addressed. In particular, for each jurisdiction in Australia, the brief overview in chapter six ('EIA procedures in Australia') is supported by detailed references, as well as useful Internet addresses to obtain further information.

Legal practitioners who deal with environmental impact statements as part of their legal practice will also be particularly interested in parts of chapter seven: 'Contents of the EIS', including chapter 7.7: 'Monitoring, surveillance and auditing – Checks on the EIS and EIA process'. In this section, Thomas analyses various approaches to monitoring, surveillance and auditing the content of EISs. The vast array of processes and methods for determining environmental impacts in chapter eight will also be a revelation for many readers, including (which was certainly a relief to the reviewer) Table 8.6: 'Overview of methods and their applicability to stages of an environmental impact assessment'. This table, at a glance, summarises the methods available to assess environmental impacts, their strengths and deficiencies.

Given, as Thomas states, that EIA processes have been adopted by governments worldwide (and in every jurisdiction in Australia), it is important that the theory (and values) which support EIA receive detailed scrutiny. Thomas fully recognises the risk that EIA runs; that rather than leading to a better decision making, EIA may descends into a form of 'ritual' falling between, on the one hand, developers who may seek it as a mechanism for assisting the approval of proposals and, on the other hand, communities, who expect that it will protect the environment.

While the primary interest of the third edition will be for practitioners of environmental impact assessment itself, it contains much of interest for legal practitioners involved in environmental and planning law. As Thomas notes, EIA has become institutionalised and has formed an industry to look after it. By analysis of the role of EIA, Thomas re-emphasises EIA as a social tool, with a recognised place in the politics of decision making. The reminder is timely.

Reviewed by Jayne Jagot

Reshaping the judiciary: Law in context special issue, Vol 18(1) 2000

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Controversies about the independence of the judiciary are not a recent phenomenon. The substantial caselaw on bias, for example, suggests that litigants have been questioning the independence of judges for hundreds of years. Nor are attempts to make courts more accountable entirely new[1]. However, there can be no doubting the claims of Dr Chris Corns, in his introduction to *Reshaping the Judiciary*, that the past twenty years have seen an unprecedented array of challenges to the judiciary and, in particular, to judicial independence and accountability. Given the recent popular profile and high stakes of these challenges, the collection of essays in *Reshaping the Judiciary* is a topical and compelling contribution to the debate. Now is, as Dr Corns suggests, an opportune time to reflect on these challenges.

But what, exactly, are the challenges to which Dr Corns refers? Anecdotally it seems clear enough to most practitioners (and, no doubt, to judges) that there is increasing pressure on the judiciary to be accountable. Such pressure comes from all quarters but not least from the executive government. Citizens and politicians want to know how judges go about their business and how much it costs for them to do so. One might have thought, however, that such simple principles as conducting proceedings in open court would deal with, at least, the first question. As for the second question, experience suggests that questions of cost, although perhaps a sticking point in relations with the executive, hardly warrant any wholesale reshaping of the way judges go about their business.

Elizabeth Handsley, in 'Can public sector approaches to accountability be applied to the judiciary' asks the pertinent question: what, exactly, do we mean by 'judicial accountability'? The answer, unsurprisingly, is not at all clear. Most notions of accountability, when used in this context, derive from attempts to make executive government more open, more disciplined, less corrupt and better managed. All of these are, of course, goals that most of us would wish the judiciary also to pursue. However, Handlsey cautions that the mechanisms for achieving these goals in the public service do not easily translate to the judiciary. Goals such as efficiency and openness are laudable as far as they go but, Handsley suggests, beg the question.

Handsley's rigorous appraisal of the terminology, criteria and concepts of attempts to achieve public service accountability, and their application to the judiciary, is enlightening. Her conclusion, that judicial accountability is best valued by reference to the public trust upon which judges hold office, avoids the contradictions that are part and parcel of popular debate on this matter (such as calls for judges to follow the rule of law) and provides a starting point for further thought on how accountability can be improved.

One of the more concrete measures adopted in pursuit of judicial accountability in New South Wales recent years has been the introduction in 1986 of the Judicial Commission. Ivan Potas, the Commission's Director of Research, argues in his paper that the complaints function of the Commission has been effective in contributing to public confidence in the judiciary. Potas counters claims that the Commission is a toothless tiger by emphasizing its role in filtering out trivial and insubstantial complaints without referring them to parliament. As it is only Parliament that ultimately has powers of sanction over judges, Potas suggests that the complaints function, whilst perhaps technically 'toothless', is predicated upon strong notions of judicial independence, upon which there is no transgression except in the most serious circumstances.

Professor Allars' paper on the bias rule identifies and explores a number of themes in the debate about judicial independence. Allars examines the rationales for the bias rules, starting with the apparent oddity of the pecuniary interest test for bias (which involves disqualification where there is neither actual nor apprehended bias on the part of the judge), and questioning the various rationales for the rule. She concludes that the pecuniary interest test is ready to be discarded in favour of a single

apprehended bias test based on notions of public confidence. It is a pity that the editors did not allow time for Professor Allars to provide more than a brief postcript in which to develop these arguments in the light of the High Court's decision in *Ebner v Official Trustee in Bankruptcy* (2000) 176 ALR 644.

The significance of Allars' analysis is borne out by her observation that there has been, over the last 20 years, a dramatic increase in the number of applications for judicial recusal for apprehended bias. The reason, she suggests, is the demise of assumptions about the neutrality of judges[2] and an increase in popular perceptions of personal and political prejudgment. The popularity of these perceptions can be seen in the array of cases in which applications for disqualification have been made in recent years[3]. Ultimately, these cases reflect the extent to which the judiciary is perceived as being influenced by external political and social considerations.

The trends described by Allars and the apparent popularity of perceptions that our judges lack independence provide an interesting backdrop to Associate Professor John Willis's paper on the magistracy. Willis argues that because of the relative lack of formality and tradition, lower courts have historically been better placed to respond to community pressures. He also points out that the lower courts are very often the courts in which legislatures first attempt to address community problems, often in an innovative way, such as the procedures for dealing with domestic violence by way of, effectively, injunctive relief. Willis certainly has a point and it would be interesting to know his response to the concerns described by other contributors in relation to judicial independence and accountability generally.

Finally, Professor Russell's paper is a potted summary, regrettably all too short, of the role of the courts in Indigenous decolonisation. His conclusion that the Canadian, New Zealand and Australian courts have been important but not constant catalysts of political change by governments is hardly surprising but his analysis of the part played by the courts is useful and informative. Professor Russell does not argue one way or the other for judicial independence or accountability: his thesis is a practical one in which he acknowledges that the courts have good days and bad days when it comes to indigenous rights and that, ultimately, real political change comes from the Parliament, not the judges.

Reshaping the Judiciary is, all told, a refreshing perspective on the state of judicial independence and accountability in Australia. If Senator Heffernan has left you feeling that we all need a little more rigour in our approach to understanding and talking about our judges and how they go about their business, then this collection of essays is an excellent starting point.

Reviewed by James Hmelnitsky

1 see the amusing account by Justice Giudice of Justice H B Higgins's use of strike statistics as 'key performance indicators' for the Conciliation and Arbitration Court in a speech given to the Industrial Relations Society of Australia on 21 September 2001.

2 See also M Allars, 'Procedural fairness: Disqualification required by the bias rule' (1999) 4 *Judicial Review* 469.

3 Including personal relationships, gender and political affiliation.