BOOK REVIEW OF:

IMMIGRATION, REFUGEES AND FORCED MIGRATION:
LAW, POLICY AND PRACTICE IN AUSTRALIA
CROCK AND BERG, FEDERATION PRESS 2011

For many practitioners this area of the law seems to be at best, arcane, unapproachable, and able to be safely ignored.

However, decisions from the migration area are now cited more regularly in “general” Commonwealth administrative law; and that Commonwealth law is finding its way increasingly into State administrative and commercial law: see, eg, Kirk v Industrial Court of New South Wales [2010] HCA 1; (2010) 239 CLR 531 and decisions in the seemingly further remote areas such as the Constructions Act 2004 (WA) in Thies Pty Ltd v MCC Mining [2011] WASC 80 and Re Graham Anstee-Brook; ex parte Mt Gibson [2011] WASC 172.

In short, this book should be of interest to many practitioners.

It is perhaps inauspicious to start this review with a confession. However, in the interests of candour I am bound to disclose that the all that follows is based on my reading of, and working with, the parts of this book in which I am interested and about which I know something: namely Part I “History and Context”; Part II “Legal Frameworks”; Part VI “Refugees and Forced Migration”; Part VII “Unlawful Status and Enforcement” and Part VIII “Appeals and Judicial Review”.

I should note that the (unread by me) balance of the book is made up of Part III “Border Control and Common Entry Criteria”; Part IV “Family Migration” and Part V “Skilled Migration, Students and Temporary Visas”.

One of the authors, in the opening acknowledgements says that the writers’ objective in writing the book was to “capture the spirit of immigration law and policy in Australia as it has operated over time and as it now governs this complex and politically fraught area of administrative law”.

I am not sure that the authors have completely succeeded in this objective. That is because the authors have been too professional to try and capture the often regrettably poisonous spirit of what has passed for policy and debate in this area in Australia over the last decade.

However, the book has tried to capture something of the “game” played out between the legislature seeking to exclude or limit judicial review of immigration decisions and the courts, in particular the High Court, seeking to preserve some judicial review of such decisions. For example, the authors set out an exchange between the Chief Justice and the Commonwealth Solicitor-General in the argument in the High Court in Plaintiff S157/2002 which was decided as [2003] HCA 2; (2003) 211 CLR 476, which gives some colour to the ongoing “dialogue” between the different branches of the government.

This is a very readable, clear book which can be used by a practitioner in the area for both a statement and explanation of the law as it is, and for a short history of how the Australian cases and legislation led up to that point. The authors have (thankfully) resisted the urge to try and cite every possibly relevant decision and, appropriately, have focussed on the relevant High Court cases (although other significant cases are also appropriately referred to). I also found that, for the most part, the authors got the balance right in how much to include of the history of any particular legislative provision or development in the case law.
I understand that in reviewing a book, one ought say something critical of the book so that the reader of the review can feel confident in the review. It may be that the Parts I have not read or worked with are significantly below the high standard of those that I have, although I very much doubt it.

Unfortunately, I have no real criticisms to make. I could offer quibbles, but then, why would one?

In short, I think the book is excellent; the authors ought be commended; and people interested in any of these areas (or Commonwealth administrative law generally) should buy it.

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