

*Australian Social Security Law, Policy and Administration* by Terry Carney and Peter Hanks (Oxford University Press, Melbourne, 1986) pages i-xxv, 1-249, notes 250-310, bibliography 311-326, index 327-335. Price \$40.00 (hardback) \$19.95 (soft cover). ISBN 0 19 554754 3 (hardback) ISBN 0 19 554753 5 (soft cover).

In 1972 Professor Ronald Sackville wrote that Australian lawyers had 'devoted very little attention to the structure and administration of Commonwealth and State social welfare programmes'.<sup>1</sup> Having ascribed reasons for this, he suggested that '[s]omewhat belatedly, attitudes are changing'.<sup>2</sup> The following year he was appointed the Commissioner for Law and Poverty in the Henderson Commission of Inquiry into Poverty.<sup>3</sup> As such, he was responsible for a series of studies on the law as it affected poor people, which were published in the mid-1970s. However, it was only in the 1980s, as decisions of the Commonwealth Administrative Appeals Tribunal in the social security area began to be published, that more than a few lawyers came to consider this branch of law worthy of their serious attention. It took another few years before the academic study of the subject led to the publication of books containing analysis and evaluation. Three such books have appeared within a space of less than two years.

The first, *Legal Foundations of the Welfare State*,<sup>4</sup> by Ross Cranston, formerly of the Faculty of Law at the Australian National University, is written more for a British than an Australian readership, but its opening chapter on 'The historical background' demonstrates just what it was that the Australian settlers rebelled against in refusing to adopt the Poor Law. Much else in the book has relevance to Australia, and Australian law is drawn on from time to time by way of illustration. The second, the late John Kirkwood's *Social Security Law and Policy*,<sup>5</sup> is concerned almost exclusively with the Social Security Act 1947 (Cth) and its administration. The 'policy' referred to in the title is that of the administrators of the Act; the broader issues of social policy are pretty much confined to a sketchy treatment in the concluding chapter. From the practitioner's point of view this is probably the most useful of the three books. It would probably need to be supplemented by *The Annotated Social Security Act 1947* put out by the Welfare Rights Centre (Canberra) Ltd, or the much more expensive C.C.H. *Australian Social Security Guide*.

The third book to appear is the one under review. It is the most comprehensive of the three in relation to the social policy that has led to the legislation in three areas of Australian social security, viz income support for the unemployed and for lone parent families, and the provision of medical and like services. Its bibliography attests to the fact that it has drawn on a wealth of literature in the social sciences with which most lawyers would be unfamiliar. However, since its completion coincided with the commencement of the Review of Social Security being undertaken for the Commonwealth Government by Professor Bettina Cass, it was unable to draw on the numerous background and discussion papers produced in 1986 and 1987, providing much further information on the Australian system and overseas comparisons. In many respects, the authors have been able to anticipate this information from their own researches. From the point of view of an Australian student, this book should prove to be the most valuable.

Although perhaps regretting the fact, the authors realistically recognize that a complete structural change in Australian society is unlikely to occur in the foreseeable future so as to overcome the inequalities in the distribution of wealth and access to services that are to be found today. Their concern is the alleviation of the consequences of such inequality at the margin, i.e. the impact that social security measures in relation to income maintenance and health services can have on the alleviation of poverty and its effects. Having raised the fundamental issues in chapter 1 and set the historical background in chapter 2, they turn in chapter 3 to the definition and scale of poverty. Here

<sup>1</sup> Sackville, R., 'Social Welfare for Fatherless Families in Australia: Some Legal Issues' (1972) 46 *Australian Law Journal* 607.

<sup>2</sup> *Ibid.*

<sup>3</sup> See the Preface to all the Reports of the Commission, published in the First Main Report, *Poverty in Australia* (1975) vii.

<sup>4</sup> Weidenfeld and Nicolson (1985), published in the Law in Context series.

