

## Keeping up with Current Issues

*Jock Given* **America's Pie: Trade and Culture After 9/11**; *Spencer Zifcak* **Mr Ruddock Goes to Geneva**; *Geoffrey Barker*, **Sexing it Up: Iraq, Intelligence and Australia**; and *Brian Walters* **Slapping on the Writs: Defamation, Developers and Community Activism**, the Briefings Series, UNSW Press

Reviewed by *Natasha Cica*

These days everyone in paid employment seems to be time poor. Including, and perhaps especially, those who are paid to steer the nation in economically and socially productive directions. Federal Sex Discrimination Commissioner Pru Goward's admonition to Federal politicians to 'get a family life', delivered in a speech to the national conference of Families Australia in Brisbane earlier this year, was a blunt reminder of how extremely stretched are the timetables of our actual and aspirational leaders. Similar arguments can be made in respect of captains of business and industry, senior public servants and a range of Australian thinkers, movers and shakers.

According to Goward, this class of Australians lacks the time to mow their own lawns, cook dinner for their own children and care for their ageing parents. If that's really true, they probably don't have the time, the energy or the attention spans to read lengthy ponderings about politics and policy. What they need is something short and snappy.

A new series of essay-length books is starting to fill this market niche. Published by UNSW Press, the series is edited by Peter Browne and Julian Thomas of the Institute for Social Research at Swinburne University of Technology. They are also responsible for the website Australian Policy Online ([www.apo.org.au](http://www.apo.org.au)), another timesaving shortcut to the good oil. Each book in the Briefings series demystifies a zone of the author's expertise to identify problems with the dynamics and prospects of Australian democracy. Each is constructive as well as critical, offering some kind of useful blueprint for reform.

If words can be bullets, these short books have the potential to be Cruise missiles. The first wave of Briefings was released in late 2003, and already it's hit some strategic marks.

Consider *Slapping on the Writs*, written by Melbourne Senior Counsel Brian Walters, who is also a member of Free Speech Victoria, vice-president of Liberty Victoria, co-founder of Australian wilderness adventure magazine *Wild*, and legal spokesman for the Victorian Greens. Walters takes on the behemoth of Australian defamation law — famously described by the late Professor John Fleming, Australia's leading scholar of the law of torts, as 'a mosaic' of statute and common law, and criticised in contemporary application by Justice David Levine, Defamation List Judge of the Supreme Court of New South Wales, in a 1999 speech as follows ([http://www.lawlink.nsw.gov.au/sc/sc.nsf/pages/sp\\_310899](http://www.lawlink.nsw.gov.au/sc/sc.nsf/pages/sp_310899)):

Matters of principle have been elevated to an obsessive preoccupation, the playthings of forensic ingenuity, fantasy and imagination, at the

expense of the early, quick and cheap litigation of real issues that affect the people involved in libel actions.

From time to time I have tried judicially and judiciously to say that the nonsense must end... I have done so because it simply no longer makes any sense to me. It makes no sense to me in the wide and important context of the administration of justice which should involve the speedy and efficient and fair resolution of disputes.

Walters calls for wholesale reordering of the pieces of this legal jigsaw, in response to a growing tendency by developers, politicians and industry to threaten conservationists and community activists with legal action for expressing their political views. These legal threats are commonly referred to in the United States of America as 'SLAPP suits', an acronym for Strategic Litigation Against Public Participation. Walters offers a draft defamation reform Bill, based on North American statutory models, which themselves are the product of legal and political cultures with constitutionally protected rights of free speech going far beyond Australia's minimalist 'implied right' to freedom of political communication. The release of *Slapping on the Writs* could not have been more timely, given the March 2004 release by Phillip Ruddock, the Commonwealth Attorney-General, of a proposal for a draft national defamation law, a move which has already excited some legal and political controversy.

Another Cruise hits Phillip Ruddock's backyard in Spencer Zivcak's *Mr Ruddock Goes to Geneva*. This book is based on a discussion paper Zivcak wrote for economist Clive Hamilton's Canberra think tank The Australia Institute earlier in 2003. Zivcak has a solid understanding of the theory and practice of public law as widely defined, gained in his various capacities as an Associate Professor of Law at La Trobe University, Victorian president of the Australian section of the International Commission of Jurists, and working in East Timor at the invitation of the United Nations providing expert advice in developing that country's new system of government. Zivcak draws on that experience to challenge Ruddock's conduct of his former portfolio responsibilities as Minister for Immigration and Multicultural Affairs. Zivcak follows him into the corridors of power at the Palais des Nations in Geneva, providing an unforgiving edited account of the Minister's appearance before the UN Committee on the Elimination of Racial Discrimination in March 2000 in defence of the Howard government's track record on race issues. Zivcak then moves into a larger argument criticising that government's response to United Nations criticism of Australia's performance on human rights, one he sees as defensive and damaging. He demands a wholesale rethink of our increasingly unilateralist, pro-US-plus-anti-UN approach to international and domestic governance.

