



5TH EDITION

EDITORS
SIMON RICE
ANDREW DAY
LINDA BRISKMAN

SOCIAL WORK IN THE SHADOW OF THE **LAW**

THE FEDERATION PRESS

SOCIAL WORK
IN THE SHADOW OF THE LAW

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Fifth edition

Editors

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List of abbreviations

| | |
|--------|--|
| AASW | Australian Association of Social Workers |
| AAT | Administrative Appeals Tribunal (Cth) |
| AAT1 | Social Services and Child Support Division of the Administrative Appeals Tribunal |
| AAT2 | Second-tier AAT review |
| AATA | <i>Administrative Appeals Tribunal Act 1975</i> (Cth) |
| ABS | Australian Bureau of Statistics |
| ABSEC | Aboriginal Child, Family and Community Care State Secretariat |
| ACA | Australian Central Authority |
| ACAT | ACT Civil and Administrative Tribunal |
| ACAT | Aged Care Assessment Team |
| ACCC | Australian Competition and Consumer Commission |
| ACOSS | Australian Council of Social Service |
| ADJC | Aboriginal Disability Justice Campaign |
| ADE | Australian Disability Enterprises |
| AFSA | Australian Financial Security Authority |
| AGD | Attorney-General's Department (Cth) |
| AHRC | Australian Human Rights Commission (formerly HREOC) |
| AHURI | Australian Housing and Urban Research Institute |
| AIC | Australian Institute of Criminology |
| AIFS | Australian Institute of Family Studies |
| AIHW | Australian Institute of Health and Welfare |
| ALRC | Australian Law Reform Commission |
| ANROWS | Australian National Research Organisation for Women's Safety |
| AOD | Alcohol or Other Drug |
| APP | Australian Privacy Principle |
| ARC | Administrative Review Council |
| ARMS | Association of Relinquishing Mothers |
| ARO | Authorised Review Officer |
| ART | Administrative Review Tribunal |

LIST OF ABBREVIATIONS

| | |
|----------|--|
| ASIC | Australian Securities and Investments Commission |
| ASIO | Australian Security Intelligence Organisation |
| ATSI | Aboriginal and Torres Strait Islander |
| ATO | Australian Tax Office |
| AUSIT | Australian Institute of Interpreters and Translators |
| AustLII | Australian Legal Information Institute |
| BSWAT | Business Services Wage Assessment Tool |
| CALD | Culturally and Linguistically Diverse |
| CASA | Centres Against Sexual Assault |
| CDDA | Caused by Defective Departmental Administration |
| CEDAW | Committee for the Elimination of All Forms of Discrimination Against Women |
| CERD | Committee for the Elimination of Racial Discrimination |
| CFC | Commonwealth Financial Counselling |
| CLC | Community Legal Centre |
| COPMI | Children of Parents with a Mental Illness |
| COPQ | Committee on Overseas Professional Qualifications |
| COTA | Council on the Ageing |
| CRAF | Common Risk Assessment Framework |
| CRP | Child Responsive Program |
| CRPD | Convention on the Rights of Persons with Disabilities |
| CS(R&C)A | <i>Child Support (Registration and Collection) Act 1988</i> (Cth) |
| CSA | Child Support Agency |
| CSHA | Commonwealth-State Housing Agreement |
| CTO | Community Treatment Order |
| DDA | <i>Disability Discrimination Act 1992</i> (Cth) |
| DEEWR | Department of Education, Employment and Workplace Relations |
| DFYCC | Department of Families, Youth and Community Care |
| DHHS | Department of Health and Human Services |
| DHA | Department of Home Affairs (formerly DIBP) |
| DHW | Department of Housing and Works (WA) |
| DIBP | Department of Immigration and Border Protection (Cth) (now DHA) |
| DOH | Director of Housing (Victoria) |
| DOORS | Detection of Overall Risk Screening |
| DSS | Department of Social Services (Cth) |
| EMAN | Elder Mediation Australasian Network |

