Obviously, a reviewer will not always adopt the positions of an author and will refer to alternative material in relation to certain matters. This is to be expected. It does not in any way detract from the excellence of this work, which relates to a subject which hitherto has deserved greater attention. It is hoped that it will be prescribed reading, either as an introduction or a text or reference as may be appropriate, in both Law Schools and Business Schools. It ought also, in the reviewer's opinion, to be found on the shelves of the libraries of Government departments, as well as law offices both here and overseas.

DAVID FLINT*

Environmental Law in Australia, by D. E. Fisher, St. Lucia, Queensland University Press, 1980, xxx + 197 pp. $14.95.

This book is one of those rare jewels in legal writing — a first of its genre. It is the first to view environmental law in the context of the Australian legal system. For this reason alone it is an important publication.

Dr Fisher claims, so he says in his preface, to have merely attempted to put together a few ideas on the subject. At first glance the size of the book, a mere 183 pages, may well support his modesty. However a reader perusing the contents and the case and statute lists will soon appreciate the enormity of the author's task. What Dr Fisher has achieved is to condense, one suspects under pressure of his publisher, what is a major thesis into a small, manageable book. Presumably its size was also conditioned by the market place. The book is quite expensive and for economic reasons alone this may well limit its clientele. However for those amongst us interested in this developing area of the law the book is essential reading. No other author has attempted such a wide ranging review of Australian environmental law.

This is so because in the Australian context environmental law is very much an embryo legal subject. While the concept of preserving the environment has always been inherent in the common law and later in statutory form its development to a stage where environmental considerations are a distinct and separate criteria for legal decision making is a quite recent development. Australia is well behind its counterparts in the United States or Canada in the development of an environment consciousness. Part of the reason for this is because in the post-war

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period preoccupation with the resources boom left little room for public concern for protection of an environment which seemed so bountiful. It was not until the seventies that a wider public awareness of environmental issues grew out of the heightened political debates over development projects. What member of this generation will forget the controversies surrounding the Ranger Uranium Environmental Inquiry, the Fraser Island Environmental Inquiry, the New South Wales rain forest debates and the still subsisting debate on the South-West Tasmanian wilderness?

All these issues have challenged the governmental systems of the States and Commonwealth so that their parliaments will or will not act at their peril.

The reaction of government has been to enact a plethora of legislation and to set up accompanying legal machinery designed to introduce a balanced concept of environmental protection and planning into the legal system. Dr Fisher has analysed this array in the context of the Australian legal system.

This is a considerable task. In Dr Fisher's view it requires emphasis to be placed on the jurisprudential aspects of environmental law. It is important, so he implies, to find the uniquely Australian norms in environmental law. His book gives this search ample recognition. The analysis focuses on the legal principles as well as some of the minutae of environmental law. The book while containing considerable detail of legislation and case law only uses them to illuminate the relevant principles.

For some readers this jurisprudential emphasis may be a basis for criticism of the book. However, its value is to provide a background or "golden thread" which sharpens the focus on problems associated with the environmental legal system. Its disadvantage is that it provides a text which can be difficult to grasp and in places seemingly lacking in much needed detail. The massive task he sees in his preface as being for the labour of others is probably to increase the amount of background material which will support his conclusions. In fact when one reflects on the contents the initial reaction is to realize that its author (or his publisher) has deprived us of the major opus which he is clearly capable of. A larger volume could have blended the need of jurisprudence with the need of more substance.

The book consists of seven chapters. The first four of these deal with the broad concepts of what is the nature of environmental law, what is its structure — how it is fragmented, the institutional framework and the role of the courts. The final three chapters focus more closely on concepts drawn from the first part — the application of the principles of environment protection, environmental planning, and the role of the concept of policy.

The author sees the nature of environmental law as being essentially "anthropocentric", with a progression to a more "ecocentric" emphasis in the future. Man is, for most of the law on the subject, the chief point of reference. Legislation which is "eco-altruistic" is extremely rare. It probably only exists in laws preserving particular wildlife, flora or fauna. Indeed the challenge for Australian environmental law, as Dr Fisher sees it, is the determination of what is, or will be, the relationship between man and his surroundings (page 5).

