

Book Reviews

The Constitution of the Commonwealth of Australia Annotated (5th edition 1995)

R D Lumb and G A Moens

Butterworths, 1995

RRP \$85.00

This is a fully revised edition of a work first published in 1976. Since its 4th edition in 1986, the High Court, under the leadership of Sir Anthony Mason, has delivered a series of significant constitutional decisions, all of which are penetratingly discussed in this edition, as indeed is a large number of decisions of the Federal and State Supreme Courts in which constitutional questions have arisen for determination. Amongst other things, the authors have successfully confronted the conundrum of how and where a work which explicitly takes the form of textual annotation deals with implied constitutional rights. Accordingly, included in the book is to be found an extensive discussion of decisions such as *Australian Capital Television Pty Ltd v Commonwealth* ([1992] 177 CLR 106) and *Nationwide Pty Ltd v Wills* ([1992] 177 CLR 1).

The book commences with a discursive introductory chapter which casts a glance at Australian constitutional history and evolving relations with the United Kingdom, including the significance of the Australia Acts. It also adverts to questions of federalism, the separation of powers and the role of the High Court and judicial review. The sections of the work which have been substantially revised since the last edition are those dealing with external affairs, acquisitions, industrial relations, corporations and sections 90 and 92. The treatment of section 92 is bifurcated - the landmark decision in *Cole v Whitfield* ([1988] 165 CLR 360) and the cases which have grappled with the meaning of "discrimination of a protectionist kind" following that decision are treated in the main body of the text; the pre-*Cole* jurisprudence forms a 25-page Appendix which is of more than passing historical interest (although the authors do not undertake the task of analysing which of the pre-1988 body of case law would be decided differently post-*Cole*).

This book is an excellent starting point for any constitutional inquiry. Each section of the Constitution is separately annotated and analysed. One particularly useful feature of the work is that it seeks to identify, although not exhaustively, the source of constitutional authority for a large number of Commonwealth enactments, thus providing a ready signpost to the authorities and arguments relevant to any challenge to an Act's constitutional validity. Page references are also provided to the treatment of each particular section of the Constitution in other leading constitutional texts, including *Quick and Garran*. In addition, interspersed throughout the work are references to various recommendations of the Australian Constitutional Convention, the Constitutional Commission and the Republic Advisory Committee. The work of these bodies is itself a useful source of reference and it is pleasing that recognition

has been given to that fact. There is also to be found at the end of the book an extensive Bibliography.

Assuming that the practitioner or student knows where to start looking in the Constitution for the answer to his or her particular problem, this work can lay valid claim to being the required first port of call for any constitutional inquiry. It should not be thought, however, that to describe it as a useful starting point is to undervalue the quality of the substantive discussion which it contains. It is simply to emphasise the book's particular value as a resource and reference tool. □

Dr Andrew S Bell

Castles' Annotated Bibliography of Printed Materials on Australian Law 1788-1900

Professor Alex C Castles

The Law Book Company Limited, 1994

RRP \$120.00

As the editor himself states, "[a] bibliography of printed materials on Australian law cannot be definitive". However, in this collection of materials, which is the product of a decade's work, there is an extremely comprehensive selection of the legislation, law reports, digests, treatises and pamphlets available to practitioners and lay persons alike in respect of the administration of justice in the Australian colonies in the period between settlement and Federation.

The scope of the collection is impressive, and at times extremely amusing. The entries range from the first proclamations, official orders and other directives to a document by the Rev. James Nish dauntingly entitled "Is Marriage with a Deceased Wife's Sister Forbidden in Scripture?" being the substance of a speech delivered before the General Assembly of the Presbyterian Church of Victoria, together with a "Review of Strictures on the Speech" (1873) (an issue on which Australia proved to be rather more progressive than Britain); and from the first series of law reports in each of the colonies to the blatantly self-aggrandising pamphlets of practitioners and law reformers. Notable in this latter category is the writing of one Thomas Parsons, a Melbourne barrister in the mid nineteenth century, who also rejoiced under the appellation for publication purposes of "Washerwoman", and who, had he lived in another age, from the volume of his correspondence to all and sundry, would surely be all too familiar to those responsible for twentieth-century letters to the editor columns.

The bibliography commences with an outline of legal publishing in Australia from the first written Ordinances and the first use of a printing press in 1796 by the convict George Hughes through to the sophisticated reporting of the Federation debates. The materials themselves are listed alphabetically with enlightening annotations regarding the availability, genesis and context of the documents.

This book, by one of Australia's leading legal historians,