

BOOK REVIEWS

LOCAL GOVERNMENT AND ENVIRONMENTAL PLANNING LAW IN NEW SOUTH WALES, by Harry Whitmore, LL.B. (Syd.), LL.M. (Yale), Professor of Law, University of New South Wales. (The Law Book Company Ltd., Sydney, 1981), pp i-xvi, 1-174 with Table of Cases. Paperback recommended retail price \$17.50 (ISBN 0 455 20361 x).

This book fulfills a hiatus in local government by providing a primer on the subject of local government and town planning law. The text was developed from a series of notes for students which were prepared by the author "for teaching purposes at the Australian National University" (preface page v). This privileged few, by virtue of this book, are now joined by a wider family; those "people working in local government and environmental planning." To them also, this text will be an invaluable asset as an introduction to the area.

The author does not claim it as a comprehensive book. If further, more in depth study is required, the author refers the reader to the opuses provided by either of the major legal publishing houses — **Local Government Law and Practice** (Law Book Company) or **Local Government, Planning and Environment Service** (Butterworths). It is worth noting that these loose leaf services comprise a number of large volumes. Professor Whitmore's book is a mere 167 pages.

The format of the book is concise. It consists of a table of cases, thirteen short chapters and an index. There is no table of statutes. Perhaps it was thought that since the text deals with basically two enactments, the Local Government Act 1919 (N.S.W.), and the Environmental Planning and Assessment Act 1979 (N.S.W.), no "table was "required. Inevitably, however, the number of statutes touched on is quite large and a table of statutes would have been of considerable value. The index makes no attempt at correcting this anomaly so the reader is left without direct reference to statutes discussed in the book. The table of cases, by contrast, is voluminous. It consists of eight pages with cases listed in two columns per page. These will be of considerable use to the practitioner.

The table of contents gives an indication of the emphasis of the book. Out of thirteen chapters, ten are directly on local government, six of these deal with administration and finance, four deal with powers over land. Of the remaining three chapters two are concerned with environmental planning and development and the final chapter is concerned with judicial and administrative controls.

To the reader delving for the first time into local government law, the chapter on council administration will be particularly valuable. The author is at his best in these areas. He provides a succinct historical introduction to the present legislation and then a detailed account of the council's administrative powers in elections, personnel meetings, finance and rates. The survey will be useful to those persons interested in the inner workings of a local council. It is not a section by section legal analysis of the relevant statutes and ordinances. The author reveals a keen understanding of the day to day work of a

council. He is well aware that, despite the legal parameters, a council may only be "as good as its engineer" or that the town clerk often shoulders a great deal of the work of a, usually, part-time mayor (page 35).

The author also understands the position of the often beleaguered ratepayer: ill-feeling is often generated by the council's power to require contribution from a frontager to a public road of up to half the cost of the road's kerbing and guttering (page 30); or that councils may have taken advantage of spiralling land values "to extort unduly high rates" prior to State Government reforms (page 27).

These populist sentiments add to, rather than detract from, the text. It is not a book meant purely for the legally trained and legalese is kept to a minimum. Opinions, such as those indicated above, are frequently given and reforms are suggested throughout the book. In the area of administration the author is a consistent advocate of open government. He correctly holds that it is essential that relevant documents be disclosed to the press and the public (page 51) and he is not slow to suggest that "the appearance of open government is somewhat deceptive" (page 51) in many councils.

It is in the area of drafting of rating legislation that the author aims his most critical salvo. He says "it is not putting it too strongly to suggest that these (rating) provisions are in a disgraceful state!" (page 55) and that "no ordinary reasonable person could be expected to understand them" (page 55). The Valuation of Lands Act 1916 (N.S.W.) receives scathing comment: "It is a disgrace that this form of drafting be allowed to stand in modern legislation" (page 80). These comments bear particular importance because rates may now be levied on "land value" instead of the "unimproved capital value" (page 56). He is equally critical of the justice to be had from Valuation Appeal Boards, whose membership, he says, "usually consists of estate agents and valuers who are not overly concerned with the niceties of fair procedures", (page 88). What is required is a complete re-drafting of the Valuation of Land Act 1916 (N.S.W.) and the Local Government Act 1919 (N.S.W.) so that the ordinary citizen can understand the basics of a legislative framework for heavy taxation (page 88).

For the professional advisor, the chapter on acquisition of land (chapter 8), sub-division of land (chapter 9) and building controls (chapter 10), may contain useful material and go further than being a mere catalogue of the relevant legislative provisions. Again the author, in places, provides critical opinion. In general, he comments that the legislation controlling acquisition of land and compensation payments is unsatisfactory.

