

## Discrimination Law and Practice

by Chris Ronalds; The Federation Press 1998; 245pp; \$40.00 softcover.

## Human Rights in Australian Law

edited by David Kinley; The Federation Press 1998; 366pp; \$60.00 softcover.

As someone moving from legal policy and law reform to work as a solicitor, I was interested in what these books have to offer the rookie practitioner.

Chris Ronalds is well established as a discrimination law guru at the Sydney bar. She has the ideal background and breadth of experience to write a guide-book on legislation and procedures in this area. As well as filling the role of a preliminary practice manual, *Discrimination Law and Practice* intended to be more broadly educative. Ronalds wants to provide organisations with an in-depth appreciation of the law so they are in a better position to create environments where discrimination does not occur. The author's emphasis on preventative measures is significant in the current climate of backlash against disadvantaged groups.

The book begins with an overview of the principles underlying discrimination legislation and briefly canvasses jurisdictional issues. Ronalds does not provide any guidance on whether a complainant should opt for a federal or State remedy if both are available. Presumably the answer to this depends on many factors including limitation periods, remedies, enforcement mechanisms and cost. However, some guidance on this point would be helpful.

*Discrimination Law and Practice* then takes the reader on a guided tour through the discrimination complaint process: step one, identify a ground of discrimination (for example, race, sex); step two, identify an area in which discrimination on this ground is unlawful (for example, employment, education); step three, attend conciliation followed by a hearing if necessary. The procedural map drawn by Ronalds is clear and helpful.

Ronalds illustrates her points with brief examples from decided cases including recent decisions such as *Hickie v Hunt and Hunt*. In that case a

complaint of indirect discrimination was upheld against a Sydney law firm because its partnership requirements disadvantaged women taking maternity leave. Strangely, Ronalds describes *Australian Iron and Steel* as a landmark case but does not give an outline of the facts or describe the outcome. This litigation, which was successfully instigated by women workers from non-English speaking backgrounds against one of the biggest corporations operating in Australia, warrants greater attention even in a relatively brief text. Hypotheticals and worked examples would also be useful.

Throughout the text, Ronalds uses federal legislation to illustrate her points. However, the tables in the appendices to *Discrimination Law and Practice* compare Australian legislation in terms of grounds of discrimination, areas of discrimination, exceptions, conciliation powers and contact points. It is interesting to discover that the ACT and the Northern Territory are the only jurisdictions to outlaw discrimination on the grounds of transexuality, political belief and trade union activity. This is a little embarrassing for the supposedly progressive southern States although NSW is redeemed to some extent by formally recognising transgender and HIV/AIDS vilification. Tasmania's failure to proscribe race or disability discrimination is sadly predictable.

Ronalds does not shy from showing her political savvy which is refreshing in a practice oriented text:

Sexist or racist advertisements for commercial products, especially on television or radio, are not covered by the provisions in the discrimination law as they are more general in nature. Any person who may be offended by stereotypes such as women in the kitchen or laundry achieving personal happiness and achievement through the use of margarine or washing powder do not have the

direct personal interest needed to base a discrimination claim. [p.126]

*Human Rights in Australian Law* examines the potential for international human rights law to be used in areas such as criminal law, constitutional law and family law. Again, the book is aimed at legal practitioners. It is also intended to provide a conceptual analysis of the status of human rights in Australian law. Chris Ronalds has co-authored a chapter on using human rights in litigation with Kate Eastman. Eastman has also contributed a useful table of international instruments relevant to Australian human rights law. It includes the date of entry into force in Australia and, importantly, any domestic legislation expressly implementing the obligations of becoming a signatory.

David Kinley, the editor of *Human Rights in Australian Law*, brought together an impressive range of authors, both young and established. Part One of the book looks at human rights and the legal framework. Part Two surveys human rights in the substantive areas of criminal law, immigration law, family law, labour law, environmental law, information technology law and health law. Finally, Part Three includes chapters on practice and procedure. A chapter on the human rights of children would have been a timely addition to Part Two.

It is not possible to give an overview of the variety of topics and writing styles in *Human Rights in Australian Law* in the space of this review. Instead, I will look briefly at two topical chapters. Chapter five, 'Indigenous Australian peoples and human rights', by Jennifer Nielsen and Gary Martin aims to highlight the main issues and examine the particular rights of Indigenous people at international law. It includes material on the recognition of Indigenous common law, the Draft Declaration on the Rights of Indigenous Peoples, self-determination, equality rights and cultural rights. Each section is necessarily brief but is a useful introduction to the topic. For example, the material on discrimination in the administration of criminal justice uses key sources from Chris Cunneen, the Australian Law Reform Commission and Judy Atkinson. While acknowledging their importance, the authors deliberately omit any

discussion of social policy issues such as health and housing.

