

Deakin University

Faculty of Business and Law

office use only									
3	0	0	3	2	6	5	0		

PRO-FORMA FOR REPORTING RESEARCH PUBLICATIONS

Follow instructions and complete **shaded boxes** as appropriate

1	Year appearing as the latest date on the publication:	2010
---	---	------

2	Have you previously published this research or a very similar piece of research? (circle Yes or No)		No
---	---	--	----

3	Publication Type	TICK <input type="checkbox"/>	Specify
	Book (A1 – A7, AN)		
	Book chapter (B1 – B2, BN)		
	Article in refereed journal (C1 – C4, CN)		
	Article in refereed conference proceeding (E1 – E4, EN)		
	Other: (eg. Reviews/Reference works: D1, D2; Media: M)	Book Review	<input checked="" type="checkbox"/>

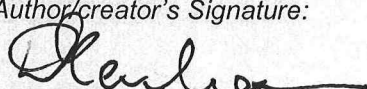
Book Review
C2
Key

4	Authorship in the order they appear on the publication			
	Surname	First name	Staff/ Student/ Visiting scholar/ External	School, Centre or external affiliations
1	Mendelson	Danuta	Staff	School of Law
2				
3				
4				
5				
6				

C2

5	Research Coding	
	ANZSRC Field of Research (FoR) Code: http://www.deakin.edu.au/research/admin/grants/abs_codes/for-2008-codes.php	180106
	ANZSRC Socio-Economic Objective (SEO) Code: http://www.deakin.edu.au/research/admin/grants/abs_codes/seo-2008-codes.php	940499

6	Verification
	If you are reporting this submission for the HERDC (A1/B1/C1/E1), it is essential that each item of supporting documentation is provided, OR is available online . Please tick each item on the checklist overleaf to indicate that you have attached it to your submission OR have provided the correct URL, as proof of your claim. For non-HERDC publications please attach supporting documentation as required.

7	I declare that the details provided, are to the best of my knowledge, correct:	
	Author/creator's Signature: 	Date: 2-2-2010

2011

Return pro-forma and evidence to: Katrina Fleming, Business and Law, Geelong Campus
ATTACHMENT CHECKLIST Complete the category for your publication and attach required evidence

Tick ☐	Note: evidence of author affiliation to Deakin, OR an author statement, must be provided for all categories.	
BOOK		category A
	Book provided for Deakin Library collection (tick if book is to be returned to you *)	
OR:		
	Photocopy all pages from the front cover to the last page of the first chapter (include the title page, publication details, contents, preface, introduction and first chapter)	
	Last numbered page and back cover of book	
	By-line or footnote or statement in the publication showing Deakin affiliation or other proof	
	For A3 category include proof of substantial revisions	
BOOK CHAPTER		category B
	Copy of the book, which will be returned to you after processing	
OR:		
	Copy of the chapter	
	Photocopy all pages from the front cover to the last page of the introduction (this will include the title page, publication details, contents, preface and introduction)	
	Last numbered page and back cover of book	
	By-line or footnote or statement in the publication showing Deakin affiliation or other proof	
JOURNAL ARTICLE		category C
	URL for online publication, if available	URL:
OR:		
	Copy or offprint of the published paper	
	Copies of pages showing journal title, ISSN and volume/issue/year where these are not provided in the copy, offprint or online version	
	By-line or footnote or statement in the publication showing Deakin affiliation or other proof	
	For C1 proof of refereeing	
	For C2 if a non refereed article is submitted proof that the journal is refereed	
	For C3 and C4 proof of an editorial board	
REVIEW / REFERENCE WORK		category D
	URL for online publication, if available	URL:
OR:		
	A copy of the published review or a copy of the published reference material	
REFEREED CONFERENCE PAPER		category E
	URL for online publication, if available	URL:
	ERA unique conference Identifier http://lamp.infosys.deakin.edu.au/era/	ERAID:
AND:		
	Copy of the published paper (and a photocopy of the CD cover if published on CD)	
	Photocopy all pages of the proceedings from the front cover to the first page of the first article (this will include conference details, proof of publication, contents, preface and introduction)	
	List of all contributors (if not already included above)	
	Proof of national or international significance. (National significance: at least 4 states were represented at the conference. International significance: 4 countries were represented.).	
	Proof of refereeing or keynote status (statement in proceedings, referee reports)	
	By-line or footnote or statement in the publication showing Deakin affiliation or other proof	
	For E1 - proof of refereeing of <u>full paper</u> and not just the abstract	
	For E2 - proof that the abstract was peer reviewed or that an editorial board reviewed the full paper	
PAPER AT A DISTRIBUTED/MINOR CONFERENCE		category L
	URL for online publication, if available	URL:
OR:		
	Copy of the paper	
	Conference details (date, organizing body etc)	
	For L1 - evidence of refereeing	
MEDIA OUTPUT (authored by Deakin staff member)		category M
	URL for online publication, if available	URL:
OR:		
	Copy of article	

Deakin Law Review

CONTENTS

2010 Richard Searby Oration

The Obligation to Communicate: The Interaction between Language and the Law
The Hon Marilyn Warren AC

Articles

Control Orders Post 9-11 and Human Rights in the United Kingdom, Australia and Canada: A Kafkaesque Dilemma?
Sascha-Dominik Bachmann and Matthew Burt

The Legal Effect of Voluntary Self-Exclusion Programs for Problem Gamblers
Natalia Antolak-Saper

Provocation as a Complete Defence to Trespass to the Person
Andrew Pingree

Case Note

Eisenwerk Reconsidered (Twice) – A Case Note on Cargill International SA v Peabody Australia Mining Ltd, and Wagners Nouvelle Caledonie SARL v Vale Inco Nouvelle Caledonie SAS
Benjamin Hayward