The challenge in practice is most obvious in the law on resources. "Many of the issues of environmental law arise in the context of the use and exploitation of resources" (page 8). It is not surprising then to find a major part of this book analysing resource law. Chapter 5 is specifically titled "Management of Resources". Dr Fisher uses the area to form a background to his description of how the environmental legal system operates. This is important because of all the areas of human activity, resources development attracts the most criticism as lending to an imbalance against consideration of the environment.

This emphasis may attract the criticism that in adopting resources as the criteria Dr Fisher has not placed enough importance on land use planning or town and country planning. However Dr Fisher's main preoccupation in this book is to elucidate current trends and principles. His use of a wider canvas may well have created more substance in support of his conclusions but not have affected the validity of the conclusions themselves. The inclusion of more substance as already stated is for the massive task of a larger publication.

The most controversial of Dr Fisher's theses is that environmental protection and environmental planning exist as separate entities. He concedes that overlap does exist, but even in jurisdictions where a single administration oversees both areas the two concepts can be analysed independently. This is so in Victoria, where a single Environment Protection Authority administers both planning and protection. Also in New South Wales where the role is rather more separate but the State Pollution Control Commission, an essentially environment protection body, does have planning functions in areas of air, water, noise and waste pollution and works in conjunction with the Department of Environment and Planning.

Despite the confusion which attends any analysis of the role of environmental protection and planning in Australia it is difficult not to accept that a dichotomy does exist, if not in the structure of the environmental administration, then to the extent of the actual decisions made by those in control. Put simply, a planning decision requires a vision or plan of how a particular matter will affect a number of issues; an environment protection decision, for example to license an air pollution source, requires a conception of a particular problem in its

own context. Both encompass a difference in approach. The planning decision is wider in effect than that for protection.

Dr Fisher has gone to considerable lengths to show how the planning and protection aspects of the environmental legal system have evolved into their present form.

He starts with the traditional common law. At page 11 he quotes Lord Scarman, who put the problem for the common law and the courts rather aptly. His Lordship said:

> Tied to concepts of property possession and fault, the judges have been unable by their own strength to break out of the cabin of the common law and tackle the broad problems of land use in an industrial and urbanized society. The challenge appears, at this moment of time, to be likely to overwhelm the law. As in the area of social challenge, so also the guarding of our environment has been found to require an activist instrusive role to be played by the executive arm of government.[1]

This is a fundamental observation with which Dr Fisher agrees. He shows how environmental law requires the induction into the traditional legal system of the concept of public interest (page 8). However the courts, tied to concepts of private property, have abdicated any responsibility for invoking public interest as a ground for changing the legal system. Arguably this is a positive aspect of the present Australian environmental legal system because the courts would seem to be ill-equipped to provide a guide in such a complex and controversial area. However, balanced against this comment is the recent creation of the N.S.W. Land and Environment Court which has jurisdiction encompassing a number of environmental areas such as land use, clean air and water and noise.

In any event the effect of this observation has been to change the environmental legal system to one dominated by the executive and parliament. Dr Fisher documents in considerable detail how the resulting mass of legislation has created a multitude of institutions which are only today moving from a fragmented to a cohesive approach to decision making. This is being done by adopting planning policies as guidelines for decisions. The policies cut across the usual boundaries in government to provide an interdisciplinary decision making process. This is important for environmental issues because often they concern a number of authorities who must now relate their decisions to a set of common guidelines or objectives. In New South Wales this change can be observed in the formation of the Water Resources Commission, an institution which now plans, develops and controls water resources and the Energy Authority which plans the State's use of energy related resources (page 41).

[1] L. Scarman, *English Law — The New Dimension* (1974), p. 59.

