

Human Rights under the Australian Constitution

by G Williams

(Oxford University Press, Melbourne 1999)

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As someone with a growing interest both in constitutional law and human rights, this book appealed to me from the outset. Both of these areas are at the crossroads at this point in Australia, and both are coming under growing scrutiny as our society moves into the 21st century. This book greatly aided my understanding of the intertwining nature of the relationship between these two bodies of law. In recent times, the issue has been placed before the High Court of Australia as to how constitutional interpretation proceeds when human rights come into question. This book goes further, and also examines the other bodies of law which provide the guidelines and restrictions on the various branches of government. To this end, a complete picture of the human rights framework in Australia is put forward.

There is an important subtlety in the content of this book which broadens the scope of its examinations and allows it to properly cover the topic of human rights in Australia. Rather than merely describing the human rights contained within our Constitution, this book examines all the different sources of law which protect human rights. Therefore, a great deal of the book covers the various express and implied rights which have been derived both from written agreements, and also unwritten conventions which have developed through the ages. The human rights contained within the Constitution, as well as express rights and implied rights, are the three broad categories of human rights protection which are dealt with by Williams. Each of these areas has had problematic aspects, so a comprehensive overview such as that provided by Williams allows for a better understanding of Australia's position, both with regard to human rights and our present constitutional arrangements.

A key motif examined by Williams is the ambiguity as to what actually constitutes human rights. They have been broken down into civil and political rights, and economic, social and cultural rights. While there will be continual debate as to their

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relative importance, they are all nevertheless an integral part of the web of rights. These rights as framed in the Constitution are comprehensively analysed, as is the development of their roles as protection against laws which violate these rights. Because it is only recently that human rights have assumed a position of importance within the Constitution in their capacity to nullify laws, this is an area central to much discussion of this body of laws.

Williams also discusses the role of human rights in the drafting of the Constitution, as well as in its interpretation after this time, and the changing development of constitutional interpretation to the present. Importantly, the role of human rights in the doctrines of representative government and the separation of powers are also comprehensively covered. To the uneducated, the importance of these doctrines is often ignored, and thus, their interpretation combines well with the issue of the Constitution itself to provide a proper picture of the protection afforded under Australian law.

As Australia attempts to define, review and refine its constitutional position at the end of its first century as a federation, the issue of human rights will be one of many to come under scrutiny. At present, the protection afforded to human rights in Australia is not well understood by many. This book not only examines the various bodies of law, but it also ties them together to create a single picture of the present situation and possible directions for the future. This further understanding will allow for better choices to be put forward, and for the various scenarios to be properly understood. The High Court has come under criticism both from advocates of human rights, and those in opposition to human rights through protection of other interests. By coming to understand the nature of protection of rights in Australia and the Court's changing role in administering this protection, some of this criticism may be allayed.

This book is an important tool not only for the scholar and student attempting to refine their understanding of the protection of human rights under our present constitutional arrangements, but it is also a useful reference for those attempting to bring the issue of rights closer into the political sphere. Perhaps, however, the most important point to note is one pointed out by Williams in his final chapter: that human rights require a culture and climate in Australia which will allow them to flourish if they are to be properly protected into the next century. This book will be an important aid in debates and the development of human rights and our Constitution in the years to come. ●