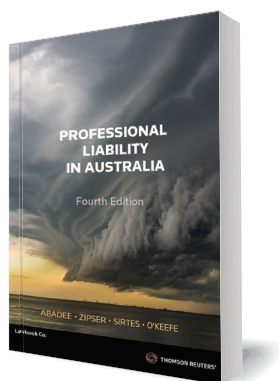


## IN PRINT

This month's books cover professional liability, war crimes and whistleblowing, statutory interpretation, legal biography and fiction.



## Professional Liability in Australia

Alister Abadee, Ben Zipser, Greg Sirtes, Richard O'Keefe, Thomson Reuters, 2023, pb \$273

Since the first edition in 2002 and the previous edition in 2015, *Professional Liability in Australia* has established itself as the leading work in its area. The fourth edition consolidates that status. This edition adds a contribution by Richard O'Keefe who has taken over editorial responsibility from Stephen Walmsley SC for Chapter 4 which deals with the substantial topic of "Doctors".

The work is divided into eight sections: "General Principles"; "Doctors"; "Solicitors"; "Barristers"; "Accountants and Auditors"; "Building Professionals", "Valuers"; and "Financial Services Professionals". It engages with a vast array of case law authority, as well as a surprisingly extensive array of statutory provisions. The authors highlight imminent legislative reforms flowing from the Hayne Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, which will affect the chapters on Financial Services Professionals, and increasing Federal Court decision-making about misleading or deceptive conduct under the Australian Consumer Law and non-compliance with consumer guarantees.

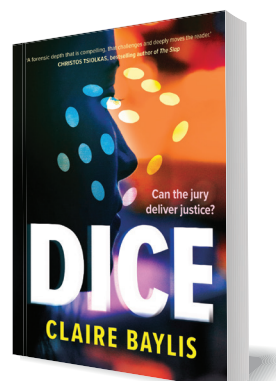
The number of areas in which registered and unregistered health practitioners have been held accountable for their conduct raises a question as to whether the chapter

on "Doctors" should be converted into one on "Health Care Practitioners", especially in light of major penalties having been imposed for cognate misleading or deceptive conduct under statutory provisions such as those in the *Therapeutic Goods Act 1989* (Cth). Another relevant phenomenon is the increasing incidence of referral of health and legal practitioners to their regulatory bodies by coroners at the conclusion of inquests.

The authors make useful reference in this edition to decisions on the funding of class actions and changes to continuous disclosure laws which have had the effect of making the bringing of securities class actions more challenging and involve the role of both lawyers and accountants as litigation gatekeepers.

*Professional Liability in Australia* continues to be well-organised and to combine extensive analysis of legal principle with discussion about the different bases for professionals' liability in the diverse common law and statutory environment. The fourth edition of this authoritative work confirms it as the scholarly work of first resort on the many areas that it covers.

Dr Ian Freckelton AO KC, Castan Chambers, Melbourne



## Dice

Claire Baylis, Allen & Unwin, 2023, pb \$33

The jury room is a secretive place – a forum where deliberations are intended to be insulated from emotions. Of course, this does not mean all of the jurors enter the jury room without pre-conceived views and opinions.

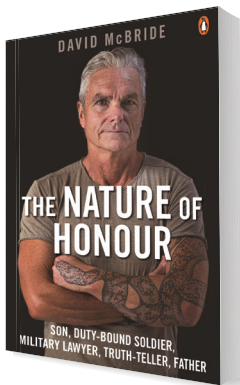
This novel explores the jury room determining the fate of four young men charged with sexual assault crimes against three young women. The defendants are alleged to have taken part in a game of throwing a dice to determine what sexual act they each had to perform with a particular complainant.

The jurors are diverse. There are young jurors, those who can relate to the world of the complainants and the defendants. There are elderly jurors, who seek help from the younger ones about the expectations of the "younger generation".