LIST OF ABBREVIATIONS

| | |
|---------|---|
| EMIN | Elder Mediation International Network |
| ERP | Estimated Resident Population |
| FACS | Family and Community Services |
| FaHCSIA | Department of Family, Housing, Community Services and Indigenous Affairs |
| FCA | Family Court of Australia |
| FDR | Family Dispute Resolution |
| FDRP | Family Dispute Resolution Practitioner |
| FGC | Family Group Conference |
| FLA | <i>Family Law Act 1975</i> (Cth) |
| FMCA | Federal Magistrates Court of Australia (now Federal Circuit Court of Australia) |
| FOI | Freedom of Information |
| FRC | Family Relationship Centre |
| FTB | Family Tax Benefit |
| HPLC | Homeless Persons' Legal Clinic (NSW) |
| HREOC | Human Rights and Equal Opportunity Commission (now AHRC) |
| IAAAS | Immigration Advice and Application Assistance Scheme |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| ICL | Independent Children's Lawyer |
| IFSW | International Federation of Social Workers |
| INPEA | International Network for the Prevention of Elder Abuse |
| ITSA | Insolvency and Trustee Service Australia |
| IVAWS | International Violence Against Women Survey |
| JIRT | Joint Investigative Response Teams (NSW child protection services) |
| KLC | Kingsford Legal Centre |
| LEADR | Association of Dispute Resolvers |
| MCCD | Medical Certificate of Causes of Death |
| MER | Medical Examination Report |
| MSB | Mediator Standards Board |
| NAATI | National Accreditation Authority for Translators and Interpreters |
| NACLC | National Association of Community Legal Centres |
| NADRAC | National Dispute Resolution Advisory Council |

LIST OF ABBREVIATIONS

| | |
|----------|---|
| NATSILS | National Aboriginal and Torres Strait Islander Legal Services |
| NCAS | National Community Attitudes toward Violence Against Women Survey |
| NCAT | NSW Civil and Administrative Tribunal |
| NCCPA | <i>National Consumer Credit Protection Act 2009 (Cth)</i> |
| NCIS | National Coronial Information System |
| NDIA | National Disability Insurance Agency |
| NDIS Act | <i>National Disability Insurance Scheme Act 2013 (Cth)</i> |
| NDIS | National Disability Insurance Scheme |
| NGO | Non-Government Organisation |
| NLD | National League of Democracy |
| NSWLRC | New South Wales Law Reform Commission |
| NTCAT | NT Civil and Administrative Tribunal |
| OOH | Office of Housing (Vic) |
| OPAN | Older Persons Advocacy Network |
| PCO | Permanent Care Order |
| PHN | Primary Mental Health Care Network |
| PIAC | Public Interest Advocacy Centre (PIAC) |
| QCAT | Queensland Civil and Administrative Tribunal |
| RAND | Research And Development Corporation |
| RCIADIC | The Royal Commission into Aboriginal Deaths in Custody |
| RFCS | Rural Financial Counselling Service |
| RHP | Refugee and Humanitarian Program |
| RTO | Registered Training Organisation |
| SACAT | SA Civil and Administrative Tribunal |
| SANDS | Stillbirth and Neonatal Death Support |
| SAT | State Administrative Tribunal (WA) |
| SCRGSP | Steering Committee for the Review of Government Service Provision |
| SHASP | Social Housing Advocacy and Support Program (Vic) |
| SHEV | Safe Haven Enterprise Visa |
| SHP | Special Humanitarian (visa) Program |
| SIDS | Sudden Infant Death Syndrome |
| SNAICC | Secretariat of Aboriginal and Torres Strait Islander Child Care |
| SRSS | Status Resolution Support Services |
| SS(A)A | <i>Social Security (Administration) Act 1999 (Cth)</i> |
| SSA | <i>Social Security Act 1991 (Cth)</i> |

LIST OF ABBREVIATIONS

| | |
|---------|--|
| SSAT | Social Security Appeals Tribunal (Commonwealth) |
| T&I | Translating & Interpreting |
| TIO | Telecommunications Industry Ombudsman |
| TIS | Telephone Interpreting Service (Cth) |
| TPV | Temporary Protection Visa |
| UN | United Nations |
| UNESCO | United Nations Educational, Scientific and Cultural Organisation |
| UNCESCR | UN Committee on Economic, Social and Cultural Rights |
| UNHCR | United Nations High Commission for Refugees |
| VACCA | Victorian Aboriginal Child Care Agency |
| VCAT | Victorian Civil and Administrative Tribunal |
| VTMH | Victorian Transcultural Mental Health |
| WDO | Work and Development Orders |
| WHO | World Health Organization |