<sup>5</sup> Law Book Company Ltd (1986).

is found a succinct presentation of the disputes as to the meaning of this elusive concept and the attempts which have been made to measure it. Other continuing debatable issues, such as whether benefits should be universal or means-tested are raised in chapter 4 on policy choices in relation to the alleviation of poverty. It is not overlooked that taxation policy is intimately connected with policies related to expenditure on social security.

The general principles outlined in the first four chapters are then applied to specific aspects of Australian social security provision in the next four chapters, dealing respectively with income support for the unemployed; income support for lone parent families; the health insurance, Medibank and Medicare saga; and nursing home and pharmaceutical benefits. These chapters display a thorough knowledge of the legislative history and a similar familiarity with the interpretations of the Commonwealth Administrative Appeals Tribunals and those few court decisions that have emerged in recent years. A reading of the relevant part of the book could not but help to make any subsequent decisions better informed. Occasionally one finds a statement which causes, at least, a raising of the eyebrows. For instance, on page 115 it is said that the dollar-for-dollar reduction in unemployment benefit beyond the 'free zone' and tapered reduction 'is explicitly designed to preserve work incentives' (cf. the reference to the 'poverty trap' on page 119 and the good discussion of this issue at pages 165-6). But, more often, this reviewer found himself nodding agreement with the authors' comments, as with the passage on page 201 adverting to the apparent paradox that Medicare, by offering access to medical services to all members of society, not only avoids stigmatization, but achieves a more progressive distribution of the cost of those services than it would by focussing on selected sectors of society.

The final chapter is entitled 'A Policy Stocktaking: From Conservatism to Complacency or Measured Reform?' At the outset one finds the rather surprising conclusion drawn from what has gone before: 'Apart from the preference for government-funded, flat-rate and means-tested income security (rather than the contributory and earnings-related systems found elsewhere in the western world), Australia's social security arrangements are notable for their mainstream characteristics.'<sup>6</sup> The exceptions listed are surely so significant that they take Australia out of the mainstream, at least of Western industrialized economies with which we are apt to compare ourselves. That does not mean that our arrangements are necessarily inferior. It is strongly arguable that governments ought not to concern themselves with the preservation of income-differentials except to the extent necessary for the smooth functioning of the economy, and that flat-rate benefits are appropriate for all non-productive members of the society, whether their non-productivity is due to a congenital abnormality; subsequent accident, illness or redundancy; or age. Means-testing is not in itself necessarily evil. If it can achieve better targetting without stigma, as may be the case with the age pension, it allows for redistribution to the more needy of whatever limited resources are available. Whether universality would lead to a greater political availability of resources in this area is doubtful. Different arguments might be advanced in other areas, e.g. in relation to Medicare, as mentioned above, and family allowances,<sup>7</sup> where the better approach may be through universality plus taxation.

The final chapter raises also the important issue of the balance between rules and discretion. The authors here advocate a reasonable middle course, which requires 'that discretion be structured by enunciating the policy objectives sought to be advanced, building in presumptions to guide the exercise of discretion, and insisting on open and reasoned decisions; and that it be rendered more accountable by expanding the prospects for prompt and informed review on the merits'.<sup>8</sup> This should keep administrative lawyers happy, at least if there are resources to pay for their services, which would undoubtedly be needed in such a system. But the question of the availability of resources generally to help Australia's poor must apparently await the return of a government unlike the present one, which has, as noted on page 243, 'retreated from any commitment to redistribution, as evidenced by the mildness of the capital gains tax . . . , by the rejection of the reintroduction of wealth taxes or death duties, and by the significant reductions in the progressivity of income tax scales for higher income earners'. Meanwhile, we can welcome the limited reforms proposed by the authors.

HAROLD LUNTZ\*

<sup>6</sup> Page 236.

<sup>7</sup> See the arguments advanced in Issues Paper No. 1 of the Social Security Review, *Income Support for Families with Children* (1986).

<sup>8</sup> Page 241.

\* George Paton Professor of Law, University of Melbourne.