

Fisheries Law in Australia

Warwick Gullett

(*LexisNexis Butterworths*, Chatswood NSW 2008 pp 335 and xlvi)

There has been a need for a book on Australian fisheries law for a very long while and Warwick Gullett's book has filled this gap very well indeed. The book covers a wide range of subjects within its rubric. It starts off with a good discussion of the historical background, including the now almost forgotten Federal Council of Australasia, and the lead up to federation, resulting in section 51(x) of the *Constitution*. It also includes a discussion of the misunderstanding about the extent of State powers over offshore waters, including fisheries, which was not finally resolved by the High Court until 1975, and which was effectively reversed in the offshore constitutional settlement. This chapter weaves through a number of potentially confusing issues, from the multiplicity of legislative powers available to the Commonwealth to legislate with respect to fisheries, the possible limitations on state extra-territorial legislative competence in offshore areas, and the offshore constitutional settlement itself.

By the end of the introduction, the reader will have become very much aware that the subject of fisheries law in Australia is not for the faint hearted. It is not surprising that only a few people have made the effort to write on it. This is followed by a frankly excellent chapter on the common law, which covers not only the public right to fish but also indigenous fishing rights, including native title issues. Ch IV deals with legislative objectives for the fisheries sector, which are quite popular in Australia, and which have led to a number of cases where administrative action has been tested against these objectives by a process of judicial review. This chapter is of interest not only to Australian lawyers but to lawyers in other 'common law' countries where similar clauses are often included in fisheries legislation, sometimes with unforeseen consequences. Indeed, lawyers from so called civil law countries would find the discussion here valuable also. This is followed by a chapter (Chapter V) on ecosystem and species protection, which covers at both Commonwealth and State and territory level a range of topics, from various assessments, protected species, threatened species, critical habitats and others.

It is only in Chapter VI that we get to commercial fisheries, which to many would be the heart of the subject. This deals amongst other things with quota management and statutory fishing rights. Australia has considerable experience in this approach to fisheries management, and the chapter will provide a rich source of information about the legal basis of the various schemes operating at the State and federal level. For countries which are thinking of switching over to this method of management (Denmark is a recent addition), the information here is a rich treasure trove of examples adopted in Australia at different levels of government. This is followed by the surprisingly important 'recreational fishing' chapter (VII). This chapter contains a lot of detail on this subject.