

FOREWORD

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In his *Life of Johnson*, Boswell records Samuel Johnson saying:

It is more from carelessness about truth than from intentional lying, that there is so much falsehood in the world.

In large measure, the law of evidence is concerned to minimise the amount of 'carelessness' and, accordingly, the amount of 'falsehood' in legal proceedings.

The pursuit of truth is not, however, the only value reflected in the law of evidence. Other matters of public interest are often engaged. As Knight Bruce VC said in *Pearse* (1846) 63 ER 950 at 957:

Truth, like all other good things, may be loved unwisely – may be pursued too keenly – may cost too much.

The law of evidence has developed over the centuries in the context of an adversary system of justice based on practical experience of the search for truth in the context of other values, upon which such search may impinge.

The common law of evidence has been modified from time to time by statute and is now, in substance, codified in the New South Wales, Tasmania and Commonwealth jurisdictions. The Evidence Act 1995 in large measure repeats the common law but modifies it in important respects. The prior law of evidence had become second nature to practitioners and the judiciary, so that evidence issues could often be disposed of with facility. That is not to say that important questions did not often arise, particularly in the course of criminal trials, but the range of disputation was more limited than has arisen under the new regime. By reason of the introduction of the new Evidence Act, and by reason of the scope and significance of the changes to the pre-existing law which it contains, over recent years the courts have had to give attention to evidence issues to a much greater degree than had hitherto been the case. The difficulties have also been reflected in a significant number of successful appeals, resulting in new trials. If the authors of the Evidence Act expected that the Act would produce efficiencies in the conduct of litigation then, at least in the short term, that expectation has not been realised.

There is now a substantial body of case law dealing with a wide range of issues under the Act. It is essential that judges and practitioners have access to the case law in an ordered and readily accessible format. Practitioners outside New South Wales, the Australian Capital Territory and Tasmania, must maintain mastery of the common law of evidence, as modified by statute in that State or Territory,

whilst simultaneously acquiring familiarity with the 1995 Act to be able to conduct litigation in the Federal Court or the Family Court. The present work includes an alphabetical guide to the Act which permits such judges and practitioners to look up common law concepts which will lead them to relevant provisions of the Act.

Practitioners will, no doubt, gradually develop the kind of familiarity with the terminology of the 1995 Act that they once had with common law concepts and which may still linger. In New South Wales, in the second half of 2002, there is a discernible increase in the comfort level with which concepts and section numbers of the 1995 Act are employed. This publication will, no doubt, further enhance that comfort level.

The authors bring this topic a depth and diversity of experience of the law of evidence. They are to be commended for making a large and rapidly growing body of the law accessible to the judges, practitioners, scholars and students for whom the work is intended.