The jurors face a difficult task. They are told they must put aside their feelings of prejudice or sympathy. How can they do that? Some have experiences that lead them to challenge their own views on what is consent and what is acceptable behaviour. One seeks to do her own "research" on the internet. Others argue. One emotionally withdraws. Factions emerge. Despite the best of intentions, they are all fallible.

This story is a thought-provoking drama of one of the cornerstones of our criminal justice system.

Jamie Bolic, general counsel, Golden Age Group



## The Nature of Honour

David McBride, Penguin Random House, 2023, pb \$27

David McBride's colourful and intriguing autobiography helps us understand the reasoning of the man whose courageous whistleblowing led to uncovering potential Australian war crimes in Afghanistan. However, it obfuscates – or even misses – the point of investigating breaches of international humanitarian law (IHL).

McBride attributes his whistleblowing to the Australian Defence Force's (ADF) investigations of its soldiers. "Epitomis[ing] the nature of honour", he defends a soldier being investigated for removing the hand of a dead, suspected Taliban member for DNA identification. He writes, "[t]o me, the real crime was . . . the way we abandoned a soldier who was just doing his job". The book ends with his decision to leak documents following another soldier's investigation for killing – with three rounds of ammunition – an unarmed prisoner.

These acts, McBride says, are misunderstood by outsiders because the macabre is just "part of the job". Accordingly, ADF investigations into these acts were "window-dressing" meant to please outsiders.

However, while outsiders may not "get it", IHL fundamentally accepts that ugly things happen in war. It attempts to minimise this ugliness by distinguishing fighters from non-fighters, ensuring the conduct is

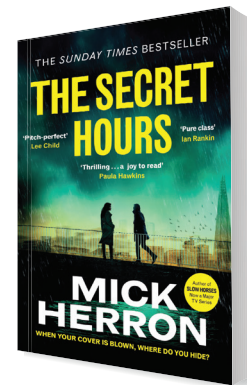
militarily necessary, and ensuring any harm to non-fighters is proportional to the military advantage gained.

In addition to being the law, accounting for harm if it occurred was central to counterinsurgency operations in Afghanistan. This should have required thorough investigations of potential breaches and making amends where necessary – including making culturally appropriate compensation payments.

This imperative led the NATO-led International Security Assistance Force to establish a Civilian Casualty (CIVCAS) Tracking Cell in 2008, evolving into the CIVCAS Mitigation Team in 2011, to investigate reports of civilian harm, make amends if necessary, and adapt tactics accordingly. Although both were incredibly underfunded and understaffed, it's unsurprising that in 2013, when McBride's frustration was at its height, there were calls for greater investigations.

McBride's bravely honest account clarifies that the ADF did let its forces down, but not in the way McBride suggests. Instead, it let down its forces by not emphasising the critical legal and strategic imperatives of upholding IHL. And it failed not by simply initiating investigations but by failing to make investigations and accountability just "part of the job".

Jennifer Keene McCann, Asia Justice Coalition



## The Secret Hours

Mick Herron, Baskerville 2023 pb \$33

If you've galloped through the *Slow Horses* novels or binged season three on Apple TV, you won't need any convincing to read Mick Herron's latest spy offering.

*The Secret Hours* is a gem. It's a prequel we didn't know we needed – a bonus book.

Briefly, a public service inquiry is set up to investigate the British Secret Service. It's expected to fail. It is tedium and hearings and obfuscation from First Desk. This time the public servants are the bumbling inadequates trying to do their best for the country despite the forces against them. Then a file from the past is leaked to them and it's on.

Action races between the old days in Berlin, where some of our favourites are practising their spy craft, and the current day inquiry. There's also a retired spy on the run and in trouble.

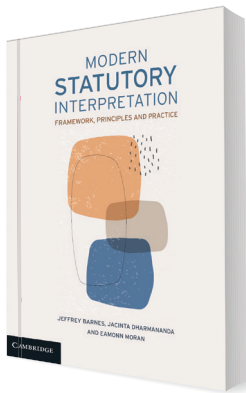
It's not possible to say much more about the characters without major spoilers.

