

The Australian Social Worker and the Law, by FRANK BATES, LL.M. (Sheff.), M.A.C.E., Reader in Law, University of Tasmania, J. B. BLACKWOOD, LL.B. (Tas.), Senior Lecturer in Law, University of Tasmania, A. P. DAVIDSON, LL.B., Dip.Ed. (Exe.), LL.M. (Tas.), Senior Lecturer in Law, University of Tasmania, K. F. MACKIE, LL.B. (Tas.), Lecturer in Law, University of Tasmania. (Law Book Company Limited, Sydney, 1985 2nd ed.), pp. i-xiv, 1-280, with Table of Cases and Index. Limp recommended retail price \$19-50 (ISBN 0 455 20300 8).

More years ago than memory willingly contains, I and my contemporaries at the University of Sydney sat through a subject called 'Legal Aspects of Social Work' taught by an academic lawyer. Painstakingly, he conducted us through the New South Wales Matrimonial Causes Act and Child Welfare Act, the Commonwealth Social Services Act, landlord and tenant legislation and other such statutes as our educators, in their wisdom, thought were necessary knowledge for social workers. He introduced his novices to the mysteries of torts and workers compensation. He led us along the paths of court procedure and rules of evidence. He also called a roll. The lectures were held at 5.30 p.m. and, as the year progressed, fewer and fewer students responded to the roll call on behalf of more and more of their peers. The academic lawyer's task was a thankless one. To this day, however, some of his students may recall, with great accuracy, all the grounds for charging a child as neglected, including being found in the company of a common prostitute, or in an opium den, what might constitute breach of promise, or whether an act of bestiality was a sufficient cause for divorce.

The content of *The Australian Social Worker and the Law* gives one a feeling of *deja vu*. All the traditionally recognised areas of the law are encompassed – crime, family law, children, consumer law, landlord and tenant and something called social welfare legislation which, on closer scrutiny, is concerned with income security provision, the Social Security Act and its appeals system as well as benefits and entitlements for veterans and their dependants. The intricacies of employment law are addressed as they were in the past, but there are chapters on legal services and minority groups as well as sections dealing with the relationship of the law to social work and social workers. These latter are an innovation, because the academic lawyer of decades past, if he considered it at all, certainly did not introduce his students to the differences between the occupational groups and their respective modes of practice, nor were minorities of particular interest to the law at that time.

The authors remark that “[a]s the frontiers of knowledge continue to develop, the law, legal processes and lawyers are forced into contact with an increasing number of novel areas. One of these areas is social work” (page 5). This is an interesting comment on two counts. Firstly, the organised profession has existed in Australia for a period of half a century or so and for rather longer in Europe and North America. Secondly, social work is concerned at base about social justice. Must one assume novelty for the

business of social work, or is it that lawyers find the matter of social justice novel? Surely neither can be the case. The authors, through the literature on social work and the law, explore the differences between, and the complementary aspects of the occupational groups. This is a useful exercise and its reading is to be commended as much to lawyers as to social workers. The former, one suspects, often perceive the latter as anarchic.

Of increasing concern to social workers is their own legal position. Quite recently, for example, the professional association has taken out indemnity insurance to cover its members. The authors note that Australian courts have not yet recognised legal duty of care in the case of social workers, but social workers are, and have been, quite capable of doing harm to their clients. That harm can be of quite catastrophic proportions and practising social workers are perhaps fortunate that to date their clientele has not been particularly litigious. For the purposes of this book, however, it is unfortunate that the authors must be hypothetical, since a few documented cases in law may shake social workers into a realisation that 'there but for the grace of God go I'. Similarly, it is fortunate that the common law offence of misprision of felony (have social workers even heard of it?) is rarely invoked, since there are few social workers in practice who have not been guilty of it.

A constant conflict for social workers is the matter of confidentiality in relationship to privilege. Apart from ethical considerations, confidentiality is an important tool of social work. In many cases, the relationship between client and social worker cannot be sustained without it. It is fundamental to the trust without which many modes of social work intervention would be rendered inoperable. In the ordinary course of events, practising social workers are often under pressure, for example by the police, to reveal information about their clients, and regrettably, from time to time members of the legal profession have been known to attempt to bluff social workers into similar revelations. It is a pity the authors are not rather more specific on this matter because it is one thing to state that 'there is no general legal duty of confidentiality' and quite another for social workers to be subject to the harassment of those who claim a superior position in law. One solicitor relentlessly pursued a social worker for information, through her employing agency, through the higher echelons of the Health Department and finally, through her professional association, until, with the battle lost, he remarked, with rancour, that the information was not privileged. It seemed appropriate to point out, with respect, that he had not as yet been elevated to the bench! Social workers *do* worry about having to disclose confidences before a court. They worry about what purposes their written records might be put to in court. The authors cite A.R.N. Cross on privilege which prevails for solicitor and client:

[c]andour (in the relationship) is essential, and the subject matter with regard to which legal advice is sought, as well as the circumstances in which it has to be given, often renders it improbable that the fullest confidences would be exchanged if communications between the client and his adviser had to be disclosed (page 33).

