INTERLOCUTORY CRIMINAL APPEALS IN AUSTRALIA

Interlocutory Criminal Appeals in Australia, by Greg Taylor, Lawbook Co, Sydney, 2016, 181 pages: ISBN 9780455234694. Softcover $79.00.

One might be forgiven for thinking that interlocutory criminal appeals were a relatively novel advent in Australian law. Not so, Greg Taylor reminds us at the outset of his brilliant book on the subject. A limited right of interlocutory appeal has existed in certain Australian jurisdictions for many years. In New South Wales there existed a right to apply to the Court of Appeal, in its supervisory jurisdiction, to review an interlocutory decision of a District Court judge on a stay application (see eg, *Watson v Attorney-General (NSW)* (1987) 8 NSWLR 685; see also *R v Clarkson* [1987] VR 962).

A more fulsome right of interlocutory appeal was introduced in that State in 1987 by the *Criminal Appeal (Amendment) Act 1987* (NSW). But long before even these dated developments the Crown had a right of interlocutory appeal against decisions to quash indictments dating back to 1911 in Western Australia, the 1920s in New South Wales, and the 1970s in Tasmania.

Yet these exceptions in a sense prove the rule that all rights of interlocutory appeal were, until relatively recently, limited to very particular circumstances. It is perhaps not surprising, then, that until recently no textbook had emerged to grapple with and synthesise this difficult and dynamic body of laws. Taylor, an Associate Professor of Law at RMIT University and an Honorary Professor at the University of Marburg in Germany, confidently steps in to fill this lacuna. What is immediately apparent on reading just a few pages of his book is the depth of the research behind it.

At one point in the first chapter we learn, via a humble footnote, of Taylor's achievement in securing access to item R20970585 in the Archives of New Zealand. The document bearing that anonymous identifier is the record of a notorious 1960s murder trial in New Zealand, which included a successful interlocutory application for a change in venue. As the file is closed to the public until 2056, it was only by corresponding with the Chief Parliamentary Counsel of New Zealand that Taylor was able to review extracts of the record – all of which effort only results in a two sentence aside in the text itself. Other deep research highlights include the discursive footnote in Chapter 3, which directs the reader to a case note from a 1911 edition of the *South African Law Journal*. The upshot of these asides, and many others like them, is that Taylor's scholarly enthusiasm for his subject becomes contagious; he manages to render intriguing an area of law that might first appear, at least to some, arid and overly technical.

The book starts with a genealogy of the right of interlocutory appeal in Australia and the United Kingdom. Then readers are afforded a brief glimpse of the law in other jurisdictions before Taylor settles down to the real focus of the book's attention – the legislation and case law surrounding

interlocutory criminal appeals in Australia today. Discussion centres on what are described as the "comprehensive jurisdictions" (the Australian Capital Territory, the Federal Court of Australia and, especially, Victoria and New South Wales) but there is also material covering the remaining, more restrictive and idiosyncratic, "defined issues" jurisdictions.

Logically divided into chapters, a large part of the text is occupied by a helpful taxonomy of interlocutory decisions, judgments and orders that are commonly the subject of successful or, perhaps even more commonly, unsuccessful appeals or applications for leave to appeal. Severance, stays, no-case rulings and disqualifications for bias all receive attention here, as well as more pedestrian issues including adjournments and the giving of evidence by video link. The second of the book's two central chapters offers an extensive catalogue of factors relevant to the appellate court's decision to grant leave to appeal and to allow interlocutory appeals in criminal matters. This survey will no doubt prove an invaluable aid to practitioners making and resisting such applications. The remaining chapters are largely concerned with procedural issues (including costs), although the final chapter contains some thoughtful suggestions for law reform.

As it is the first book dedicated to this subject in Australia, this text could have been excused for glossing over some of the peripheral topics. But Taylor does nothing of the sort; the book is staggering in its detail and scope (the one omission, which is freely admitted to by the author, is any discussion of the interlocutory appeals processes in summary matters). The author's understanding of the different schemes governing interlocutory criminal appeals across Australia and internationally allows him to draw insightful comparisons and contrasts and justify the occasional polite but firm refutation of the conclusions reached in some of the cases. Particularly interesting is Taylor's view of the origins and essential character of the modern systems of interlocutory criminal appeals (p 14):

> Just as the provisions for post-conviction appeals are slanted towards the accused, so the provisions for interlocutory criminal appeals are … slanted towards the Crown. Interlocutory criminal appeals represent, depending upon the beholder, a re- or unbalancing of the "classic" system of criminal appeals in favour of the Crown.

Whatever one's opinion of the efficacy and desirability of the various approaches to interlocutory criminal appeals, the reader walks away from this book with a more informed view and nuanced appreciation of the benefits and detriments of the different schemes. Ultimately, Taylor's book transcends its billing as a practitioner's handbook – it is that, certainly, but it is also the first thorough historical account and critical appraisal of this burgeoning field of practice and procedure. These multiple facets of the book will ensure its position as the academic authority, at least for the immediate future, in a field that Justice Mark Weinberg of the Victorian Court of Appeal somewhat deprecatingly describes, in the Foreword (p vii), as an "unruly thicket of legislation and case law that now governs appeals of this nature".

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