

---

## Maritime Law in Australia

D A Butler & W D Duncan

Legal Books RRP \$85.00

Until recently, those interested in Australian maritime law had no purely Australian text available for reference. That situation has changed dramatically with the publication of *Shipping Law*, Davies & Dickey (1990), *Australian Maritime Law*, White (1991) and *Maritime Law in Australia*, Butler & Duncan (1992).

The student and practitioner now have a choice of ready reference books. Inevitably, there is some duplication in the texts, but the three publications are also complementary and worthy of consideration for your library.

*Maritime Law in Australia* has the advantage of being the latest publication, with references to such recent events as the EXXON Valdez disaster in Alaskan waters in March 1989. It addresses new statutory provisions and conventions up to early 1992: for example, the *Limitation of Liability for Maritime Claims Act* 1989 and the *Carriage of Goods by Sea Act* 1991 (COGSA). The 1989 *Salvage Convention*, forming the basis of the Lloyds Open Form (1990), is also examined.

It comments upon recent legislative activity such as COGSA, which introduces the "Amended Hague Rules" for contracts of carriage entered into after October 1991. This Act also contains provision for the adoption of the "Hamburg Rules" in lieu of the "Amended Hague Rules", if at some future time such adoptions are considered desirable.

An innovative chapter is that covering "pollution at sea". This is an area of increasing interest and importance to the maritime lawyer, following introduction of legislation in each of the States and the Northern Territory (which is in each case a virtual re-enactment of the *Commonwealth Protection of the Sea [Prevention of Pollution from Ships] Act* 1983); and the strengthening of international conventions.

*Maritime Law in Australia* also examines in detail marine insurance; covers the provisions of Lloyds Open Form Rule 90 salvage agreement, which imposes on the salvor a new, additional duty to prevent or minimise damage to the environment; and explains clearly the rule of law relating to the carriage of goods by sea.

This book is very clearly laid out and well indexed; indeed, in these respects it is a model for legal texts. In each section it uses very clear examples from case law as illustrations and has very useful worked examples to demonstrate the new limitations of liability regime: one of the examples used is the loss of the Russian cruise ship *Mikhail Lermontov* off New Zealand in 1986. Whilst it is essentially an introductory text for the maritime lawyer and student, it is a most useful unified book for ready reference and a worthwhile addition to any practitioner's library. □ D D Farthing

## The High Court and the Constitution

(3rd edition) L. Zines

Butterworths Hard Cover RRP \$89.00

Professor Zines of the Australian National University has already made a highly significant contribution to the literature of Australian constitutional law. His publications include not only the two previous editions of the book under review, but also *Federal Jurisdiction in Australia* (with Sir Zelman Cowen) and, more recently, *Constitutional Change in the Commonwealth* (Cambridge University Press 1991). *The High Court and The Constitution* has already achieved a notable place among text books in this area. Students, academics and practitioners have available to them many outstanding annotated commentaries on the Constitution (beginning with the work of Quick and Garran in 1901) which digest exhaustively the reported decisions on each section of the Constitution. This is not Professor Zines' approach. His work on the Constitution has from its first edition focussed on some of the more important and difficult questions of constitutional law rather than on a complete digest of every reported decision on each section. Thus, characterisation, the incidental power and the enigmatic section 92 all receive detailed consideration over a number of chapters. Further, the various difficulties surrounding the interpretation of chapter III of the Constitution also receive minute attention.

Professor Zines' latest edition comes at a most exciting time in Australian constitutional law. In the last five years there have been a number of quite revolutionary decisions: for example, in *Cole v Whitfield* (1988) 165 CLR 360 the Court articulated a new test for the interpretation of section 92. Other important developments include the *Incorporation case* (1990) 169 CLR 482 and *Polyukhovich v Commonwealth* (1991) 172 CLR 501. All of these cases are discussed in detail. Also included is a chapter entitled "Common Law, Tradition and Individual Liberty" in which Professor Zines examines certain constitutional implications and assumptions which have been discerned by the High Court in the interstices of the written words of the document. In this area too, the High Court has been most active in the period since the last edition of this book in evaluating various implicit rights in the Constitution. This is perhaps the most interesting chapter of the book, particularly given the dearth of other detailed treatments of this area. The importance of such implied guarantees of personal freedom has been resoundingly emphasised in the twin cases of *Nationwide News Pty Limited v Wills* (1992) 108 ALR 681, and *Australian Capital Television Pty Limited v The Commonwealth* (1992) 108 ALR 577 and it is notable that Professor Zines' writings were expressly referred to by Brennan J in his judgment in the *Nationwide News Case*.

Like its predecessors, this third edition is destined to take its place as a classic of Australian constitutional law. □