

**AUSTRALIAN ANTI-DISCRIMINATION
AND EQUAL OPPORTUNITY LAW
(3rd edition)**

FOREWORD

Discrimination law is a surprisingly modern phenomenon. As this book reminds us, discrimination was a concept unknown to the common law and it was not until the mid-1960s that legislatures first recognised the right not to be discriminated against.

The history of Australian anti-discrimination law since that time is a story of laws being shaped – and reshaped – to give expression to high ideals. The result, however, is a bewildering array of statutes, each with its own peculiarities and its own body of interpretive case law.

For any traveller in these parts, this encyclopaedic work is simply indispensable. The authors are acknowledged experts and seasoned campaigners, and their lucid exposition is enriched by extensive quotation from the work of other expert commentators.

The coverage is breathtaking in its scope and depth, the attention to detail astonishing. To identify the differences between State, Territory and Commonwealth provisions, topic by topic, is a work of herculean proportions, requiring meticulous care.

But this is no mere practitioner's toolbox. The book provides a conceptual framework within which to understand the philosophical origins, and legal and social objectives, of anti-discrimination law. Important questions are raised: is the policy objective of these laws equality, or liberty, or respect for dignity, or fairness, or social inclusion? Would legally enforceable positive duties eradicate discrimination and promote equal opportunity? Is litigation an effective pathway to social change?

And serious problems are identified: the joint failure of legislatures and courts to develop clear principles in relation to the concept of unlawful discrimination; undue complexity within individual statutes and across the multi-jurisdiction patchwork of laws; and the absence of any real attempt to assess whether the laws are achieving their stated aims.

What is required, the authors contend, is urgent renewal of our anti-discrimination laws. The time has come, they say, for a new set of objectives to be devised, for the underlying public policy to be clearly articulated. This book should serve to alert policymakers to the need for change, and inform their consideration of appropriate reforms.

Whatever form the laws take, judges will continue to have a crucial role to play. Here, too, the critique is a stringent one. The authors are critical of judges' lack of familiarity with – and disinclination to learn about – the history, principles and beneficial aims of anti-discrimination legislation. They lament the absence of a strong body of anti-discrimination jurisprudence, which they attribute to 'the dry language of the statutes [being] picked over unproductively by appellate courts'.

There has been a revolution in judicial education in the past 15 years. But this book exposes what appears to be a serious gap. Since questions of interpretation of anti-discrimination law inevitably end up before the courts, we must make sure that as judges we are adequately equipped to play our proper part in advancing these high ideals.

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