BOOK REVIEWS

Environmental Law Handbook, by DAVID FARRIER. (Redfern Legal Centre Publishing, Sydney, 1988), pp.1-350. Limp recommended retail price $28.95 (ISBN 0 9472005 02 0).

In reviewing a book such as David Farrier's *Environmental Law Handbook,* it is important to identify the standards or goals which the author has set and to evaluate whether the book attains those standards.

Farrier states that he wrote the book with two audiences primarily in mind: first, people involved in environmental or community groups and, secondly, public officials including planners, engineers and environmental scientists who make the decisions or exercise the powers under the various environmental statutes. Both groups, Farrier perceives, would have had no background in law but find themselves regularly in situations where they are dealing with legal issues. As a secondary goal, Farrier hoped the book would also be an important resource for practising lawyers and students.

The choice of non-lawyers as the primary audience creates a difficult problem. A practitioner's book demands quite detailed exploration and analysis of the complexities of the law supported by many case citations and references. Such a book, however, would be unintelligible to its primary audience. Yet, bland summaries and generalisations are of little use to even a non-practitioner and, in many instances, may be misleading.

Farrier's solution was to attempt "to make the law accessible while not shying away from its complexity". On the whole, I believe Farrier has succeeded in the task of finding the middle path between complexity and simplicity. The two groups for whom the book primarily was written should find it an invaluable source of reference. There is, quite simply, no other reference work available which is as comprehensive in its coverage of the range of environmental statutes in New South Wales. Farrier covers not only the well-known and often invoked statutes such as the Environmental Planning and Assessment Act and Local Government Act but, importantly, lesser known statutes concerned with pollution control, mining control, conservation and destruction of trees and plants, regulation of agricultural activities, coastal and riverland protection and water supply.

In many ways, it is in the coverage of these lesser-known statutes that I find the real worth of the book. These statutes have not, as Farrier notes, been explored by the courts to any extent. By extracting these statutes from the musty covers of vast volumes of statute books and by methodically translating the turgid legalese of parliamentary draftsmen into readable English, Farrier has made these laws accessible to the people. He has given a timely and much needed breath of life to these statutes. Hopefully, the

rekindling of interest will result in a review and upgrading of the environmental protection offered by these statutes.

The comprehensiveness of the book and clarity of the summaries of the statutes will also make it appealing to students and to those practitioners who want a general overview of the scope of environmental law.

The book is logically arranged. I particularly liked the flow diagrams dealing with steps in the making of environmental planning instruments under the Environmental Planning and Assessment Act. The use of case studies and the reproduction of documents such as a land use table found in environmental planning instruments assist in making the book live up to its title as a handbook for citizens.

On the negative side, I found the layout and typesetting of the table of cases to be poor. The list of Acts fail to bear any references to the text thereby rendering it useless. Both the table of cases and a revised table of statutes should, in my opinion, be in the front of the book.

I turn now to consider the use of the book for a practitioner. Farrier notes that "many people, especially lawyers, see environmental law primarily in terms of the Environmental Planning and Assessment Act 1979, along with the Heritage Act 1977, and the pollution legislation. This represents the main area of legal practice" (p. 10). Hence, for these "many people", the chapters dealing with these matters will be the part of the book to which they will refer the most.

Chapter Two deals with some of the basic concepts in environmental law such as the environmental planning scheme, the law of nuisance, planning permissions, appeals to the Land and Environment Court and the role of the criminal law. Whilst I can understand the purpose and place of such a general overview in a book orientated to the non-practitioner, a number of the concepts considered are of sufficient importance in environmental law as to warrant a more thorough discussion. The sections on judicial review and access to the courts are two examples.

Given the limited situations in which an ordinary citizen may appeal on the merits, judicial review is an important means of public access to the courts. Many of the famous environmental cases have been applications in the nature of judicial review.[1]

The importance of judicial review to public interest litigation is, therefore, deserving of a more detailed analysis of the grounds of judicial review. At the very least, the key cases should be referenced. The only case referred to in the whole judicial review section other than the case study on the *Parramatta Park Case* is the rather obscure case on natural justice of *Bray v. Faber*[2]. The classic pronouncements on natural justice of the High Court in *FAI Insurances Ltd v. Winneke*[3] and *Kioa v. West*[4], or of a Full Court of the Federal Court of Australia in *Idonz v. National Capital Development Commission*[5] have not been cited. The now classic summary of Mason J. in *Minister for Aboriginal Affairs v. Peko-Wallsend*[6], is another serious omission from the section on improper exercise of power.

The section on access to the courts is a competent summary. However, bearing in mind the book's origins as a citizen's handbook, the section might have been improved if it had provided greater indication of the ways in which citizens or citizen groups may acquire standing to sue.[7]

The chapter dealing with the various types of environmental planning instruments under the Environmental Planning and Assessment Act, (the State Environmental Planning Policies, Regional Environmental Plans and Local Environmental Plans), how they are made and how they interrelate, is a credit to the author. The chapter achieves his goal of making the law accessible whilst not shying away from its complexity. Indeed, the clarity of writing is beguiling. It makes the reader believe that the topic is really rather simple. This is the genius of the chapter. Farrier's lucid and logical explanations ensure that the careful reader will stay on the straight and narrow path Farrier has cut through the thicket of environmental planning instruments and avoid the dead ends.