This book struck me as more of a traditional spy thriller with John Le Carre overtones. It sets a different tone from the previous series with Jackson Lamb and his bunch of misfits.

You can expect a rollicking plot with surprises, good versus evil themes and origin stories for some of our favourite characters.

It's not a *Slow Horses* novel. It stands proudly on its own. Enjoy.

Kerry O'Shea, media consultant and crime reviewer, KAOSworks



## Modern Statutory Interpretation – Framework, Principles and Practice

Jeffrey Barnes, Jacinta Dharmananda and Eamonn Moran, Cambridge University Press, 2023, pb \$135

This is a new book on statutory interpretation written by two legal academics (at La Trobe and UWA respectively) and the Inspector at the Victorian Inspectorate of 14 integrity bodies who has been Chief Parliamentary Counsel in Victoria and Law Draftsman in the Department of Justice in Hong Kong. Each author has read and contributed to all the chapters while having primary responsibility for certain chapters.

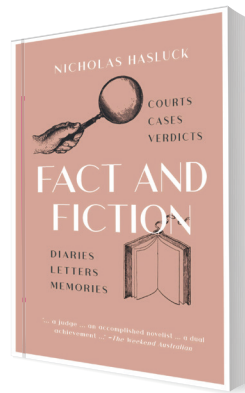
Its 43 chapters spanning 726 pages include legislative intent, the judicial duty to be independent, linguistic canons or maxims of statutory interpretation such as the *noscitur a sociis*, *expressio unius* and *generalia specialibus* rules, the “always speaking” approach, extrinsic materials, the use of precedent, statutory reasonableness and the presumption against retrospective operation. The chapter on purpose states that there may be difficulties in determining the purpose if purpose can only be expressed at a high level of generality such as the purpose of the *Corporations Act* which has more than 1600 sections in 4000 pages.

The chapters are in eight parts – background; the framework of statutory interpretation; working with legislation: broader skills and knowledge; the provision, and the Act as a whole; legislative history; interpretation Acts and other Acts of general application; the wider context and special interpretative issues.

The final chapter on delegated legislation should be of interest to parliamentary counsel and regulators like ASIC with their extensive law making by regulations and instruments. This chapter includes eight grounds for invalidity of delegated legislation such as “Delegated legislation is invalid to the extent that it deals with a matter outside the scope of the enabling Act” and “An Act may empower the making of delegated legislation inconsistent with, or that directly amends, the enabling Act”.

The book opens with a foreword by former High Court Chief Justice Susan Kiefel who says that “(t)he work seeks to ensure that the next generation of lawyers will be skilled in the ‘art’ and ‘science’ of statutory interpretation”. It includes a list of case examples, table of cases, table of statutes, glossary, bibliography and index. I would have preferred more medium neutral (AustLII) citations. There are online resources for instructors at the [www.cambridge.org](http://www.cambridge.org) site.

Paul Latimer, adjunct professor, Swinburne Law School



## Fact and Fiction

Nicholas Hasluck, Australian Scholarly Publishing, 2023, pb \$50

A usual form legal biography has the young barrister struggling to make a living with appearances in the lower courts, then progressing to appearances in the higher courts until finally the judicial appointment when they become a famous and often cited judge.

Nicholas Hasluck, retired Western Australian Supreme Court judge, has given us a different format – his personal diaries. He has published these in a book called *Fact and Fiction: Courts, Cases and Verdicts, Diaries, Letters and Memories*. The diaries cover the period 2002-2012, when he retired from the Bench.

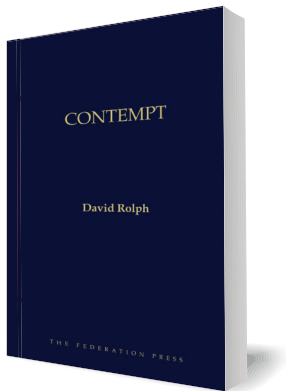
His diaries give insights into the different aspects of day to day judicial life. Among the numerous insights are his thoughts on the whole sentencing process. These include his reactions to press reporting of sentences and the frustration of judges in passing sentences because the law of sentencing has become so complex. He has the feeling that in sentencing more concern is shown to the accused than to the victims of crimes. Another insight refers to the constant and frenetic haste that makes life on the Bench such an ordeal.

