

employment problems at the enterprise, rather than the industry, level.

However, despite these changes, there remains doubt as to whether we really can talk about a 'new industrial relations'. *The New Industrial Relations in Australia* is a collection of essays and reviews which explore the impact of recent changes to the industrial relations system. The essays present legal, philosophical and economic perspectives on the impact of the changes and the question of whether they really do amount to what could be called a 'new' system.

The question is raised by Malcolm Rimmer in the quote which heads this review. Examples of this new talk abound. Typical of the emerging language of industrial relations is the substitution of 'employee relations' for 'industrial relations' and the use, especially by politicians, of key words such as 'representation, democracy and choice'. This phrase was recently used by the West Australian Minister for Labour Relations in defence of the program of reform adopted by the Court Government. Although made by a proponent of industrial and political reform largely opposed to that of the Federal Government's *Reform Act*, the statement is broadly consistent with the policy of labour market flexibility, especially in relation to non-union Enterprise Flexibility Agreements, which undoubtedly underpins amendments to the *Industrial Relations Act* (Cth) and indicates the extent to which the new language has been adopted across the political spectrum.

Is this 'new'? Malcolm Rimmer in his article 'The New Industrial Relations: Does it Exist?' suggests that although the language may be new, industrial relations is not. He argues that despite the language of reform, which focuses on the decentralisation of regulation and on employee participation, there is little evidence that the system of state-sponsored collective bargaining has undergone any real structural change. Secondly, he argues that little has been achieved in the area of employment contracts, particularly in addressing the persistent problem of the unequal power relationship between the contracting parties. For all the talk of individual choice, the underlying tensions between employers and employees have not been addressed. Finally, Rimmer suggests that the widespread adoption of a 'best practice' style of management has had little success in

creating an industrial milieu in which the parties are able to negotiate win/win outcomes. He suggests that the managers charged with the implementation of these policies are themselves captives of economic prerogatives which undermine 'best practice'.

A further aspect of change is the emphasis on 'representation' as an objective of industrial reform. Although one of the principles claimed by the Minister for Labour Relations to underpin the reforms in WA, it is also a concept which is central to the *Reform Act*. In 'Law and Feminism in the New Industrial Relations,' Rosemary Owens examines the impact of the *Reform Act* on women, particularly in relation to women's representation in the industrial system. Her paper is particularly telling of the gulf which is emerging between the rhetoric and the reality of industrial reform. Although the *Reform Act* is clearly guided by a policy of participatory democracy, especially in allowing for non-union agreements, and although it for the first time makes federal awards subject to anti-discrimination provisions previously to be found in the *Sex Discrimination Act 1984*, Rosemary Owens demonstrates that the federal system of industrial relations is still one which fails to meet the changing needs of women in the workplace. Although the legislation in its present form preserves a safety net designed, in part, to protect women's interests, the *Reform Act* diminishes the operation of the 'public interest' test. The consequence for women is that their interests are only taken into account at the level of the safety net and not at the level of negotiating substantive elements of industrial agreements. This is so because, in Owens' view, legislation assumes a

level of participation and democracy at the enterprise level that simply does not exist in practice.

Finally, the notion of choice in industrial relations is one that is recurrent in modern debate. The emphasis on decentralised regulation and enterprise bargaining brings with it the suggestion that the 'new' model of industrial regulation allows, or should allow, choices and freedoms to the individual participants in the system that were not available under the 'old' system of centralised wage fixing and awards. Choice is often promoted as the ingredient which proves that workplace agreements must be mutually beneficial, as the employees have 'chosen' them. Ian Hunt, in 'Are choices Always Liberating? Dilemmas of "Freeing Up" the Australian Labour Market' attacks the philosophical and scientific assumptions about the operation of free markets. His conclusions suggest that the language of choice, although seemingly radical in terms of Australian industrial relations, does nothing to resolve or change the perennial tension which exists between labour and capital. In philosophical terms, there is nothing 'new' about choice in industrial relations.

It is difficult to resist the conclusion suggested by the contributors to *The New Industrial Relations in Australia* that the cause of the underlying conflicts in industrial relations, namely the unequal power relationship of the parties and the desire of management to make its employment arrangements a source of competitive advantage, persist despite the language of reform.

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## Public Interest Perspectives in Environmental Law

edited by D. Robinson and J. Dunkley; Chancery Law Publishing, 1995.

There has been considerable growth in both the volume and complexity of Australian law relating to the environment over the last 25 years. Currently, there are approximately 180 statutes directly concerned with environmental protection and an additional 150 statutes which contain provisions relating to the environment. Under these statutes, there are hundreds of subordinate regulations, environment protection poli-

cies, planning policies, and countless guidelines and other policy documents.

The driving force for the development of this area of the law is the growing consensus that continued patterns of growth, resource consumption and waste disposal are having a serious and perhaps irreversible impact on our environment. Even though it retains a small and sometimes useful role, by and large, the common law has failed to

protect the environment. New issues continue to emerge that warrant urgent legislative action. Recent legislation in the area has attempted to tackle coastal planning, Aboriginal heritage, land clearing, groundwater quality, biodiversity, endangered species, contaminated land and climate change.