With the chapter on sub-division of land the text edges into a discussion of environmental planning. Environmental planning in its contemporary interpretation covers, in the author's words,

- (a) preservation of a worthwhile environment for the individual (the preservation and enhancement of amenity;
- (b) protection of the environment generally;
- (c) conservation of resources;
- (d) co-ordination and planning of transport and industry. (page 123).

In so far as these concepts are covered in the Local Government Act 1919 (N.S.W.) and the Environment Planning and Assessment Act 1979 (N.S.W.) they are covered in this book. However, the wider import covered in such environmental legislation as the Clean Air Act 1961 (N.S.W.), Clear Water Act 1970 (N.S.W.), Noise Control Act 1975 (N.S.W.), Waste Disposal Act 1970 (N.S.W.), Heritage Act 1977 (N.S.W.), Coastal Protection Act 1979 (N.S.W.) and National Parks Act 1975 (N.S.W.) are noted but not surveyed in detail. This is unfortunate as it appears to distance local government from these

important environmental considerations. In fact they are inextricably part of the planning processes open to local government.

The core legislation in environmental planning is the Environmental Planning and Assessment Act 1979 (N.S.W.). The implications of this legislation are enormous. It was introduced in the same era as a considerable volume of environmental legislation, such as the acts mentioned above and the Land and Environment Court Act 1979 (N.S.W.). The reader will find excellent historical material in Chapter I and a succinct comment on the workings of the environmental planning system. The book is the first to discuss this area without the use of the annotated statute format. For that reason alone it is valuable. The author's "final assessment" of the new scheme is worth quoting:

There is much that is good in the new legislation concerned with the environment. Special mention might be made of the provisions for statements of objectives, the detail in the **Environmental Planning and Assessment Act** which should result in simpler environmental planning instruments, the improved access to the Court, the structure of the Court itself, the improved supervisory powers of the Minister and the Director, the provisions for inquiries, and the third party rights of appeal.

However, when account is taken of all the legislation the pattern of control is much too complex — and this is quite unnecessary. The essential legislation could all have been encompassed in one Act and the multiplicity of authorities could have been avoided. As it is, most laymen, and probably most lawyers, have little hope of understanding all the ramifications of the legislation. Laws which ordinary people cannot comprehend must be regarded as bad laws (page 152).

The final part of the book deals with administrative and judicial controls over councils. The most stringent control is dismissal of the council. The author doubts whether a council should be dismissed for default in the planning area. The preferable solution may be the appointment of an environment planning administrator (page 153). Regretably, he does not develop his argument on this proposal. A considerable innovation in the Environment Planning and Assessment Act 1979 (N.S.W.), is Section 123, widening the common law of standing so that no special interest need be shown by any individuals or groups who wish to take action for enforcement of the Act.

The Land and Environment Court receives considerable emphasis. The author makes these observations on the procedures of the court:

Procedures should be adopted which will allow speedy and expert decisions — and these need not necessarily be adversary procedures. Ordinary people who wish to appeal, and this will include third party appellants, should be able to approach the Court without having to employ high-priced lawyers. Whether the intention will be realised depends very much on the calibre and pre-dispositions of the Judges and assessors appointed. It would be a pity if the jurisdiction were to be developed into a new "bonanza" for lawyers (page 159).

One difficulty only touched on by the author is the definition of the Court's jurisdiction and the supervisory jurisdiction of the Supreme Court. As the author notes, the meaning of "planning and environment" is crucial in deciding whether a matter is within the Land and Environment Court's jurisdiction. A more detailed analysis of this problem is reserved by the author for a larger volume.

This review of the book only finds it deficient in the area of environmental planning. This is such a large and expanding area that it may be too much to ask that its full import be found in a book of this size. However, as a book on the role of local government, it is disappointing that more effort was not directed to explaining the role of those bodies in important environmental areas such as pollution, coastal protection and heritage.

Environmental planning does encompass these areas, as can be seen in provisions in section 16 (1) Clean Air Act 1961 (N.S.W.), section 19 Clean Waters Act 1970 (N.S.W.) and section 27 Noise Control Act 1975 (N.S.W.) and new work likely to cause pollution cannot proceed without the approval of the State Pollution Control Commission. To that extent the author's comment that "the Acts are designed to deal with specific problems not directly related to control over development" (page 136) is not entirely correct. It is the intent of the legislation that development be planned to avoid the problems of pollution at the design stage. This criticism only underlines the comment that the author has concentrated on the traditionally perceived role of local government and not on its wider role in environmental planning.

Within those limitations the book however, does what it sets out to do: review local government law for students and other persons being introduced to the field. The book is recommended reading.

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