

is the indication that these figures, combined with the likelihood that recent migrants are clustered in low income groups, show that migrants are not over-represented in the people seeking help from legal aid. However, overseas-born migrants represented over half of the refugee residents surveyed. This may only indicate that locally born survivors may have access to family or friends when they leave a violent home. This chapter also contains an inadequate analysis of police responses. It merely examines perceptions as to whether the police were *prepared to act* without any breakdown as to the *type of action* taken. Many overseas-born refugee residents reported difficulties with their refugee accommodation such as a failure to provide culturally appropriate services. However, most refugee residents believed the services available for survivors in Australia were better than those in their country of origin.

Chapter Seven examines the perceptions of service providers in legal aid, refugees and ethnic welfare agencies. Nearly 90% of refugee workers indicated that their clients had particular difficulties in reporting family violence to police. Service providers found communication difficulties and language barriers, together with a lack of knowledge as to local rights

and services to be major factors limiting the provision of effective service delivery. While a table (p.36) indicates that service providers felt they had a major role to play in reducing violence and improving services, there is no analysis of *how* they thought their services could be improved.

Chapter Nine proposes solutions to the particular problems encountered by overseas-born women in violent relationships. While some proposals are general motherhood statements, such as the need to re-examine prescribed masculine and feminine gender roles and challenge the beliefs that underlie male violence, there are some useful practical suggestions. For example, further screening of men who sponsor brides to Australia is recommended, along with the provision of verbal information about domestic violence law and services in Australia before and after arrival in Australia.

Overall, the book is a good collation of data on the important issue of family violence in migrant families. Further research and government funding for services is obviously necessary. The book makes a valuable contribution to the growing literature on violence in the home.

**HELEN BROWN**

*Helen Brown teaches law and legal studies at La Trobe University.*

## Interpreting Constitutions Theories, Principles and Institutions

*edited by Charles Samford and Kim Preston; The Federation Press, 1996; 274 pp; \$72.50 hardback.*

*Interpreting Constitutions* responds to the need for sound, educative and informative material about constitutions and constitutional processes, perfect for that idealised and possibly mythical creature an 'informed member of the general public'. Debate about constitutional issues not only has a high public exposure currently in Australia, it is a discourse with immediacy in many countries.

Overseas the last few years have seen an astonishing number of new constitutions or constitutionally significant measures being adopted in diverse circumstances. The Canadian Charter, the new South African Constitution, the passage of the Basic Law for Hong Kong and the return of Chinese sovereignty, new constitutional structures and/or constitutions for Germany, Poland, Fiji and the various states of former Yugoslavia etc. These experiences are important ones for Australians to monitor in order to discern what lessons may guide us in our quest for an appropriate constitutional structure for the 21st century. (Without

drifting into millenarian determinism the item is certainly on the national agenda.)

In Australia, putting the republican issue momentarily to one side, matters of public concern such as the 'proper' or constitutional role of the High Court have been vigorously debated in the post *Mabo* and post *Wik* public forum with much of the commentary given greatest media exposure being ill-informed, misleading and politically parochial. Other major list items for many years have been:

- whether or how to get a Bill of Rights (especially in and since the Murphy era);
- implied constitutional rights (another interesting item to analyse in light of the rapidly changing composition of the High Court);
- the domestic impact of international standards, especially in light of Australia's commitments to international treaties and declarations;
- constitutional recognition of the prior presence of Indigenous people; and

- the weight to be given to fundamental pieces of legislation such as the *Racial Discrimination Act 1975* (Cth) which could easily be disregarded or over-ruled by subsequent federal legislation.

There are many other constitutional issues which get exposure in the media from time to time, but the major constitutional item on the national agenda (although the weight to be given to its priority may depend on one's politics) is an Australian republic. For a long time this issue has been dominated by two opposed positions — the Australian Republican Movement in the green and gold shorts and Australians for a Constitutional Monarchy in the red, white and blue. Dialogue in the past has mainly been of the 'we want it, no we don't' type notably lacking in-depth analysis of many of the issues which must be considered if we wish to have an Australian head of state as successor to Elizabeth II.

As the centenary of our Constitution draws near many more spokespeople have begun to put forward their views with more considered and constructive contributions to the debate than either of the above opponents has yet generated. Many of those thoughtful contributors are among the authors collected in this book which is a timely, broad ranging, reflective offering. It has a *fin de siècle* aspect arising from a research grant on 'Constitutional Theory and Practice for Australia's Second Century' by the Australian Research Council.

The book is kicked off by a fabulous contribution from the five eighth for the implied rights team (and Chair of the Advisory Board of the National Institute of Law, Ethics and Public Affairs which sponsors the series of which this book is a part), Sir Anthony Mason. The essay 'The Interpretation of a Constitution in a Modern Liberal Democracy' poses a thoughtful question for any person thinking their way towards constitutional change: 'how do we see the constitution and the purposes which it is intended to serve?' Sir Anthony faces directly the proposition that constitutional interpretation cannot be limited to a strict text-based reading, the latter doctrine of which he calls nonsense (in terms which are more polite or, rather, judicious). He proceeds to analyse the different methodologies for working with a constitution leading to evaluation of the major constitutional theorists. Whilst the essay may not be relaxing bed-time reading it provides a major short cut to how to think about a constitution and its on-going relationship to the organs of democratic government which do rely upon a sound, fairly unbreakable constitutional skeleton.

*Interpreting Constitutions* is divided into three parts: Theoretical Approaches

To Constitutional Interpretation; Democracy and Judicial Choice — The Implied Rights Debates; and Judiciary And Parliament — Aligning Institutional Roles. The structure is an excellent guide to this topic area taking the reader through theory, major controversy and practical application.