An emerging feature of environmental law is the formalisation of a greater role for the public in strategic planning, actual decision making and the enforcement of the legislation. This has not been without resistance. In certain jurisdictions, such as New South Wales, the role of the public is well established. However, in other States, such as Victoria, recent amendments have seen the public's role limited and in some cases removed entirely. In other jurisdictions, the role of the public is *ad hoc* and dependent on the policy of the relevant decision-making authority and the nature of the issue.

With some notable exceptions, the potential role of the public in both the administration and enforcement of environmental and planning law has received scant academic analysis. Even more uncommon is a comparative analysis of international approaches to public interest environmental law. Indeed, books, monographs and major articles undertaking a comparative analysis of environmental and planning law are rare. While some international conferences examine various issues, they lack a rigorous approach to analysis, have a poor theoretical and philosophical understanding of subject matter and, too often, fail to provide a sense of where the law ought to be heading.

In part, this book seeks to address these deficiencies. *Public Interest Perspectives in Environmental Law* is, as the editors acknowledge, a random and incomplete introduction to the characteristics of public interest environmental law in countries from both hemispheres. It seeks to provide a 'public interest perspective' which the editors define as a perspective which seeks to vindicate causes, in particular, human and ecological interests, rather than advance the interests of government, property or capital. This perspective argues that no longer should government have an exclusive role in protecting the public interest. Rather, the complexity and importance of the task warrants a complementary role for the public. This role is to assist the government in upholding the public interest, stopping public nuisances and compelling the performance of public duties.

The book evolved from a conference held in London in October 1993. Essentially, it draws from experience and identifies ways in which the legal system can introduce into decision making a greater awareness of community and environment.

The book is organised into three sections, following the general format of the conference. The first examines international experiences and draws upon the knowledge and experience of various public interest lawyers from South Africa, India, Brazil, the European Community and the United States. The second part examines the position in the United Kingdom on the themes raised in the first part. Part 3 examines the appropriateness of a specialist environmental/planning tribunal or court, largely from the experience of Justice Stein of the New South Wales Land and Environment Court.

As with most conferences and edited conference proceedings, the chapters are of an uneven quality. Some chapters are simply outstanding, while others fail to offer insight or depth of understanding of the subject. In the former category, is the opening chapter by Robinson which details the history of the various public interest environmental law firms in the United States and their contributions in protecting the public interest. Another is a chapter by a South African advocate and lecturer, Francois de Bois, who examines the scope of the constitutional rights for access to environmental justice in the constitutions of South Africa and India. This chapter is particularly relevant for Australia given the refusal of the 1988 Constitutional Commission to consider including a new head of 'environment' power within s.51, the former Government's

recent Access to Justice policy statement, and the recent review by the Australian Law Reform Commission of its 1985 findings on standing in public interest litigation. De Bois argues that the reservations concerning the procedural innovations adopted by Indian courts, and the rights granted by the interim South African constitution allowing greater access to the courts for environmental cases can be addressed by a comprehensive approach to the competing interests concerned. This requires a major commitment to environmental and planning legislation which provides for a significant role for the public. South African and Indian public interest lawyers can thus learn much from the Australian experience.

Part 2 of the book is concerned with the position in the United Kingdom and while this is interesting, it offers a more limited diet of ideas. Part 3 is important for it contains the wealth of experience and practical assistance the Land and Environment Court of New South Wales has provided in matters of public interest litigation for over 16 years. This is relevant for Victoria, Western Australia and the Territories which are yet to see the benefits of a superior court of record for all environmental, planning, building, valuation, compensation and rating matters.

In summary, this work is a timely and important contribution. It should be of interest to students, public interest groups, lawyers, community activists and government. With its comprehensive table of cases and legislation it should also provide an important reference for future work.

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*References continued from Patel article, p.71*

5. For example, *Fuduche v MILGEA* (1993) 117 ALR 418; see Allars, M., 'One Small Step for Legal Doctrine, One Giant Leap Towards Integrity in Government: Teoh's Case and the Internationalisation of Administrative Law', (1995) 17 *Sydney Law Review* 204.
6. For a detailed discussion of the increased use of statutory rules and associated problems see, 'Rule Making by Commonwealth Agencies', ARC Report No.35, AGPS, 1992.
7. Section 10, though note s.10(b) provides that children born in Australia after August 1986, who reside here for 10 years will be citizens.
8. Duignan, J. and Staden, F., *Free and Independent Immigration Advice*, BIPR, 1995, p.49.
9. Section 52 *Disability Discrimination Act*. The only other exemptions are in relation to the defence forces, Australian Federal Police, and Telstra with respect to public phones.
10. Unlawfuls are no longer deported, but removed. The only determinations to be made before a person can be removed are that they are unlawful and any visa applications have been finally determined (*Migration Act*, s.198).
11. Cronin, above, ref. 2, p.102.
12. Unauthorised arrivals who are either under 18 or over 75 can be released on a bridging visa E Subclass 051, Schedule 2 Migration Regulations 1994. Unauthorised arrivals must be released if detention exceeds 273 days; however time taken for, among other things, matters outside the control of the DIEA is not counted (*Migration Act*, s.182(3)).
13. See Poynder, N., 'Marooned in Port Hedland', (1993) 18(6) *Alt.LJ* 272.
14. DIEA MPMS Data, Overseas Client Services Division, 24 November 1995.
15. Cronin, above, ref. 2, p.104.