The diaries also reveal the interesting relationships with different colleagues, both in his own state and as a result of the many judicial conferences the author was required to attend. Hasluck laments the demise of traditional judicial dress, which he sees as a backward step for the profession.

A most important aspect of the book for lawyers is the importance Hasluck places on the benefit of lawyers reading fiction. He is well qualified to say this for he is an accomplished fiction writer. To quote the author, “Works of fiction about the law can be useful in keeping minds alert to changing patterns of right and wrong and to various interpretations of ambiguous events. A mind attuned to a wide range of possibilities may be better placed to review the available evidence keenly and with ingenuity than a mind accustomed to sticking to the generally ‘accepted facts of the case’”.

The book will be of wide general interest to not only lawyers but to those interested in what being a judge is really like.

Scott Whitechurch, adjunct lecturer, College of Law



## Contempt

David Rolph, The Federation Press, 2023, pb \$265

This book is a first of its kind. It provides an in-depth and highly practical examination of the law of contempt as it pertains to Australia. The book contains comprehensive discussions of Australian case law and extensive reference to English decisions, interspersed by carefully selected cases from other common law jurisdictions. Although its primary focus is on the law as applied by Australian superior courts, it provides a useful statement of the law as it relates to tribunals and other bodies.

The author introduces the reader to this complex and “somewhat amorphous and diffuse area of law” by uncovering its origins and the nature of its jurisdiction (Chapter 1). This includes a philosophical and legal discussion as to whether the term “contempt of court” aptly reflects the law’s purpose of protecting the due administration of justice. The amorphous nature of contempt is also illustrated by an examination of the summary nature of the offence, with its elements which are drawn from the criminal law (Chapter 2).

Following this, the author succinctly and methodically explains the various forms of contempt (Chapters 3 to 12). The author concludes by explaining the legal procedure to follow in an action for contempt (Chapter 13) and what penalties and other forms of relief may be sought against a contemnor (Chapter 14).

The author’s holistic approach has produced a book which is not only an exposition of a complex and difficult area of law, but one which will prove to be highly valuable to even the well-experienced practitioner. ■

David Kim, barrister



## LAW BOOKS

### Statutory Interpretation in Australia e10



Dennis Pearce  
**Member: \$189**  
**Non-member: \$210**

Newly revised and updated, *Statutory Interpretation in Australia* is a fundamental text on Australian law, often cited in courts and tribunals.

[www.liv.asn.au/StatutoryInterpretation10](http://www.liv.asn.au/StatutoryInterpretation10)

### Corporations Legislation 2024



Jason Harris, Alexandra Pieniazek, Karen Petch and Kerry Abadee  
**Member: \$113.40**  
**Non-member: \$126**

Thanks to its reputation for accuracy, dependability and reliability, this is the go-to resource on corporate law for legal professionals and students.

[www.liv.asn.au/Corporations2024](http://www.liv.asn.au/Corporations2024)

### Zuckerman on Australian Civil Procedure e2



Adrian Zuckerman, Stefanie Wilkins, Jonathan Adamopoulos, Alexander Vial, Andrew Higgins, Stephanie Hooper, Naomi Oreb and Claire Jago  
**Member: \$233.10**  
**Non-member: \$259**

This authoritative text explores Australian civil procedure and provides comprehensive analysis of state, territory and federal rules.

[www.liv.asn.au/Zuckerman2](http://www.liv.asn.au/Zuckerman2)

[www.liv.asn.au/LawBooks](http://www.liv.asn.au/LawBooks)

Level 13, 140 William Street, Melbourne  
[lawbooks@liv.asn.au](mailto:lawbooks@liv.asn.au)