The chapter on environmental planning control continues the standard. It covers topics such as when development consent is required, what is an existing use, development applications, granting of consent, appeals, public participation, the matters to be considered when making the decision to grant or refuse consent, conditions which can be imposed on consents including section 94 contributions, amendment and enforcement of consents. Again, this chapter should prove useful to both non-practitioners and practitioners. Three matters however require comment.

Firstly, the proposition that neighbouring owners have no legal rights to have their views considered by a council either under the Act or arising from some general concept of natural justice unless the proposed development is designated, prohibited or advertised development or development under section 342ZA of the Local Government Act is open to question. If a local council has a practice of giving notice to potentially affected residents (even though the council is under no statutory obligation to do so) such as to give rise to a legitimate expectation in the mind of the neighbouring owner, that owner is entitled to be afforded procedural fairness or natural justice.[8]

Secondly, the section dealing with the effect of non-compliance with statutory requirements concerning advertising and the giving of notice of development applications fails to isolate the critical issue as to whether Parliament intended non-compliance to carry with it the consequences of invalidity of subsequent acts or decisions. The leading cases are not cited.[9]

Finally, an interesting point which might have been taken up by the author is whether proceedings pursuant to section 123 of the Environment Planning and Assessment Act to remedy or restrain a breach of the Act can be seen to be, in certain instances, of a nature different from judicial review. For example, where there is an alleged failure to comply with

sections 111 or 112 of the Act (concerning environmental impact assessment), the court's function would not be to rule upon whether it was open to the determining authority to reach the decision it did (the judicial review approach) but to make up its own mind as to whether or not there has been a breach of the Act.[10]

Taking the book as a whole, its shortcomings are not significant and certainly should not deter readers from purchasing and using the book. I consider Farrier should be congratulated for presenting to people concerned with environmental laws a practical and comprehensive summary which will be invaluable as a first reference point in many instances.

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1 *The Parramatta Park Case (Hale v. Parramatta City Council* (1982) 47 LGRA 269 (LEC) and 319 (CA), the challenges against the Forestry Commission including *Kivi v. Forestry Commission* (1982) 47 LGRA 38, *Prineas v. Forestry Commission* (1983) 49 LGRA 402, *Jarasius v. Forestry Commission* (unreported, Hemmings J., 4 March 1988, No. 40173 of 1987) and the *Regent Theatre Cases (Nettheim v. Minister for Planning and Local Government Nos 1 and 2* (unreported, Cripps C.J., 16 August 1988, No. 40086/88, and 21 September 1988, No. 40139/88)) were all applications in the nature of judicial review.

2 [1978] 1 NSWLR 335.

3 (1982) 151 CLR 342.

4 (1985) 159 CLR 550.

5 (1986) 60 LGRA 328.

6 (1986) 162 CLR 24, 39-42, 45-46.

7 See for example L.Pearson, "Standing: Recent Developments and Future Possibilities", *Impact,* September 1988, 1, where there is a discussion of the categories in which standing has been granted by the courts, including objectors, residents, ratepayers, taxpayers, environmental or resident groups and Council members.

8 This was recognized in *Idonz v. National Capital Development Commission* (1986) 60 LGRA 328 and *Rapid Transport Pty Ltd v. Sutherland Shire Council* (1987) 62 LGRA 88, but in those cases there was no evidence of such a practice. By contrast, in *Hardi v. Woollahra Municipal Council* (unreported, Cripps C.J., 17 December 1987, No. 40196 of 1987) the Court held that there was such a practice and hence the applicant was entitled to be heard.

9 *Scurr v. Brisbane City Council* (1974) 133 CLR 242, 251-252, *Tasker v. Fullwood* [1978] 1 NSWLR 20, 23-24, *McRae v. Coulton* (1986) 7 NSWLR 644, 661 and *Hunter Resources Ltd v. Melville* (1988) 164 CLR 234, 251, and in the Land and Environment Court, *CSR Ltd (trading as the Readimix Group) v. Yarrowlumla Shire Council* (unreported, Cripps J., 2 August 1985, No. 40054 of 1985) and *Broomham v. Tallaganda Shire Council* (unreported, Stein J., 31 October 1986, No. 40172 of 1985).

10 The "breach" approach is supported by dicta of McHugh J.A. and to a lesser degree Street C.J. in *F. Hannan Pty Ltd v. Electricity Commission* (No.3) (1988) 66 LGRA 306 and Hemmings J. in *Jarasius v. Forestry Commission* (unreported, 4 March 1988, No. 40173 of 1987). *Contra* Cripps C.J. in *Leichhardt Municipal Council v. Maritime Services Board* (1985) 57 LGRA 169.