The final chapter of *Human Rights in Australian Law*, contributed by Michael Bliss and Shahyar Roushan, is an innovative guide to using electronic resources in human rights research. It begins with an overview of the major Australian databases and a guide to finding international instruments and documents on the Internet. Web addresses are included. The section on Australia gives a much deserved plug for the excellent sites maintained by AustLII and Foundation Law: 'It is not an overstatement to say that both these

resources are revolutionising legal practice in Australia' (p.358). The chapter ends with information on human rights mailing lists which are a superb way to keep up to date with international developments.

*Discrimination Law and Practice* and *Human Rights in Australian Law* are useful tools for beginners, either new practitioners or people new to the field. Each provides a useful overview of the subject area while providing pointers to more detailed and specific information. Definitely worth having on the shelf.

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## It's Your Constitution Governing Australia Today

by Cheryl Saunders; The Federation Press; 1998; 200 pp; \$16.95 softcover

As Australia heads closer towards the promised 1999 referendum on the republic, the people will be asked to make some important decisions about the way in which we should be governed as a nation.

The republican debate is certainly not unknown to the Australian people. In particular, the constitutional convention held in February 1998 brought the debate into our loungerooms each night.

During the convention, the most popularly debated questions were — Do we want the Queen or an Australian as our head of state? Should the people or the parliament decide who should be our head of state?

The popular press has focused on the symbolic effect that any changes will have on our national identity. Such symbols lie at the heart of the republican debate and indeed take it to its most inspiring levels.

However, in order to make an informed decision in 1999 we need to go beyond these symbols to understand what the proposed republican model would mean for our system of government. Such discussion is inhibited if the public at large does not have a good understanding of how our present system of government works.

*It's Your Constitution* is an ambitious book designed to explain the Constitution and why it matters for the way in which we govern ourselves. The book does not express any opinion as to

pros and cons of constitutional change. Rather, the book's aim is to arm people with the knowledge necessary to more fully participate in constitutional debate and to reach their own informed decisions. Professor Saunders invites people to 'have a look at the Constitution', a truly ambitious aim given that fewer than half of enfranchised Australians voted for candidates to attend February's constitutional convention.<sup>1</sup>

As Professor Saunders says in the preface, this book is not for constitutional scholars and for people who work regularly with the Constitution. Only the main sections of the Constitution and a few of the most important High Court decisions are referred to (but then, without citations).

The book touches on the history of our Constitution and then sets out to answer three important questions.

First, what kind of a say do we have in our system of government? Under this section, Professor Saunders discusses what is meant by popular sovereignty in Australia. In this context, she discusses the role of parliament, our electoral system and what is meant by democratic rights and obligations.

Second, how are decisions made? Here, Professor Saunders describes the role and powers of different arms of government, namely, the parliament, the judiciary and the executive.

Third, what are the limits on what governments may do and how they do it? In this regard, the book considers the

role of the rule of law in a democracy, the checks and balances in our system of government, and the notion of 'rights'.

On 1 January 2001, the Constitution will have been in use for 100 years. Professor Saunders notes that since the Constitution came into effect in 1901, a lot has happened both within and outside Australia. Cars were not in general use until after federation and it wasn't until 1909 that the first aeroplane flew. Radio and television are inventions of the 20th century. Australia was also a colony of Britain at the time that the Constitution came into effect, and was not recognised as an independent nation until 1926.

Whilst much has changed, Professor Saunders considers that our Constitution has adapted reasonably well and our democracy has been stable. However, she notes that at some point in time the circumstances of a community will change so much that parts of the Constitution will no longer work and new rules will be needed. Whether the Australian Constitution has reached this point, writes Professor Saunders, is a matter for Australians to decide.

*It's Your Constitution* makes a very important contribution to the public discussion leading up to the 1999 referendum and beyond. And as was noted by the High Court in the freedom of speech cases,<sup>2</sup> informed discussion lies at the heart of representative democracy.

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### References

1. McKenna, Mark, The Greatest Show on Earth — The 1998 Constitutional Convention; (1998) 23(2) *Alternative Law Journal* 83.
2. *Levy v The State of Victoria & Ors* (1997) 189 CLR 579; *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520; *Theophanous v Herald Weekly Times Ltd* (1994) 182 CLR 104; *Nationwide News Pty Limited v Wills* (1992) 177 CLR 1; *Australian Capital Television Pty Limited & Ors v The Commonwealth* (1992) 177 CLR 107.