Undoubtedly social workers endorse the same sentiments, but there seems little likelihood of extension of privilege if the proposals of the Australian Law Reform Commission are influential.

Of further concern are the implications of recent freedom of information legislation. The authors' brief discussion of this suggests that much of what is recorded by social workers, which is of a confidential nature, would be exempt from disclosure under existing legislation. Hypothetical questions are difficult within the ambit of this book, but one raised recently by a social worker may make for interesting exploration. Who 'owns' the social worker's record? The client? The social worker? The employing agency? Does 'ownership', for example by an employing agency, confer access? And, if so, access by whom? For social workers employed by Commonwealth or State bureaucracies, the answers may be clear, but many social workers are employed in a diversity of voluntary agencies, semi-statutory organisations, or by community groups funded by government. The answers for them are not certain and yet social workers thus employed are confronted not infrequently by the questions. In a way, this is a serious, if understandable, shortcoming of this book. The legal 'what if?' questions are the ones which most commonly plague social workers, and which are least likely to be answered by lawyers with their passion for precision, logic, evidence, case precedent and legal test.

The fact of the matter is that many of the 'legal' questions which exercise social workers have not been tested in law because of the lack of resources of social workers' clientele, their employing agencies and the profession itself. This state of affairs leaves practising social workers vulnerable to the exercise of sometimes less than legitimate power ploys and exempts poor social work practice from the scrutiny of due legal process.

The statutes which social workers most commonly encounter in practice are much more comfortably encompassed by the authors. However, legal change must be a perennial problem for publications such as this. The authors, in preparing the second edition, noted the need for considerable rewriting since the first edition of 1979, and, if the book is to remain a useful reference for students and practitioners, further editions will be necessary. The law, although regarded as conservative, is sufficiently dynamic to require constant vigilance. It is hoped the authors will do this, otherwise *The Australian Social Worker and the Law* will pass into history like those lectures on the legal aspects of social work of decades past. When another edition is planned, a table of relevant legislation would be welcome. It is surprising to find a Table of Cases, but no listing of legislation, no bibliography or reports of committees of enquiry which may be illuminating on some legal aspects of social work practice. While the authors have largely avoided the excesses of legal terminology, a glossary would be a useful inclusion, if the book is intended to inform social workers. Finally, the

inadequacy of the index must be rectified. If one is foolish enough to lose one's place, finding the reference again demands research skills, considerable time and a cool and equable temperament.

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The State, the Law and the Family: Critical Perspectives, edited by M. D. A. FREEMAN, Professor of English Law, University College, London. (Tavistock Publications, London, 1984), pp. i-ix, 1-318, with Table of Cases, Table of Statutes, Name Index and Subject Index. Limp recommended retail price \$21.95 (ISBN 0 422 79080 X).

This collection of papers is the product of a workshop on family law held by the London Institute of Advanced Legal Studies in July 1983. Matters canvassed include maintenance, domestic violence, child protection, and conciliation, and at a meta-level paradigms such as public/private, State/family, and patriarchy/equality enter the analyses.

In a paper entitled "Resolving Family Disputes: A Critical View"¹ Bottomley challenges some of the fundamental assumptions underlying the discourse on conciliation:

[f]irst, is there equality of power in the relationship between the parties, and between the parties and the mediator? . . . Second, despite the presentation of the mediator in terms of neutrality and objectivity the mediator may be the purveyor of a particular pattern of beliefs that would tend to favour a particular 'resolution' to which the parties give their formal agreement.²

Bottomley's concerns may be counterpoised by a reading of Gerard's preceding paper, "Conciliation: Present and Future".³ An adherent of the conciliation process, Gerard leaves the reader with the impression that a big brother approach is an inherent and desirable aspect of the conciliator's role and function. For example, consider the following extract from her paper.

What happens if . . . the parties reach an agreement not in the best interest of the child? Personally, I find it difficult to envisage a situation in which parents could make such arrangements under the eyes of a conciliation or welfare officer. He/she would undoubtedly express views concerning the child's welfare in a way the parties can understand and accept.⁴