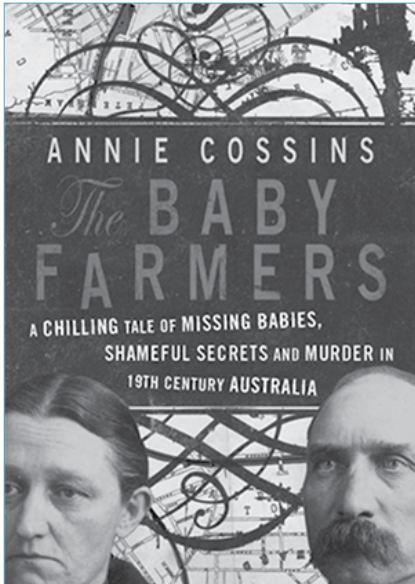


## The Baby Farmers: A Chilling Tale of Missing Babies, Family Secrets and Murder in 19<sup>th</sup> Century Australia

By Annie Cossins | Allen & Unwin | 2013



Baby farming in late Victorian New South Wales was a well-known occupation. Advertisements appeared regularly in newspaper classified sections offering children for adoption, sometimes for a 'premium'. If these words were used, the child was to be sold to the baby farmer. The advertisements were often vaguely coded:

WANTED Lady to adopt pretty little GIRL two and a half months old, fair, large blue eyes, no premium give. Address: Mrs Greves, G.P.O., Sydney.

WANTED, kind person to take charge of Baby. Apply, stating terms to 333 Herald Office, King-st.

Syphilis was then rampant in the colony, and inordinate numbers of children were born affected. Many of them perished in their infancy, as they were the offspring of syphilitic parents. Many were sold for paltry sums to couples who themselves were also infected.

This is the backdrop to Dr Anne Cossins' fascinating look at the lives of John and Sarah Makin, who were convicted of murder of Horace Amber Murray in 1893 at Darlinghurst in Sydney. They are, of course, the subject of the decision of the Privy Council in *Makin v AG for NSW* [1894] AC 57, perhaps one of the most famous cases in the law of evidence, and prior to the introduction of the co-incidence rule in the *Evidence Act* 1995, a leading case on similar fact evidence.

Dr Cossins, who is an Associate Professor at the Faculty of Law at the University of New South Wales, is an occasional screenwriter, author and actress. Indeed she played Sarah Makin in the 2009 production of *Deadly Women*, which was broadcast on the ABC. Dr Cossins is also a criminologist who has conducted important research into evidence given by sexual assault victims, and in particular delayed complaints made by children.

The book relies largely on historical documents that Dr Cossins has managed to find in archives throughout New South Wales. To say that she is a dedicated researcher is something of an understatement. Birth, marriage and death certificates are examined in detail and contemporary newspaper accounts are rummaged through. She tells the surprising story of *Godfrey's Cordial*, a potion of opiates that was commonly given to babies to stop them from

crying, and its use and abuse by mother of all classes and social strata.

As a result of her efforts, Dr Cossins uncovers the strange tale of the bigamist Constable James Joyce (Australia's own) who pursues the Makins over several years, from the discovery of the bodies of thirteen babies buried in the backyards of cottages in inner Sydney, to inquests to murder convictions and ultimately to John's execution and Sarah's imprisonment. It is Dr Cossins' thesis that whilst John and Sarah Makin were likely guilty of many crimes, including the manslaughter of several if not all of the many children they 'adopted', they were ultimately convicted of the death of the wrong baby.

The book is successful in several respects. First it is a fascinating historical cultural snapshot of life in pre-federation Sydney. Dr Cossins describes a thriving colonial town, a distant outpost of the Empire locked in the hypocrisy of a puritanical time. As Dr Cossins points out:-

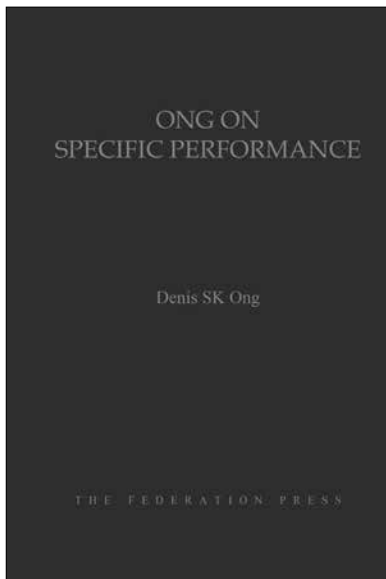
Sarah's and John's crimes were also the crimes of a society that condoned infanticide while, paradoxically, stigmatizing unmarried mothers.

The legal status of an illegitimate child was described as 'filius nullius', child of no-one, which sums up the legal and social reality of the times. Since these children had no legal status, it is hardly surprising they had little or no social value. Life was cheap for illegitimate babies. Baby farmers provided an unsavoury but

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# Ong on Specific Performance

By Denis SK Ong | The Federation Press | 2013



Professor Denis Ong of Bond University has taught and written extensively on the topic of equity for many years.

His latest book on specific performance accompanies his previous works, *Ong on Equity* and *Trusts Law in Australia* (the latter now in its fourth edition).

*Ong on Specific Performance* is arranged in six chapters and examines all aspects of suits for specific performance.

The first chapter analyses the difference between performance of an executory and an executed contract.

The second, much longer, chapter considers the requirements for the making of orders for specific performance, including the inadequacy of common law damages and the plaintiff's readiness and willingness to perform the contract.

Chapter three gives examples of contracts where specific performance may be refused, including contracts requiring the supervision of the court and contracts of personal service.

Chapter four deals with the doctrine of part performance.

Chapter five looks at specific performance and common law damages as alternative remedies. This includes a detailed discussion of *Ogle v Comboyuro Investments Pty Ltd* (1976) 136 CLR 444 which established the proposition, among others, that a vendor who has initiated proceedings for

specific performance may be able despite, and during the pendency of, such proceedings to rescind the contract for further breach.

The final chapter deals with the defence of hardship.

Ong is not afraid to speak his mind. He describes the decision of one member of the High Court in *Foran v Wight* (1989) 168 CLR 385 as 'conceptually problematic as well as irreconcilable with pre-existing high authority' and one which gives rise to 'a capricious dichotomy of outcomes'. All this despite the fact that the said approach – as Professor Ong fairly acknowledges – has attracted support at intermediate appellate level on at least two occasions.

*Ong on Specific Performance* is written in a lively way, but also in a clear, accessible style. Possibly it was written with students in mind. It will attract a wider readership. Professor Ong has produced a useful, concise yet comprehensive survey of this important remedy.

**Reviewed by Jeremy Stoljar SC**

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necessary service that filled the vacuum left wide open by government policies, the market economy and the limited assistances available through charitable organisations.

It is also a romp of a detective story. Dr Cossins clearly relishes being able to uncover facts and evidence in order to tell a story which has never been told in full. It is a story of convict heritage, family betrayal and forensic science still in its infancy. In the

days before radio, television and mass communication, it is easy to understand how the Makins' notoriety fascinated the people Sydney, many of who attended or attempted to attend the inquests, trial and appeal. Contemporary accounts suggest that the court hearings were each and every one a full house.

From a lawyer's perspective the book provides a fascinating insight into how considerably the

criminal law has evolved, and in particular how our notions of a fair trial have developed in the 120 years since the convictions of the Makins. Dr Cossins applies the sensibilities of the twenty first century criminal lawyer to demonstrate how different the outcome might have been, had the trial been held today.

**Reviewed by Richard Weinstein**