

to translate, it is represented in the English version of Article 1 of the Declaration by the word 'conscience' in the phrase 'they are endowed with reason and conscience'.

It was a Brahmin woman from India, not a Westerner, who spoke most strongly for upholding the equality of women in the Declaration. Hansa Mehta, known in her own country as an advocate for women's rights, was determined that the Declaration should say 'All human beings are created free and equal' rather than 'All men', and she feared that if it did not, men in her own country would have an excuse to exclude women from the declaration of equal protection.

Charles Malik, a Lebanese professor of philosophy and of Greek Orthodox faith, proved a skilled negotiator, playing a critical role in managing the drafting to a successful conclusion. He succeeded Eleanor Roosevelt as chair of the Commission. On 6 November 1948 he gave a masterly presentation to the Third Committee of the UN General Assembly, then considering adoption of the Declaration.

It is moving to hear Malik's rich, Arabic-accented English describing how the essential task of the Declaration was to give definition to what the world meant when, in the UN Charter 1945, it committed itself to 'fundamental human rights and freedoms'.³ Malik set out the Declaration rights, beginning with those most concerned with basic survival and physical integrity and building a vision of rights — reputation, leisure, family, the arts and sciences — that together, he said, captured what humankind understood to be human dignity. He concluded by saying that the Declaration 'will be an international document of the first order of importance, and will be read and pondered by our children's children.'

REFERENCES

1. Summary report, 1948–49 *UN Year Book*, 524 ff.
2. Eleanor Roosevelt, 'In Your Hands' (speech delivered at UN Commission on Human Rights, New York, 27 March 1958).
3. Charles Malik, speech to the Third Committee of the UN General Assembly, 6 November 1948, <webcast.un.org/rangen/ondemand/legal/audio/humanrights/dr_charles_malik-human_rights_06_nov_48.rm> at 17 February 2009.

Now, at the 60th Anniversary, we are the children's children.

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DISCRIMINATION LAW

At the Standing Committee of Attorneys-General meeting in March 2008, Ministers put harmonisation of Commonwealth, state and territory anti-discrimination laws on the priority list. The first stage of harmonisation will involve identifying non-legislative options to improve consumer access to discrimination complaint-handling procedures. The second and third stages will identify options for minor, then substantive, legislative and institutional reforms. If anyone is hoping for a nationally uniform anti-discrimination Act in a hurry, don't hold your breath.

Although I am a junior practitioner who is relatively new to the field of anti-discrimination law, I am savvy enough to know that harmonisation in this area would be a good thing. I frequently muse over the matrix of ACT and federal anti-discrimination law, wondering which jurisdiction will offer my client the best prospects of success. Do the facts at hand lend themselves to a more convincing argument under the federal Sex Discrimination Act than the Discrimination Act (ACT)? If so, should this consideration trump the fact that if conciliation fails, and my client has to take the matter further, she would rather represent herself in the local Discrimination Tribunal than in the Federal Court? I sense that I am not the only one challenged by the intricacies of anti-discrimination law. Knowledge of this field is now essential, not just for lawyers practising in the area, but for the growing pool of employers, managers and human resource staff tasked with providing their employees, students and customers with non-discriminatory workplaces, schools, shops and services (and the list goes on).

In this context, Australian practitioners can thank The Federation Press for the wise guidance provided by these two new discrimination texts. Whilst taking markedly different approaches to the subject, both

texts offer the reader crucial practical and thought-provoking assistance regarding this complex area of law.

DISCRIMINATION LAW AND PRACTICE

Chris Ronalds; The Federation Press, 3rd ed, 2008; 266 pp, \$59.95 (paperback)

Chris Ronalds SC is a leading Sydney barrister with over 20 years experience in discrimination, employment and administrative law. When the first edition of this text was released over a decade ago, it was praised by the *Victorian Bar News* as an 'indispensible handbook for practitioners'. Ronalds says that she designed this edition to 'assist lawyers, equal opportunity and industrial relations practitioners, human resource managers and people involved in employment decisions as well as students and anyone with a general interest in the law and its effect' (p 1). The 3rd edition highlights Ronalds' skill in distilling complex legal concepts into a practical 'roadmap'. The text is a goldmine for those preparing to tackle a discrimination matter, particularly when trying to do so on a tight schedule. The book's A5 size and colourful cover makes it the kind of thing you might inadvertently pick up and flick through in a bookshop. The unfussy contents page allows you to jump straight to the section of interest; although, comrades intimidated by this field of law will feel substantially better if they take the couple of hours necessary to read the text cover-to-cover.

I was never allowed to eat dessert first, but I'll start by saying that some of the book's most obvious strengths are the handy appendices hidden at the back. Two tables summarise the grounds and areas of discrimination and where they can be found (if at all) in each of the relevant federal, state and territory anti-discrimination Acts. A further table outlines the exceptions that may be argued in defence to a discrimination complaint, again by jurisdiction. These time-saving tables bring back memories of carefully-crafted first-year law summaries (or at least the summary of that university medalist-winning friend of a friend that you

were lucky enough to get your hands on before the exam).

