

AUSTRALIAN UNIFORM EVIDENCE LAW

Second edition

Now in its second edition, *Australian Uniform Evidence Law* provides a clear and accessible introduction to the law of evidence. Following the structure of the *Evidence Act 1995* (Cth), the text first introduces students to basic principles, then covers more detailed and complex elements of evidence law in later chapters.

Cases and excerpts from the legislation have been carefully selected to guide students through the application of the Act in relevant jurisdictions. This edition has been thoroughly updated to include significant recent case examples and decisions, ensuring students learn about the law in its ever-changing context.

Each chapter includes a summary of key points, a list of key terms and definitions, and further reading suggestions, as well as practice questions to encourage students to apply their knowledge to realistic scenarios. The final chapter comprises longer-form, complex 'Putting it all together' practice problems that are designed to test students' understanding of the concepts and rules covered in the Act as a whole. Guided solutions to each question are also provided to ensure students can check their understanding.

Providing clear explanations and relevant examples, *Australian Uniform Evidence Law* is an essential foundational resource for all students of evidence law.

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Fiona Hum , Gregor Urbas , Ottavio Quirico
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PREFACE

Since the publication and positive reception of the first edition of this book, many things have caused the *need* for another edition – certainly not out of want for more punishment. Rather, there have been a number of important and significant developments in evidence law that have occurred in rapid succession. Such changes must be seen in the context of a changing society and certainly a society that is becoming more fully informed and aware. This evolution, which should be encouraged and sustained, is well expressed through Albert Einstein’s comment: ‘The world as we have created it is a process of our thinking. It cannot be changed without changing our thinking.’

One of my primary goals in teaching this subject has always been to educate both students and practitioners alike that evidence law is much more than mere rules of procedure or turgid application. Evidence law, when properly applied and understood, advances fundamental human rights, as well as social and political policies, in a manner and form that will assist in combatting the still rampart forces of social inequity and injustice. A courtroom, where rules of evidence are central, is itself a symbol of truth and justice. An advocate for human rights and social justice understands it is important that laws that oppress, repress and dominate are removed to allow the story of children, sexual complainants, and people from diverse cultural, religious and sexual backgrounds to be heard.

The legal developments and political responses giving rise to this second edition show an increasing acknowledgement and understanding of the many complex issues inherent in domestic violence, elder abuse and child and adult sexual abuse. The creation of and recommendations from Royal Commissions investigating sexual offences against children and the treatment of the elderly in aged care, together with changes in how social institutions, such as childcare providers and religious institutions, are required to comply with legal and statutory developments, highlight the gradual but positive changes in the legal perspectives used to address these sensitive, yet neglected areas of the law. We have included some of the more important developments since the first publication that have resulted in an upsurge of new cases and many significant legislative amendments. For example, the provisions relating to tendency evidence in New South Wales now also specifically apply to child sexual offences and the threshold for admissibility of such evidence has been lowered. There have also been many new High Court decisions providing a variety of responses, some consistent with prior cases, but at other times there has been a fresh approach and welcomed reinterpretation in particular areas of evidence law that otherwise would have continued to oppress vulnerable members of our community. The greatest impact in this era of change has been related to topics such as complainant evidence and the concept of forensic disadvantage of the accused, tendency and coincidence evidence and privileged communications.

In addition, the continuing fall-out of COVID-19 should not be underestimated. In all likelihood that virus will have a continuing influence on the development of health, economic, political and legal policies. It is of no surprise that, as our society is tested in such times and becomes more complex, legal participants – judges, litigants, prosecutors and defendants – have demanded more from the law and challenged the status quo with respect to the appropriateness of some of the existing laws and their impact on the evidentiary process and how that process is delivered. In this second edition, we seek to explain very complex and difficult areas of the law simply and meaningfully for the student. Despite the legislation being referred to as ‘uniform’, it is important to note that differences between states continue. Where possible, we have highlighted these in this edition. Furthermore, there are new practical problems and answers in the final chapter, ‘Putting it all together’. These will challenge the student and practitioner and require them to apply their understanding and knowledge of the various concepts.

I would like to thank my co-authors: Ottavio Quirico for always being a patient and supportive colleague, ready to take on additional tasks to get the job done; and Gregor Urbas for his commitment and perseverance in revising chapters. Let’s forge forward to new beginnings and a hopeful future.

Dr Fiona Hum

30 June 2021

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