While this burgeoning bureaucracy is imbued with the public interest it generally does not include input from the public. "Public", as Dr Fisher shows, means public officials acting as agents of the citizens. Only recently in New South Wales have third party appeals against decisions of public authorities been allowed: Environment and Planning Assessment Act, 1979 (N.S.W.), s. 123. This legislation is too recent for consideration in this book. However the observation is still valid for the remainder of the Australian environmental legal system.

The public in terms of the legislation delegates its interest to parliament and the executive. Enforcement is essentially a one way process. This state of affairs, Dr Fisher observes, is quite deliberate. Governments do not wish to let off the leash a creature which could cause both political and practical problems in the context of prevailing political and social attitudes. But the observation could be made that the trend is probably towards less stringent executive control if the recent New South Wales legislation is an indicator. However the High Court decision of *Australian Conservation Foundation* v. *The Commonwealth*[2] which considered the *locus standi* of third parties has not found the courts changing their attitude, so the matter remains the same with any change continuing to be initiated by the legislature.

The book is not written with a zeal for reforming the Australian environmental legal system. Dr Fisher clearly did not see that as within the parameters of his task. He has written a purely objective account of how the present system works. Any opinions of the author are well hidden in the wealth of accompanying detail. To that extent the book could be criticized as being a mere catalogue, adding nothing new to the nascent study of Australian Environmental law. This conclusion however fails to acknowledge that this book is a unique analysis of the Australian legal system's accommodation of another facet to its many-sided character. Dr Fisher does imply reform either, for example, by the need of third parties' appeals or a greater role for the courts. However the book's greatest contribution to the study of environmental law is its analysis of the development of environmental law to 1978. This study heightens the reader's perceptions of important or relevant trends, for example, from "anthropocentric" emphasis to "ecocentric," from priorities with resources to matters concerned purely with environment, from narrow *ad hoc* methods of dealing with environmental protection to wider concepts in comprehensive planning. Whether these trends are headed in the wrong direction is left to another writer, but it is important that at least in the first analysis of Australian environmental law these progressions be perceived as the basis for change. If no change is proposed then those trends will conceivably extend into the future Australian environmental legal system.

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[2] (1980) 54 A.L.J.R. 156.

The text of this book was completed in 1978 and not published until 1980. Quite important changes have come about since then either in the public arena by debates on rain forests, aboriginal sacred sites or in the law by the introduction of the Environment Planning and Assessment Act, 1979 (N.S.W.), the Land and Environment Court Act, 1979 (N.S.W.) or the High Court case of *Australian Conservation* v. *The Commonwealth*[3] on *locus standi*. These milestones, however, have not aged Dr Fisher's thesis. The book is recommended reading for any student of Australian environmental law.

DAVID JOHN HAIGH*

Principles of Australian Administrative Law (5th ed.), by H Whitmore, Law Book Company Limited, 1980, xxviii + 289 pp $25.00 (hard cover), $15.00 (paper).

The first edition of this book by the late Professor Wolfgan Friedmann appeared in 1950, and the second, by Professor Friedmann and the late Professor Benjafield, in 1962. Professors Benjafield an Whitmore wrote the third and fourth editions, the third, on which dieted as a student, appearing in 1966, and the fourth in 1971. Now in 1980 the fifth edition has been published, written solely by Professo Harry Whitmore.

This work is a general account of what is traditionally describe as administrative law. Its text has 279 pages which are divided int twelve chapters. Four introductory chapters deal with some back ground constitutional matters, Chapter 5 deals with the classificatio of functions in modern administrative law and the next five chapte cover aspects of administrative review — delegated legislation, judici review at common law, Public Service Boards, the Ombudsmen, th Administrative Appeals Tribunal, the Administrative Decisions (Jud cial Review) Act, and the Administrative Review Council. The fin two chapters deal with actions in tort and contract and the speci position of the Crown and public authorities. Therefore, the book comprehensive in that it deals with the major remedies provided b administrative law, as that term has been traditionally understood. Fo the most part, it is easy to read as Professor Whitmore has a lilting, idiosyncratic style. Thus as a clear and concise account of a large fie of remedial law, the book is a useful work. However, the work h

[3] *Ibid.*

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