Preface

In the preface to the first edition, Phillip Swain wrote that *SWITSOTL*, as we like to call it, 'attempts to examine legal aspects of social work practice not as a lawyer would see them, but as practitioners have found them, through experience and the wisdom of practice, to be'.¹ In the years since, social workers, lawyers, reviewers, teachers and students have agreed that Phillip's 'attempt' succeeded, and we are grateful to him for his faith in our ability to maintain his vision in a fifth edition.

The cover of this fifth edition maintains the change that took place in the fourth edition, giving prominence in the title to Social Work, to emphasise that we are concerned primarily with the practice, and practitioners, of social work; the 'law' part of the title is a context within which social work takes place. In the first edition, Phillip explained why he chose the title *In the Shadow of the Law*, saying that it had been:

part of my vernacular as a social worker-cum-lawyer for many years. Where I first heard it I cannot say ... Whatever its origin, I am indebted to those who coined it, as I believe it aptly portrays both the philosophy of this book and the practice reality for social workers.²

Although Phillip retired and is 'taking it easier', we are delighted that he is still writing for the book, and has been available to us for advice and counsel. Phillip noted in comments to the current editors his pleasure that after more than 20 years, some of the original contributors – 'survivors' – are still authoring chapters.

Simon Rice and Andrew Day continue in their editorial role for this fifth edition, and welcome a new editor, Linda Briskman, who holds the Margaret Whitlam Chair of Social Work at Western Sydney University. All three editors continue to ensure that the original vision of the book is maintained, while ensuring changes are made according to emerging contexts, laws, policies and practices. With this in mind, we have some new contributing authors and two new chapters, one on 'Social Work and Human Rights' and the other titled 'Socialising the Law', which has led to some minor restructuring of the book.

In the first part of the book, Phillip Swain and Spencer Zifcak each offer their deeply considered reflections on the relationship between social work and law and Chris Maylea and his co-authors explore multidisciplinary practice with lawyers and social workers. The second part follows from that broad, contextual beginning, and each of the 18 chapters discusses the legal contexts of social work practice from topics as diverse as adoptions, child sexual abuse, prisons, mediation and homelessness. The final part looks at

1 Swain, P (ed), 1995, *In the Shadow of the Law*, Federation Press, xv.

2 Ibid, 2.

the law not as it bears on the clients of a social worker, but as it sets bounds on a social worker and their own practice, addressing issues such as ethics, record keeping, interpreters, courts and evidence. With an expanded total of 26 chapters, we hope this book will be a significant resource for social workers and others who require understandings of the law, its application and processes.

All of the chapters from the fourth edition have been updated, with fresh accounts, references and perspectives. Some of the chapters have been re-titled, and some have been re-focused.

It has been very gratifying to work with so many authors who continue to write for all previous editions. The few who were unavailable for this edition regretted they could not take part, and we welcome the new authors.

The legal context of a social worker's practice can cause confusion and uncertainty. It is our hope that social workers – armed with knowledge and insights from experienced practitioners in this edition of *Social Work In the Shadow of the Law* – can achieve enhanced results, for their clients and for systemic reform, by working confidently with lawyers and the legal system.

Simon Rice, Andrew Day and Linda Briskman

Acknowledgments

We are deeply indebted to Phillip Swain for having conceived and realised this book. It is a privilege for us to succeed him as editors of what is well-established as the standard text on social work and law in Australia.

The many chapter authors have been prompt and willing throughout the writing and editing process, and we are grateful to them for their generosity in sharing their expertise and insights.

The staff at The Federation Press have been, as ever, unfailingly keen, encouraging, supportive, and professional to work with, particularly our editor Gordana Peresin.

Simon thanks Elizabeth for her patience, love and support. Andrew would like to dedicate the book to Leesa, Noah and Mabel. Linda sends love to Hannah, Samuel, Thomas, Willow and Zara.

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