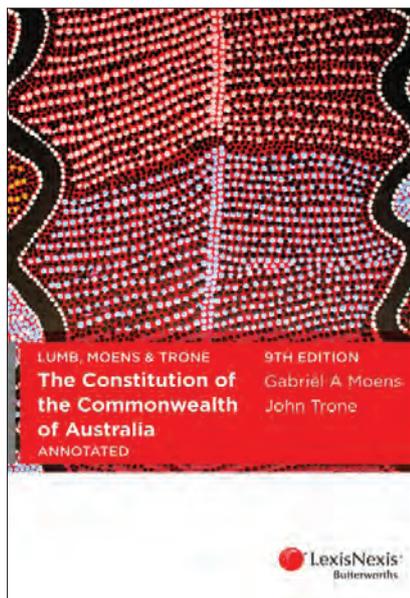


Lumb, Moens & Trone *The Constitution of the Commonwealth of Australia Annotated* (9th ed)

By G Moens & J Trone | LexisNexis Butterworths | 2016



The authors, Gabriel Moëns and John Trone, did not set out on a grand project to examine the shifting jurisprudence of Constitutional law.

The book, by any measure, is relatively small and compact, weighing in at some 600 odd pages. It is not a heavyweight text on Constitutional jurisprudence and neither is it supposed to be.

It is a neat, annotated explanation of the Commonwealth Constitution. It charts the Constitution section by section and contains relevant commentary and materials. It also contains important High Court decisions up until April 2016.

It is designed for a wide audience (including non-lawyers) however it should not be dismissed as a book reserved for students and non-legal professionals only.

Indeed, the foreword to the eighth edition, written by the Chief Justice Robert French AC, notes that the book is accessible enough to the student or non-specialist practitioner yet it also acts as a useful starting point for a deeper inquiry.

Practitioners will find it useful for its quick and accessible explanations of all the various sections of the Constitution and it may prove useful to those who find themselves in various state and federal tribunals.

Structure

As with the Constitution the book is also divided into 8 Chapters with every corresponding section set out in the relevant chapter.

Each section of the Constitution is set out in a highlighted area followed by commentary and a synopsis of major High Court decisions on the section. Important passages from some High Court decisions are also extracted.

It is not a heavyweight text on Constitutional jurisprudence and neither is it supposed to be.

Well-known sections of the Constitution have more detailed commentary and contain numerous High Court decisions that go into considerable depth. For example, the commentary relating to section 51 is sufficiently detailed to capture the historical development in jurisprudence of important High Court decisions.

The book contains a very helpful introduction that explains and gives further context to the Constitution. These include certain themes such as the federal nature of the Constitution, financial and trade relations, legislative, administrative and judicial corporation, separation of powers, judicial power and Constitutional interpretation.

Further topics (titled 'preliminary issues') are also discussed including the acquisition of sovereignty over Australia,

Australia's Constitutional relations with the United Kingdom, the role of precedent in Constitutional cases and the concept of proportionality.

What is helpful, particularly for those who will use this book as a stepping stone for further research is that the book contains references to important secondary texts that further illuminate a section or issue that is being discussed.

Important decisions in the current edition

The 9th edition contains some important recent decisions to note.

Chapter I (the Parliament) has been considerably revised in light of the decision in *Australian Electoral Commission v Johnston* (2014) 251 CLR 463 where the Court of Disputed Returns declared that the Western Australian Senate election in 2013 as void.

This book also discusses the recent High Court decision of *McCloy v New South Wales* (2015) 325 ALR 15 in which the majority of the court re-formulated the implied freedom of political communication test set out in the decision of *Lange*. McCloy's case resulted in a three stage proportionality test. The text also refers to *Unions NSW v New South Wales* (2013) 252 CLR 530, which was about the implied freedom of communication on governmental and political matters within the context of political donations.

Chapter II (Executive Government) also contains extracts of the decision in *Williams v Commonwealth (No 1)* (2012) 248 CLR 156 where the court restricted Commonwealth executive power to contract and spend without parliamentary authorisation.

Chapter III (the Judicature) has been revised to include some important

BOOK REVIEWS

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decisions. In *Australian Communications and Media Authority v Today FM (Sydney) Pty Ltd* (2015) 317 ALR 279 the court held that the broadcasting authority (ACMA) did not violate the separation of judicial power doctrine when it determined that a Sydney radio station had engaged in criminal conduct. Readers may remember that this case involved radio hosts prank calling a nurse who tragically committed suicide a few days later.

In *Plaintiff M68/2015 v Minister for Immigration and Border Protection* (2016) 327 ALR 369 the court held

that Commonwealth participation in the detention of asylum seekers (at the Nauru Regional Processing Centre) did not infringe Chapter III.

The decision in *Kuczborski v Queensland* (2014) 254 CLR 51 examined the Constitutional validity of Queensland's 'anti-bikie' laws. Further, the book also discusses the decision in *Condon v Pompano Pty Ltd* (2013) 252 CLR 38 where the court upheld a Queensland state law which empowered the Supreme Court to declare that an organisation was criminal organisation based on confidential criminal intelligence.

Conclusion

A small and handy annotator that can be surprisingly detailed in parts.

A very useful first port of call for a student or non-specialist practitioner needing a succinct explanation of a particular provision of the Commonwealth Constitution.

It may also serve well for the more experienced advocate or a diligent junior as a starting point in a long and winding enquiry into the depths of Constitutional law.

Reviewed by Ali Cheema

The Law of Tribunals: Annotated Civil and Administrative Tribunal Act 2013 (NSW)

By John Levingston | The Federation Press | 2016

Tribunals are playing an increasingly visible role in the legal system in Australia. Since the NSW Civil and Administrative Tribunal (NCAT) commenced operations in January 2014, there has been a considerable development of case law on tribunal operations, especially the biggest division in NCAT; the Consumer and Commercial Division. The tribunals operating in other states and at federal level are likewise featuring more frequently in the online law reports.

Moreover, there has been, anecdotally, an increasing awareness within the broader community, at least in NSW, of NCAT and its role within the legal system.

In NSW, NCAT administers the dispute and application processes arising under an increasing amount of legislation. It is far more visible than any of its many predecessors.

This book is an invaluable guide for the busy practitioner. While its emphasis is obviously the NSW legislation, it has a

handy overall cover of the other states and the federal tribunals.

The key to any well-written practice, is a good index, a clear paragraphing system, and a coverage of the major issues likely to confront both the experienced lawyer and the novice. The use of relevant case law, both to refine the nuances of the legislation and to set out clearly its full effect, is also vital. I think this book will be of great assistance to the practitioner.

The index is comprehensive, there is a table of cases, a table of statutes, a comparable table of legislation between the state and the Federal AAT. The Introduction covers a wide range of matters of general principle in tribunals and I personally prefer footnotes at the foot of the page, rather than at the end of the chapter or the end of the book.

While its other features are formidable, the book's real strength is the annotated Civil and Administrative Act NSW. The practitioner should find the treatment

of the Act is comprehensive, the relevant provisions are easy to find and the integration of both the legal principles and case-law are helpful.

Whether the questions asked relate to costs or the procedure between the different divisions, the appellate process or the consequences of a settlement which require orders *ultra vires* the tribunal's powers, the answer is easily found.

The development of case law from the Appeal Panel for NCAT is both dynamic and comprehensive. I expect that in a relatively short time, there will be a need for a second edition of this very handy practice. In the meantime, it should be of great assistance to the practitioners who are required to provide advice to clients on the tribunal, its powers and its processes. It would be a valuable resource in any law library.

Reviewed by Frank Holles