

BOOK REVIEWS

Environmental Law in Australia: An Introduction by D. E. FISHER. (University of Queensland Press, 1980), pp. i-xxx, 1-197. Cloth, recommended retail price \$30.00 (ISBN: 0 7022 1456 6); Paperback, recommended retail price \$14.95 (ISBN: 0 7022 1457 4).

This work is the legal contribution to the University of Queensland Press Australian Environment Series. The author, Dr Douglas Fisher, Senior Lecturer in Law at the Australian National University, makes no claim to comprehensive treatment of Australian environmental law. On the contrary, he modestly describes the work as "an introduction", an attempt to "put together a few ideas on the subject" drawing upon material from each State and from the Commonwealth. The book is intended for non-legal, as well as legal, readers and particularly for those students at tertiary institutions who are required to acquire some knowledge of the legal aspects of environmental studies.

The strength of the work is its rigorous conceptual analysis of environmental legislation. The author has sought to identify common characteristics of environmental controls, to consider the principles which they implicitly embody, and to measure the success of existing legal techniques. The result is a stimulating work which must assist to reduce the conceptual amorphousness so frequently encountered in this area.

The first chapter outlines the nature of environmental law, examining the extent to which that law has moved from being anthropocentric to ecocentric and the effect of an inter-disciplinary approach to decision-making. Recognition of new interests heightens the potential for conflict and the need for more sophisticated decision-making techniques. The author persuasively argues the case for breaking the nexus with property: "The jurisprudence of environmental law is the conception of interest rather than of right" (page 11).

This notion leads logically to the theme of the second chapter: the fragmentation of legal authority. Given the recognition of interests and the multiplicity of authorities supporting those interests, conflict is inevitable. Typically, dispute resolution involves a determination whether one interest is to overwhelm the other or whether the environmental entrepreneur must comply with two sets of rules. Occasionally an attempt is made to provide a single set of rules for a project, as by a special Act of Parliament. More frequently there is conflict between contending rules and concepts. Particular attention is given to the conflict with property interests, with aboriginal law and in federal-State relations.

The third chapter deals with the institutional framework, with particular emphasis on present systems of legal control and decision-making. Fisher frankly admits the dependence of those systems on executive discretion and the extent to which Ministers by-pass the machinery of environmental impact statements and environmental enquiries.

Chapter 4, on enforcement, may, for lawyers, be the most useful of all. The author's consideration of the traditional remedy, criminal sanctions, is highlighted by a perceptive analysis of the tensions between the achievement of the objects of environmental law and the maintenance of the principles of criminal law, a conflict epitomised by the problem of *mens rea*. Turning to civil remedies, Fisher examines the contribution to environmental law of the law of nuisance and the rules relating to review of administrative decisions. He examines the problems of justiciability and *locus standi* and concludes with a pessimistic assessment of the extent of the contribution which the courts are able to make. Perhaps his assessment is too pessimistic. In fact the role of the courts is progressively expanding as standing rules are relaxed and the technicalities impeding judicial review are swept away.

In the final three chapters Fisher turns to substantive environmental rules: the management of resources, environmental planning and environmental protection. It is possible to question some of his views. Does he overestimate the ability, in practice, of Parliament to determine environmental policy? Does he under-state the debilitating effect of statutory formulae like "as far as possible"? Is there really a clear dichotomy between environmental planning and environmental protection? Should they not be seen as obverse sides of a single coin? But, notwithstanding such doubts, these chapters methodically and informatively outline the substance of the present rules and appraise their achievements. My major regret is that the work was completed before the enactment of the Environmental Planning and Assessment Act 1979 (N.S.W.) which breaks new ground (for Australia) in many respects. An analytical comparison between that legislation and the more traditional form would have been illuminating.

The analytic method adopted in this work exposes starkly the inconsistencies in environmental law within Australia. In this area, there is no pressing case for uniformity of the laws of the various States and Territories but it is difficult to put aside the impression that the various legislatures have, for the most part, enacted laws with little knowledge of solutions adopted elsewhere. Frequently, the content of the law seems to be dictated by immediate political expediency rather than examination of successful models. The time is ripe for some fundamental re-assessment, in all jurisdictions, of the objects and methodology of environmental legislation. Dr Fisher has provided a framework against which that task may be attempted.

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