

Plea on demands

Statutory Demands: Law and Practice by Farid Assaf, LexisNexis Butterworths, Sydney, 2008, 543pp, \$180 (hb). ISBN 9780409324198.

By RON SCHAFFER, *Solicitor*

BEFORE 1993, THE LAW GOVERNING statutory demands was well-developed and well understood. Some technical differences existed between the Supreme Courts of NSW and Queensland and those of the other states and territories (which one legal wag attributed to the difference in the preferred football codes of the various jurisdictions). There was, of course, litigation but it was not a daily occurrence.

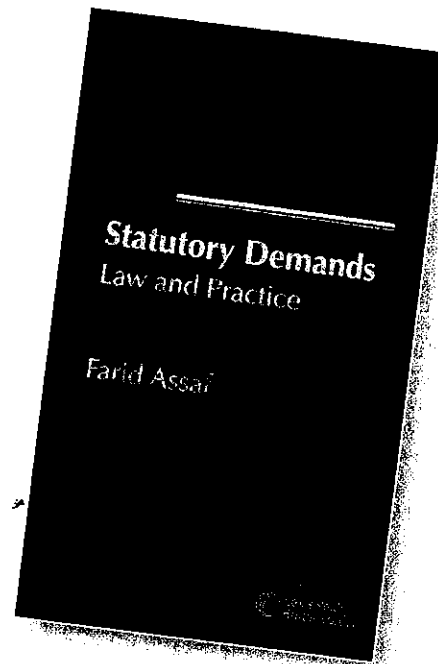
The mere existence of this book shows just how much has changed. From a few pages in pre-1993 textbooks, the law of statutory demands is now so complex that it needs a textbook all of its own. And no slim volume, either – Mr Assaf's text is over 400 pages long, and that's not including indices, tables and appendices.

The author's approach is process-driven, beginning with the requirements for the drafting and service of a statutory demand, through the set-aside procedure, and concluding with the formal winding-up process. All the related case law is surveyed and the relevant principles extracted – no mean feat when one considers that the handful of sections governing statutory demands has produced a table of cases than runs to 30 pages.

In some respects the most interesting chapter is the detailed history of chapter one. Like many before him, the author appears to conclude that the current regime has failed. He quotes with apparent approval Finkelstein J's 2004 comment in *Quadrant Constructions v HSBC* that any advantage enjoyed by the post-1993 regime is "negligible or non-existent". Finkelstein J concluded by opining that the time had come for parliament to "reconsider the wisdom of the [1993] changes".

As the author notes, parliament has not taken up the invitation. The 2007 insolvency amendments – the most comprehensive since 1993 – effectively ignored statutory demands. This, despite the fact that it is a truth almost universally acknowledged that disputes about them have become the cane toad of corporate litigation.

Austin J concludes his foreword to this



book by expressing the hope that it go into a "second, third and subsequent editions". Perhaps its greatest accolade (no disrespect to the author's efforts) would

be if this were the first and last edition. If a copy were sent to every member of the Corporations and Markets Advisory Committee, the Federal Treasurer and the Federal Attorney-General, perhaps someone in a position of influence might see the light and realise that the law of statutory demands urgently needs changing.

"Disputes about statutory demands have become the cane toad of corporate litigation."

Until then, practitioners at the coalface will daily have to struggle with the, to quote the author, "highly technical, often confusing and frequently frustrating" statutory demand regime. In that task, they will find considerable assistance from this comprehensive book.

Legal book reviewers often claim that a book under review is an essential addition to a practitioner's library. It was never truer. □

Just deserts, or truth and healing

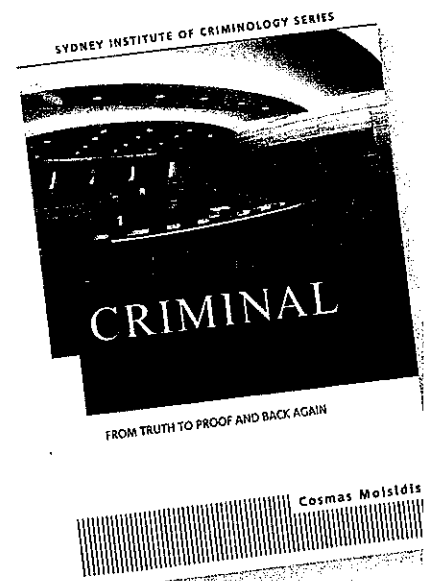
Criminal Discovery: From Truth to Proof and Back Again by Cosmas Moisisdis, Sydney Institute of Criminology Series 27, The Federation Press, Sydney, 2008, 288pp, \$71.50. ISBN 9780975196779.

By ANDREW HAESLER SC

HOW CAN WE FURTHER THE truth-seeking function of the criminal trial? What must change? As Cosmas Moisisdis explains, criminal discovery is about the control and exchange of information up to, and including, the course of the trial.

Historically, the exchange has been one-way, with the prosecution obliged to disclose all relevant material, even that which harms its case. The defendant, on the other hand, can exercise a right of silence. How that situation arose historically, and the role of defence lawyers in establishing that right, provides a fascinating introduction to this welcome work.

As lawyers, we can appreciate that there is a disconnect between what is perceived as truth and what can be proved. While



often portrayed as a search for truth, the criminal trial in particular is dependent on the material that is gathered, produced and ultimately actually admitted as evidence.