release, we have experienced enactment in most jurisdictions of anti-stalking legislation or plans to do so. An example of other changes, (prompted in this case by another tragic murder) is the New South Wales

*Bail (Amendment) Act* which provides that if an individual violates an order the court will now deliberate on each case and consider the history of violence instead of automatically granting bail. Amendments to the *Crimes Act* in that State have also seen the introduction of a panel of authorised justices who are available to issue interim orders outside of court hours. Seddon does mention some of the legislation 'in writing' but misses a few. Given the number of modifications, it may have enhanced the book if he had foreshadowed more of these changes perhaps in the recommended concluding chapter.

Despite the lack of perfect prophesy and social analysis (and the sub-title,

'The Legal Response' obviates the need for either), *Domestic Violence in Australia* is a concise and well written handbook for those involved in assisting survivors of domestic violence.

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#### Reference

1. Mugford, Jane and others, 'Domestic Violence', Research Paper No.1, The Community Law Reform Committee of the ACT, Canberra, 1993; Ratus, Zoe, 'Rougher than Usual Handling', The Women's Legal Service, West End, Queensland, 1993.

## Can Responsible Government Survive in Australia?

by David Hamer; University of Canberra, 1994; \$24.95

There has been more than one recently released book by a politician worthy of note. David Hamer, the author of *Can Responsible Government Survive in Australia?*, has served in both Houses of the Federal Parliament, including seven years as Deputy President of the Senate. His focus in the book is not a narrow individual one but the far broader matter of what system of government we possess in Australia and what system of government we might yet aspire to and achieve.

For David Hamer, our system of government is in fact a thinly disguised elective dictatorship, and responsible government is strangled by the demands of our party political system. Government is seen to be hostage to the straitjacket of the party system which provides the greatest threat to responsible – or accountable – government.

However, this book is not simply a call to arms against the perceived evils of our system of government but a clear exposition of the workings of that system and a comparative account of the Westminster system of responsible government in 19 parliaments: those of the Australian Commonwealth and those of several other countries. Seen through this lens, the Australian system of government is presented as one of many variations on the Westminster system and one of the least effective. In fact, not one of the systems examined in the context of responsible government is seen to actual-

ly live up to that claim. Not one is genuinely accountable in the political sense and in the sense which the public expects. Not one lives up to the concept of responsibility in the Bagehot sense. Rather, what they are seen to have is party government, where the party which wins the majority of seats in the lower house of the parliament forms the government and its leader becomes Prime Minister. This is seen to effect a distortion because from that point, the responsibility is not to the parliament but to the caucus of the government – party MPs. The growth of party discipline is presented as the major cause of the destruction of the system of government prescribed by Bagehot. This startling premise informs the book and provides it with a clear rationale and reader expectation that reforms will be proposed.

Nor is the reader disappointed in this expectation. Hamer provides striking evidence of what he considers to be wrong with an elective dictatorship and offers a number of thought-provoking solutions. Citing the Nazi dictatorship as an extreme example, Hamer suggests that elective dictatorships possess 'disturbing common patterns'. The dangers include the crude and unsatisfactory nature of responsibility to the electorate; the defective nature of answerability to the parliament; the power of the government to make judicial and other top level appointments; parliament's inability to assert proper control over the government's defence and foreign policy activities and finally the extent to which government possesses control over the legislative process. For Hamer, the 'bypassing of parliament as far as legislation is concerned is the most serious consequence of elective despotism'. Hamer clearly considers that the Australian House of Representatives has failed in its legislative role and the wording used here is strong:

No other national parliament treats the legislative role with such contempt as does the Australian House of Representatives.

Is this empty rhetoric from one burned out by the system? It does not seem so. The author really seems to believe that the Australian House of Representatives can regain its role as an effective legislature. One of the most productive aspects of this informative and thought-provoking book is that rational and seemingly sensible solutions are proposed. Hamer proposes, inter alia, that the Australian parliamentary term be increased to four years, noting that apart from the Australian States, all the other 12 parliaments under consideration serve five-year terms. He proposes, a reformulation of the role of the Senate (particularly the provision of Ministers by the Senate) and of the committee system, the exclusion of party politics from the election of the governor-general, and an impartial speaker.

Several aspects of the book are particularly interesting. First, there is the dissection of the Australian system, applying some reflection and description that is increasingly recognised as vital and neglected in our fields of study. Then there is the implicit proposal of a bill of rights type solution to our perceived weaknesses and a plea that the parliamentary system not atrophy any further. Whether or not one is convinced by the criticisms of our parliamentary system, it is refreshing to consider that here is another politician who has put his mind to possible solutions to perceived in-house problems that hold enormous national and community implications.

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