The evolving challenges of the relationship between the US and Australia are targeted from a different angle by Jock Given in *America's Pie: Trade and Culture After 9/11*. Given is a former director of the Communications Law Centre, policy adviser at the Australian Film Commission and deputy chair of Screenrights, the audiovisual copyright society. In this Briefing, Given peels back

the attractive facades of Australian success stories like *Finding Nemo* and Kylie Minogue. He reveals complex tensions between free trade and culture, as these are likely to play out in twenty-first century debates about the World Trade Organisation, Free Trade Agreements, global media empires, digital division, national identity and creativity. Given argues that a bilateral trade relationship affecting cultural identity is inevitable between Australia and the US, as 'the world's economic and cultural superpower, Australia's largest trading partner and a long-standing strategic ally'. But he reminds us that Australia does have choices about 'the nature of that relationship and about the other relationships it chooses to pursue and maintain alongside it'. We might choose to 'plan intelligently for complex, contradictory futures, blending the openness and targeted interventions which have underwritten success to date ...', or '[s]educed, perhaps, by familiar tides of global takeover, economic makeover, technological disruption or just powerful friends, the muscular little multilateralist in the South Pacific could instead devote itself to "deep integration" with the empire of the hour'.

Again, this Briefing was well timed. It hit bookstores shortly before the Government announced in February 2004 it was signing a Free Trade Agreement with the US that affected the arrangements under which media and cultural products consumed by Australians can be bought and sold. The proposed FTA mandates closer alignment of the intellectual property laws and practices of the US and Australia, including a 20-year extension of Australia's copyright period (currently life of the author plus 70 years), a move that has raised the concern of advocates for public and open access. It also treads on the sensitive toes of local content quotas — on the one hand, retaining the current 55 per cent Australian content quota for primetime free-to-air TV, but setting it as a maximum that future Australian governments may choose to reduce, or abolish, and thereafter be unable to restore; on the other hand, retaining the current 10 per cent expenditure quota for Australian drama on pay TV, but giving future Australian governments the scope to double it to 20 per cent. It remains to be seen down which of the broad paths outlined by Given any FTA implementation may take us, but his Briefing provides useful historical, empirical and conceptual background for debate.

The jewel in the series crown so far is the Briefing written by Geoffrey Barker, senior foreign affairs and defence policy columnist for the Australian Financial Review. Entitled *Sexing it Up: Iraq, Intelligence and Australia*, his book dissects the construction and presentation of information about the threat posed by Iraq in the build-up to last year's military intervention by the 'anglosphere' bloc of the Bush, Blair and Howard administrations. Importantly, Barker does this without resorting to the kind of crude anti-Americanism of which critics of that intervention are often accused. Instead, he serves up a well-crafted dossier that traces the spin process at home and abroad in relation to intelligence claims about Iraq's weapons of mass destruction. Along the way he explores the increasingly partisan flavour of relationships between Canberra bureaucrats, ministerial advisers with 'the bounce and the front of the used car salesman and the tabloid journalist', and elected politicians. Following earlier exposés by David Marr and Marion Wilkinson on Tampa, Patrick Weller on truth overboard, and

Graeme Dobell on the contemporary culture of the Department of Foreign Affairs and Trade, Barker asks if the necessary detachment of officers of the Office of National Assessments (ONA) may have been strained, and their integrity and honesty compromised accordingly, in the face of the Howard government's known policy position on Iraq. Barker cannot answer this question directly, but offers us the professional bodies of former Department of Defence secretary Paul Barratt, ONA whistleblower Andrew Wilkie and dead British defence scientist David Kelly as circumstantial evidence.

Professionalism and its contemporary discontents are the subterranean themes of *Sexing it Up*. Barker knows that 'to get along you go along' is a pressing fact of post-modern political and economic life, but that doesn't mean he likes it, or admires those who are craven and complicit in their service of agendas that stink. Including members of his own profession:

Journalists increasingly find themselves facing an invidious choice: become ciphers for the spin of politicians and get easy access and the information that builds professional success, or remain outsiders and trade easy access for critical independence. That some journalists choose career success over independence is part of the legacy of spin. That many resist is one reason why there is still some honour, however tarnished, in the grisly business of journalism.

Outlining the contours of power, pinpointing its potential for abuse, and naming unpopular truths is always a grisly and risky business. But without such efforts, as Barker sagely observes, the boundaries of pluralistic political debate will diminish and narrow, seduced consent will replace informed consent, and democracy as Australians have long understood it will degenerate into something a lot more blanded out and dumbed down than is good for us.

These Briefings might form part of the process of stopping that rot. Accordingly, they are worth adding to your own portfolio. The second wave has now been released. In *Refuge Australia*, Klaus Neumann helps us think more deeply about the welcome Australia has extended to refugees over the last fifty years. In *Rebels With a Cause*, Brian Costar and Jennifer Curtin trace the rise of independents as powerbrokers in Australian parliaments. And in *The Politics of Medicare: Who Gets What, When and How*, Gwendolyn Gray analyses some practical implications of the ideological clash of commitments between public and private in Australia's health care sector. These and forthcoming Briefings promise to be as probing and pertinent as the works by Walters, Zivcak, Given and Barker. Required reading - and not just for our hyper-busy leaders — in the lead-up to the next Federal election. And in its aftermath.

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