Whilst many of the contributors to the book are well known academics in the field, such as George Winterton, the book usefully includes a contribution in the third section by Daryl Williams QC, currently Federal Attorney-General. His essay, 'The Australian Parliament and High Court: Determination of Constitutional Questions', looks at the role of parliament in resolving constitutional questions. He comments that 'parliamentary processes do not necessarily involve exposure of the reasoning by which parliamentarians arrive at decisions on constitutional questions' and proceeds to look at the procedures by which such deliberations are conducted. It is a fascinating essay offering a different perspective on practical constitutional interpretation which would have remained underestimated, particularly by lawyers, without this contribution.

The diverse team of commentators on the papers which are published also included distinguished judges, politicians, academics and legal practitioners. It would have been of interest to the reader if the written commentaries, which were apparently provided to the writers and workshops which led to this volume, could have been included.

*Interpreting Constitutions* is highly recommended for insight into constitutional theory (or how to think about constitutions); for its exploration of one of the main topics of constitutional debate in Australia — implied rights; and its description of how workers, such as judges and politicians, for whom the Constitution is the main tool of trade, use it every day. The book's list of references alone is a wonderful guide to contemporary thinking about constitutional issues and all other referencing in the book is very thoroughly done — great book thank you for asking me to review it.

SUSAN PHILLIPS

*Susan Phillips is a Sydney barrister and a member of the Steering Committee of the Legal Forum on the Proposed Republic.*

sustainability. The relevance of *Environmental Outlook No. 2* to our own region is emphasised with a number of interesting and important contributions on developments in environmental law and legislative and regulatory schemes in Indonesia, Vietnam and China.

Both conferences began with an opening address by the Federal Minister for the Environment, the Hon. Ros Kelly MP in *Environmental Outlook*, and Senator John Faulkner in *Environmental Outlook No. 2*. Senator Faulkner's strong statements in relation to the then Labor Government's support for Australia's continuing participation in the development and implementation of international conventions, including the Framework Convention on Climate Change, and his warning against Australia retreating into 'environmental isolationism', are pertinent in the light of the present Coalition Government's recent failure to agree to the proposed time frames for the reduction of greenhouse gas emissions. The greenhouse gas debate, Australia's position and the approach of industry, are discussed in detail in papers by Nicholas Robinson, Ros Taplin (Director of Climatic Impact Centre at Macquarie University) and Tony Beck (Assistant Director of the Business Council of Australia).

Ms Penny Wensley, then Australian Ambassador for the Environment and Australia's Permanent Representative to the United Nations in Geneva, also spoke at both conferences on recent developments in international law and policy and the importance of Australia's involvement in these developments. In *Environmental Outlook No. 2* Ambassador Wensley provides a number of compelling arguments for Australia to engage actively in the development and implementation of international environmental legal instruments. She argues that Australia's geographic, historical, cultural, economic, political and strategic circumstances — and our unique ecological character — create an imperative, greater than that for many other countries, for Australia's active engagement in the development of international environmental law. Ambassador Wensley emphasises that increasing population pressure on scarce resources leading to tension and conflicts between states, economic and environmental interdependence among states presenting significant trading opportunities in environmental expertise and goods, the impact of international environmental agreements on Australia's present fossil fuel dependent economy, as well as ethical obligations based on important links between the recognition of human rights and the protection of the environment, all provide solid reasons from a foreign policy perspective for Australia's active involvement in global environmental treaty-making and implementation.

## Environmental Outlook No. 2: Law and Policy

*edited by Ben Boer, Robert Fowler and Neil Gunningham; The Federation Press Sydney 1996; 342 pp; \$49.95 softcover.*

Like the first *Environmental Outlook* published in 1994, *Environmental Outlook No. 2* provides an extensive survey of recent developments in environmental law and policy in Australia, the United States, Europe and the Asian and Pacific regions. Both books arose out of the Environmental Outlook conferences held in Sydney and organised by the Australian Centre for Environmental Law (ACEL). ACEL was established in 1992 and is a co-operative venture between the Law Schools at the Australian National University, the University of Adelaide and the University of Sydney. The Centre is designed as a collaborative research and law reform body, engaging in teaching through its graduate programs in environmental law and providing advice and making submissions to government on environmental law matters. The editors of both books, Ben Boer, Robert Fowler and Neil Gunningham, are the Directors of ACEL at the relevant universities and are all closely involved in the development of environmental law and policy in Australia and overseas.

The title of the conferences — *Environmental Outlook* — is intended to reflect two broad themes: first, looking forward to future challenges of environmental protection; and second, looking beyond Australia to assess developments

in environmental protection at the international level and in certain regions. In his preface to the first *Environmental Outlook*, Phillip Toyne notes that the conference is designed to be a regular activity of ACEL, providing an opportunity for decision makers and policy makers in business and government to gain insights into environmental law, regulatory developments and recent local and international trends in those areas.

Both conferences have attracted an impressive array of speakers comprising environmental law and policy experts from a number of countries. Like the first book, *Environmental Outlook No. 2* includes contributions from Australia, the United States, Europe and the Asian and Pacific regions. Nicholas Robinson, Professor of Law at Pace University in New York and Director of the Center for Environmental Legal Studies, delivers a powerful critique of the recent backlash against environmental regulation in the United States led by the Speaker of the US House of Representatives, Newt Gingrich. David Freestone, Chair of International Law at the University of Hull, discusses new directions in environmental law and policy in the European Union and addresses the influence of the European Parliament and Maastricht Treaty over Member States in relation to matters of environmental protection and