

## LAW &amp; CULTURE



### CONTEMPORARY PERSPECTIVES ON HUMAN RIGHTS LAW IN AUSTRALIA

Paula Gerber and Melissa Castan (eds); Thomson Reuters, 2012; \$93.00 (paperback)

The latest contribution to the study of human rights law in Australia, this edited collection is a broad compilation by leading and up-and-coming human rights practitioners, academics and advocates. The book successfully combines human rights law-based analysis, education and policy recommendations. From the popular to the oft forgotten human rights issues, this book leaves few stones unturned.

An insightful and inspiring foreword by Michael Kirby sets the tone for the book, which explores, in an accessible and thorough manner, the history and evolution of Australia's engagement with human rights on both the domestic and international levels. Importantly, this examination of the human rights landscape does not shy away from topical and controversial debates in contemporary Australia. From marriage equality to 'boat people' and the rights of Aboriginal and Torres Strait Islander peoples, this book looks beneath the shallow media-driven discourse and provides an up-to-date, in-depth analysis with historical reviews, statistical and legal analysis and policy ideas to strengthen Australia's respect for and protection of human rights.

A veritable 'one-stop-shop' for human rights issues in its own right, the book also offers a range of additional resources for further research. It provides an invaluable, cutting edge companion for those interested in the human rights law dimensions of Australia's most pressing social, economic and political debates.

The thematic chapters begin with an explanation of the significant shift in Australia's human rights landscape in the last decade, written by Philip Lynch. He tracks the evolution of the federal government's Human Rights Framework announced in 2010, offering a comprehensive outline of how the government should structure its most recent policy developments, in particular, the creation of a new Joint Parliamentary Committee on Human Rights and a Statement of Compatibility for all new Bills and delegated legislation, to ensure that human rights protections and safeguards, in the absence of a Bill of Rights, actually serve their purpose.

Given Australia's recent election to the Security Council, Kate Eastman's chapter provides a timely reflection of Australia's engagement with the United Nations. With a detailed introduction to the finer points of the human rights system, Eastman reviews the functions of the Human Rights Committee and provides an explanation of Australia's complicated relationship with the treaty bodies. Eastman

argues that a deep disparity exists between Australia's positive engagement with the United Nations at the international level, compared with human rights in the domestic context. Highlighting a litany of domestic deficiencies, Eastman argues, with reference to numerous examples, that much needs to be done to close the gap.

Addressing one of the most prominent human rights issues in Australia this decade, Paula Gerber and Adiva Sifris delve into the subject of marriage equality. Deconstructing both sides of the debate, Gerber and Sifris explore the emerging international trend toward legalising same-sex marriage and consider the human rights arguments underpinning that trend. This chapter provides a balanced discussion of the competing arguments, traces the evolution of the concept of marriage, considers whether there is a right to marriage and explores whether civil unions have a role to play in the debate. It identifies tradition and religion as two of the sources of intellectual opposition to same-sex marriage and gives detailed attention to the intellectual foundations of such opposition. The chapter could have given greater consideration to the views of various religious leaders (instead of lobby groups) but it nonetheless compares the Australian context to a range of international examples, further highlighting the importance of looking beyond our borders to assess how human rights are protected (or violated) in other countries. The rights of the child are also explored, ensuring this chapter makes a comprehensive, persuasive legal argument for amending the *Marriage Act 1961* (Cth) and advancing marriage equality in Australia.

The issue of 'irregular maritime arrivals', that is, people seeking asylum in Australia by boat, has been a political 'hot potato' for decades, with no end in sight. Tania Penovic's chapter, 'Boat People and the Body Politic', provides a detailed explanation of Australia's humanitarian system and the recent history regarding Australia's immigration policy. Highlighting the range of human rights law issues engaged by this issue, Penovic conducts a step-by-step analysis of both the relevant international human rights law instruments and Australia's domestic legislation, finding that Australia's policy responses are not always consistent with its legal obligations. Exposing immigration detention (a policy adopted by both sides of the political spectrum) as arbitrary, discriminatory and in breach of human rights law, Penovic reveals the vulnerability of asylum seekers to fluctuating tides of domestic party politics and explores why an expert panel was commissioned in 2012 to 'solve this problem'. The language surrounding this debate comes in for scrutiny too. A political analysis of phrases such as 'sovereignty' and 'queue jumpers' is included to demonstrate the importance of establishing and embedding human rights guarantees in law in the highly-charged political environment.

