

The Immigration Kit: A practical guide to Australia's immigration law (4th edn)

The Immigration Advice and Rights Centre; Federation Press, Sydney, 1995; 553 pp; \$60.00.

The *Immigration Advice and Rights Centre (IARC)* has produced a thorough, clearly written and user friendly manual of immigration practice and procedures. This is not a textbook about immigration law. It is a practical manual that is intended for use by practitioners in the field. Reference to case law is kept to a minimum. The *Kit* is an excellent companion to the *Butterworths Immigration Law Service*. However, it should be read in conjunction with the legislation. Immigration law has become incredibly complex and this guide should be of great assistance to both legally and non-legally qualified migration advisers. The consequences of mistakes in this area can be dire for applicants and ultimately for their advisers, especially as the grounds for precedent setting judicial review have been greatly restricted.

The *Kit* is a step-by-step guide to how the immigration system works, covering: who can come to Australia; the criteria for every visa; the evidence that should accompany every type of visa application; visa cancellation; time limits, how to find one's way around the *Migration Act 1958* and the *Migration Regulations 1994*; application forms; lodgement of applications; how applications are processed; and how to challenge an immigration decision. Each visa category is dealt with separately. Review rights are mentioned under each visa category. A useful explanation of definitions is also included. The *Kit* gives a good overview of the political considerations which can influence immigration policy and how to deal with the Department.

More emphasis could have been given to the realities of dealing with the Immigration Department such as the necessity of never relying on advice given by Immigration Department officers. In the reviewer's experience, departmental officers, regardless of seniority, have widely varying expertise and it is not uncommon to be given totally different advice in relation to the same issue by different officers. Migration case law abounds with examples of persons who followed such advice to their great detriment and who found it very difficult to raise a successful estoppel against the Department regardless

of whether the representations relied on were oral or written. The other area which could have been emphasised is the heavy reliance by departmental officers on the *Procedures Advice Manuals* (known as the PAMS) and the *Migration Instructions Series (MIS)*. These sources contain the Department's interpretation of the legislation but departmental officers tend to base their decisions on them rather than on what the legislation actually says. Practitioners should be cautioned against uncritically accepting decisions based on the PAMS or the MIS.

In addition, it would have been desirable for the *Kit* to give more emphasis to the need for applicants or advisers not to engage in 'off the record' discussions with a departmental officer. Departmental officers have an over-riding obligation to ensure that the *Migration Act* is not breached. Their usual practice is to make a record of all discussions with applicants or their advisers and to act on that information. Furthermore, there should also have been more emphasis on the necessity of not making inconsistent statements to the Department in relation to either the same application or different applications. These are easily cross-referenced and adverse inferences can be (and usually will be) drawn against an applicant. It would have been desirable for the *Kit* to contain a more extensive coverage of offences under the *Migration Act*.

The user-friendly nature of the *Kit* has led to over-simplification in some sections. For example, the chapter concerning applications for protection visas (refugee status) in Australia implies that the Refugee Review Tribunal will hold a hearing in every case. While this occurs in relation to most review applications before the Tribunal, there are instances where an application can be determined without a hearing. Applicants can elect not to have a hearing or the presiding member can decide to set aside a departmental decision because he or she is satisfied with the evidence presented in the review application. Hence, a well prepared review application that specifically addresses the relevant legal criteria can obviate the need for a hearing. Generally, however, the *Kit* contains excellent sections on how to make review applications to MIRO, the IRT and the RRT.

The major drawback with the *Kit* is that it has gone from a looseleaf service to bound form. No explanation is given for this unfortunate change which significantly lessens the durability of the *Kit* as a practice manual because immigration legislation is frequently amended. The *Kit* is current until March 1995 but there have been changes to the legislation since that date. A looseleaf service would be preferable as it can be kept up to date. The Refugee Advice and Casework Service produces an excellent looseleaf Refugee Manual which is regularly updated.

Overall, the *Kit* is an excellent publication which should hopefully make a significant contribution to raising the standard of practice in the migration law field — an essential text for all immigration practitioners.

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Conclusion

It is to be hoped that the future of the ALRC as a national, independent and permanent body is assured. The view expressed in 1973 by Lionel Murphy that 'people wherever they live in Australia should be subject to the same law' may never be completely realised. Nevertheless, the ALRC has contributed greatly over its 20 years to a national agenda for law reform.

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References

1. See Parliament of Australia, House of Representatives Standing Committee on Legal and Constitutional Affairs, *Law Reform: The Challenge Continues*, May 1994, Canberra. (Page nos in brackets in this column refer to this Report.) See also, *20 Years of Law Reform: Volume 1: The History*; and *Volume 2: Report Summaries*, published recently by the ALRC.
2. Australia, Senate 1973, *Debates*, Vol. 57, p.1347.
3. Report No 67: 'Equality before the Law: Women's Access to the Legal System'; Report No 69, Part I: 'Equality before the Law: Justice for Women'; and Report No 69, Part II: 'Equality before the Law: Women's Equality'.
4. Lavarch, Michael, 'Law Reform in Australia: Continuity, Consultation and Change', Transcript of Attorney-General's speech at ALRC Anniversary Conference, p.2.
5. Government Response to the Report of the House of Representatives Standing Committee on Legal and Constitutional Affairs Entitled 'Law Reform — The Challenge Continues'.