Book Reviews

Something to Declare: A Memoir
By Sir James Gobbo
Oscar I Roos

Gifts: A Study in Comparative Law
By Richard Hyland
Danuta Mendelson



CONTENTS

2010 RICHARD SEARBY ORATION

- The Obligation to Communicate: The Interaction between Language and the Law 117
The Hon Marilyn Warren AC

ARTICLES

- Control Orders Post 9-11 and Human Rights in the United Kingdom, Australia and Canada: A Kafkaesque Dilemma? 131
Sascha-Dominik Bachmann and Matthew Burt

- The Legal Effect of Voluntary Self-Exclusion Programs for Problem Gamblers 169
Natalia Antolak-Saper

- Provocation as a Complete Defence to Trespass to the Person 205
Andrew Pingree

CASE NOTE

- Eisenwerk* Reconsidered (Twice) – A Case Note on *Cargill International SA v Peabody Australia Mining Ltd*, and *Wagners Nouvelle Calédonie SARL v Vale Inco Nouvelle Calédonie SAS* 223
Benjamin Hayward

BOOK REVIEWS

- Something to Declare: A Memoir* 245
By Sir James Gobbo
Oscar I Roos

- Gifts: A Study in Comparative Law* 249
By Richard Hyland
Danuta Mendelson

INFORMATION FOR SUBSCRIBERS

RATES:

The subscription rate of the Deakin Law Review is \$99 per annum (including GST).

ORDERING:

Subscriptions for Australia and elsewhere (except for North America) may be ordered from the Editors, Deakin Law Review, School of Law, Deakin University, Burwood, Victoria 3125, Australia.

For North America subscriptions, please contact: Gaunt, Inc, Gaunt Building, 3011 Gulf Drive, Holmes Beach, Florida, US 34217-2199

ISSN:

The ISSN for the Deakin Law Review is: 1 321-3660

DEAKIN LAW REVIEW

VOLUME 15 NO 2 COMMITTEE

Editors

Associate Professor Elizabeth Adeney
Dr Dan Meagher

Editorial Board

Professor Philip Clarke,
Deakin University
Professor Jean Jacques du Plessis,
Deakin University
Professor Mirko Bagaric,
Deakin University
Professor Ian Freckelton,
Monash University
Professor Nicolas Terry,
St Louis University, USA

Student Sub-Editors

Abbey Colbert
Sophocles Kitharidis
Nadia Vittoria

Administration

Debbie Doherty

ABOUT THE DEAKIN LAW REVIEW

SUBMISSIONS

The *Deakin Law Review* is a leading Australian refereed law journal, published twice annually. Contributions of articles, case notes and book reviews for publication are welcome at any time. Contributions should be submitted electronically, in Word format, to the editors.

All submitted articles, case notes and book reviews are reviewed by at least one independent referee and the editorial committee. The *Deakin Law Review* ensures that each referee engaged is a recognised expert in the area of law(s) covered in the article.

STYLE GUIDE

The *Deakin Law Review* adheres to the third edition of the *Australian Guide to Legal Citation* (Melbourne University Law Review Association Inc, Melbourne) and submissions must conform to this Guide.

A Quick Reference Guide can be downloaded by visiting the 'contributions' section of the *Deakin Law Review* website at:

<<http://www.deakinlawreview.org.contribute.php>>, and then clicking on 'Our Citation Requirements Sheet'.

SPONSORS



In *Something to Declare* Sir James comes across as a thoroughly decent, hardworking and selfless man, committed to his career, his family and to the community. Unfortunately, however, admirable qualities and good deeds can rarely, of themselves, sustain a reader's interest. Ironically, it is often the subject's struggles with his or her darker side which make biographies, and sometimes autobiographies and memoirs (if the autobiographer or memorialist is candid enough), interesting. One can admire Sir James, and his achievements, without finding much to relate to in these memoirs.

Part of the problem is that *Something to Declare* provides only a superficial insight into the subject's inner life. One senses that the qualities that made Sir James an extremely capable barrister, an admirable judge, an ideal governor and a tireless servant of the community (those qualities of restraint, equanimity, fairness and reserve) are not the qualities which are needed to convert a life story into a rollicking good read. For example, Sir James writes of his long involvement with the Catholic Church at an official level, and it is obvious that his Catholic faith is a deep source of spiritual support to him, but he tells us nothing of his own views on the great controversies which have beset the Church over the last few decades, such as clerical sexual abuse, the role of women within the Church and the Church's teaching on birth control, abortion and human sexuality. Similarly, despite his extensive involvement with immigration and multiculturalism over many years, he does not offer his insights on current issues, such as mandatory detention, Australia's current treatment of refugees and Islamophobia.

To the extent that Sir James does touch upon anything controversial in *Something to Declare* (such as euthanasia, or the combating of terrorism) he almost invariably takes a somewhat muted conservative line. The one area where he does make his views plainer is in his well-known opposition to an Australian Bill of Rights. However, he does not really engage with the contemporary debate and the arguments mounted by current Bill of Rights proponents.

The best that can be said about *Something to Declare* is that I found the example of Sir James's life and indefatigable service to the community to be vaguely inspiring, and that, while reading it, I felt myself to be in the company of a good and learned man. The chapters on Sir James's experiences as Victorian Governor will be of some interest to historians, political scientists and constitutional scholars, as they lift the lid, as it were, on the inner machinations of the Victorian Executive government during a moderately controversial period in its history. But the prose of *Something to Declare* does not sing, and a mass of detail weighs the text down. A remarkable life, but unfortunately an unremarkable read.