The sheer breadth of issues covered in this book demonstrates how human rights law engages so many aspects of everyday life in modern Australia. It also reveals that the disadvantaged, the disenfranchised and those distant from the front pages of the mainstream media are in great need of legal protection. Chapters covering mental health laws, prisoners' rights, the rights of Aboriginal and Torres Strait Islander peoples, the rights of women and children as well as the balance of religious freedoms with other rights reflects that reality. However, what makes this book unique is the practical nature of its analysis. It outlines the steps that need to be taken to enhance the legal protection of human rights in Australia — as the only liberal-democratic country without a Bill of Rights — an anomaly which receives significant attention and plays no small part in facilitating the concerning disparity between Australia's international human rights commitments and its domestic deficiencies.

In essence, this book provides a comprehensive human rights law update, assessing the current state of play and establishing the foundations on which to base a call to action to advance the role and implementation of human rights norms and principles into the Australian mindset, curriculum and legal framework. Indeed the book itself will make a significant contribution to that process.

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### *PEOPLE ON COUNTRY: VITAL LANDSCAPES, INDIGENOUS FUTURES*

Jon Altman and Sean Kerins (eds); Federation Press, 2012; \$39.95 (paperback)

Indigenous Australians have been managing country for many thousands of years, yet the wider Australian community has only just begun to understand the important role that Indigenous knowledge can play in land management.

*People on Country: Vital Landscapes, Indigenous Futures* seeks to further this understanding by looking at natural resource management by Indigenous peoples on land which they own and manage, known generally as the Caring for Country movement. In order to do so, it documents outcomes of a project which took place between 2007 and 2010 in the Northern Territory called 'People on Country, Healthy Landscapes and Indigenous Economic Futures' as well as a complementary NSW project.

The book is divided into two parts, the first containing chapters written from the perspectives of researchers based at the Australian National University, each with a particular disciplinary focus. The second part contains chapters written from the perspectives of a number of Indigenous land management organisations which took part in the two projects.

The book aims to highlight the significant contribution that Indigenous people make to the management of Australia's natural resources and landscapes, a contribution it says has been too often ignored by mainstream Australia's policy and political decision-makers. It also documents the significant cultural, social and environmental benefits that can be achieved when Indigenous people are actively involved in managing their country. The book, however, doesn't seek to discredit a Western scientific approach to land management, but rather, argues that there are benefits to the whole

community of combining Indigenous ecological knowledge with Western science.

What is particularly notable about this book is the voice it gives to Indigenous people. It is therefore not a typical academic publication, perhaps reflective of the nature of the projects it seeks to document.

The chapters, and particularly those from the Indigenous contributors, provide valuable insights into what works and where the difficulties lie. In that sense it does not present a utopian view, but rather, a realistic look at the future of land management and the potential for positive outcomes when land management by Indigenous people is not only encouraged, but appropriately supported as well.

The first part of the book is likely to be of interest to researchers and policy makers in Indigenous affairs. The Indigenous case studies in the second part will be of particular interest to Indigenous groups who are or would like to be working on country and want to hear from other Indigenous groups about their experiences. It should also be essential reading for anyone involved in natural resource management. The book is more practical than theoretical in its approach with most chapters written in a relatively accessible style.

Given the differences between northern and southern Australia in relation to (among other things) Indigenous experiences, land ownership patterns and environmental landscapes, Indigenous groups and natural resource managers in southern Australia will no doubt be particularly interested in the chapters relating to NSW, as the issues presented are more likely to be of relevance.

It would therefore be of much value to see a follow up project and associated publication extending to Indigenous peoples further south. Despite the significant loss of both access to and ownership of land by Indigenous people, there are some Indigenous land management initiatives currently in place that are worthy of consideration, such as the Lake Condah Sustainable Development Project in Gunditjmarra country, south west Victoria.

*People on Country* is a welcome addition to the limited but growing body of literature documenting the benefits of Indigenous Australians owning and managing country, benefits that accrue not just to Indigenous people, but to all Australians.

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### *CLIMATE CHANGE AND AUSTRALIA: WARMING TO THE GLOBAL CHALLENGE*

Ben Saul, Steven Sherwood, Jane McAdam, Tim Stephens and James Slezak; Federation Press, 2012; 246 pp; \$39.95 (paperback)

Climate change is a pressing global issue, demanding a multi-pronged approach which draws on science, law, economics and politics; it is dependent upon public support. *Climate Change and Australia* is the latest addition to a growing literature on the challenges posed by climate change and the potential means to address these challenges. The aim of the book is 'to provide a clear, readable account of what climate change means for the future of Australia, its region and the world' (p 3). One of the most interesting features of the book