Back to main course. The book begins with a brief chapter on the background and current position of discrimination law in Australia, referring the reader to key reports and inquiries which have shaped the development of this fast-evolving field. Ronalds then provides an easy-to-read discussion of direct and indirect discrimination. Going beyond a mere explanation of these concepts, Ronalds outlines the steps that must be taken to establish each type of claim. For those just getting used to the process of compiling and assessing potential complaints, this step-by-step approach offers a valuable beginner's template.

The author provides specialist discussion on complaints made in the areas of employment and education. She also explores the courts' approach to harassment, vilification and racial hatred before looking at the defences and exemptions which so frequently stymie complaints. The text concludes with discussion of the complaint-handling process, tips on running a hearing and the types of remedies that may be ordered.

Throughout the text, Ronalds includes brief excerpts from key cases and refers the reader to other relevant resources. In many places, I was frustrated by the feeling that discussion skimmed all too briefly over the facts and results of a particular case. Overall, this potential weakness is the very thing that makes the text what it is: a concise, accessible handbook with a practical focus and no shortage of references for those who get a taste for further research.

AUSTRALIAN ANTI-DISCRIMINATION LAW:

Text, Cases and Materials

Neil Rees, Katherine Lindsay & Simon Rice; The Federation Press, 2008; 720 pp, \$99 (paperback)

This colourful orange text is the first comprehensive cases and materials book written in the field of Australian anti-discrimination law. It attempts

the monumental task of covering anti-discrimination law at the state, territory and federal levels, extracting and analysing the key cases and providing a comprehensive social and political history of the development of this area of law. The text's practical approach reflects the many years of grassroots advocacy undertaken by two of the authors, Neil Rees and Simon Rice, both of whom played a key role in the establishment and development of Kingsford Community Legal Centre's specialist anti-discrimination practice. The third author, Katherine Lindsay, also has extensive expertise in anti-discrimination law developed through her esteemed academic career as a legal teacher and researcher.

Unlike Ronalds' book, this text is designed specifically for law students, many of whom will be familiar with the traditional textbook format of historical and policy background, case extracts and critical analysis. Lecturers will be pleased to see that each chapter includes a clever list of problem questions for use in student tutorials.

Why, one might ask, has the field of anti-discrimination law grown so dramatically over the last three decades? The 1960s American civil rights movement and Britain's anti-discrimination statutes of the 1970s had a strong influence on the development of anti-discrimination law in Australia. With this background, the authors try to pin-down the policy goals of Australian anti-discrimination legislation, yet they have difficulty doing so. While many state, territory and federal politicians have made general statements about 'alleviating disadvantage' and the pursuit of a 'just and equitable society' there is a distinct lack of cogent material outlining how the available legislation should be interpreted to achieve the law-maker's intentions. Accordingly, the authors are critical that 'courts and tribunals have often been left with too much room for individual choice when seeking to determine whether particular conduct is unlawful' (p 32), noting that 'appellate courts have overturned many decisions ... because of disagreement over the meaning and the application of the statutory provisions' (p 68).

The book's core chapter deals with the concept of unlawful discrimination. The authors explore the elements of direct discrimination and do not hold back in pointing out the weaknesses of existing approaches. For example, the practical difficulty a complainant faces in proving that their employer treated them less favourably than the employer would have treated another employee of a different sex, race or sexual orientation. Even the most recent High Court case of *Purvis v New South Wales* (2003) 217 CLR 92 does not provide clear authority on the test a complainant must satisfy to prove that the unfavourable treatment was because of their protected attribute. This test becomes particularly complicated in a scenario where the employer can point to multiple reasons for treating the complainant less favourably than other employees. For those practising in the field on a daily basis, such cases tend to appear more often than not.

Discussing the concept of indirect discrimination, the authors recognise that it has the potential to dismantle systemic and structural discrimination, alleviating hardship suffered by some of the community's most disadvantaged groups. However, the evolution of this concept in Australian courts has set a high bar for complainants trying to argue their case amidst complex factual scenarios. Indeed, there have been very few successful indirect discrimination cases in Australia. Thankfully, the authors compare the Australian approach to that of the United States and the United Kingdom, making several straightforward recommendations for change that could radically improve the utility of indirect discrimination claims in Australian law.

The text uses a framework that is not dissimilar to Ronalds' text, exploring different grounds of discrimination, sexual harassment, vilification, procedural issues and remedies. Yet each section is highly detailed, dealing systematically with extracts from all of the major cases, observations from leading commentators and the authors' own critical analyses.

Reading this text chapter-by-chapter over a number of weeks, I was struck by the