

The authors point out that the third category represents the majority of s.52 cases and comment:

"The most controversial use of sec.52 is characterised by one party to a private commercial contract seeking a remedy under sec.52 in respect of pre-contractual representations which, prior to the Act, would have been sought to be redressed, with little hope of success, in an action for breach of contract, deceit, or negligent misstatement. ... The application of sec.52 to such contracts is of fundamental significance to the conduct of business in Australia. The ramifications of subordinating the convenience and certainty of a negotiated written contract to the vagaries of the 'misleading or deceptive' test are immense." (page 33)

Indeed, the reality is that s.52 now "lurks in the background of all negotiations" (at page 32). Nor can one contract out of s.52. And because s.52 operates on pre-contractual conduct, whether a disclaimer or an exclusion clause in the resulting contract is effective or not becomes a question of evidence and not a question of law. The authors discuss in detail whether disclaimers can be effective, either by preventing liability or (more likely) by negating reliance on pre-contractual representations (see pages 316-22).

This book is particularly welcome because it satisfies the need for a comprehensive treatment of the law generated by s.52. The practitioner's standard reference, R V Miller's *Annotated Trade Practices Act* (12th ed 1991), had been overwhelmed by s.52 decisions. It offers the reader 25 pages of annotations to the section without any table of contents to them, followed by synopses (apparently only in chronological order) of about 120 cases. And Heydon QC's *Trade Practices Law*, for all its many merits, cannot in its one chapter on s. 52 provide the same depth of coverage as *Misleading or Deceptive Conduct*.

There is a minor criticism to be made: although the work is a CCH publication, readers are entitled to expect citations to the authorised reports. But the *only* citations given are to CCH's *Australian Trade Practices Reports*.

Finally it should be said, given the abundance of cases that has led to the need for this book, that one hopes the authors have frequent editions in mind! □ Robert S. Angyal

Environmental Litigation

Brian J Preston

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The review of this book was made much easier by my having attended a lecture in the Bar Common Room late last year. The author was giving a lecture to barristers interested in entering the parks and gardens field and was introduced by Murray Tobias QC. In Tobias' words "This book is a must in the library of any barrister who wants to practise in the field. It is a very excellent work". He also took the opportunity to extol the virtues of the environmental and planning field as an area of

practice for barristers.

With 18 chapters, a comprehensive table of cases and statutes and a detailed index, the book is indeed a valuable guide to practitioners wishing to practise in this field.

There is a very helpful first chapter which outlines the course of environmental litigation, discusses new legislation and defines specialist courts.

This chapter also outlines the scope of the work and contains an outline of litigation procedures taking the reader through the steps necessary to start one wandering in the field of Parks and Gardens. The second chapter is a worthwhile addition to any book covering the steps preparatory to commencement of litigation and providing a more than adequate description of limitation periods, particularly statutory limitation periods.

Chapter 5, headed "Relator Actions, Representative Actions, Class Actions and Reform", focuses on today's emphasis on environmental causes and conservation issues in the community, providing an introduction to some of those areas which have been explored in other countries. It is disappointing that the movement in the American States towards the right to sue on behalf of the fish and fauna of the country is not given more discussion. Nevertheless a helpful footnote does indicate the way to go in terms of additional reading.

Chapter 6 deals with Legal Aid, again what might be described as a policy issue. Chapters 7 to 12 deal in some detail with numerous matters which might be described as the commencement of civil proceedings, attending callovers and discovery and inspection of documents, interrogatories, subpoenas and some very practical suggestions, including those under the Freedom of Information Act.

The final chapter deals with Alternative Dispute Resolution and sets out guidelines as to the use of this mechanism, including its problems and how to mediate.

In the light of the recent controversy surrounding resource security legislation, there is no doubt that this book is, in the words of the Vice President, "a valuable guide". It can be recommended as a must for any person who wishes to appear in the Parks and Gardens area.

Although the book answers many questions in relation to policy, it still remains a mystery to me as to why the legislation is entitled "Environment and Planning Act" rather than, as common in other countries, "Planning and Environment". The mystery remains and is not answered in the book. However when in doubt at the Bar rely on good rumour! Which leads me to the suggestion about our late colleague, the then Minister for Environment and Planning and his fellow architect of the scheme (now a senior consultant with a major firm of solicitors in Sydney, practising in this area). These gentlemen, it is rumoured, did not wish to be known respectively as either the MOPE or the person in charge of DOPE.

Preston's book is a worthwhile addition to any practitioner's library, incorporating as it does very practical chapters which help to unfold the mysteries of discovery and interrogatories. □ Gary McIlwaine