

only negotiate if the client's spouse was also represented, and non-representation was another reason why formal court proceedings might be initiated. In his discussion of the reasons for this preferred approach, Ingleby emphasises the coincidence between the desire of clients to avoid litigation, and the incentives for solicitors to do the same. The financial interests of solicitors lie in the rapid turnover of cases rather than increasing the bill of a particular client. Solicitors also need to maintain good relationships with other solicitors:

The paradox is that the two parties who are supposed to be diametrically opposed to each other in fact have more in common with each other than with anyone else in the proceedings (p158).

The discretionary nature of family law also increases the incentive to settle:

Where the issue is unclear, the discretionary nature of the law means that it is safer to advise accepting an offer which cannot be proven to be outside the bracket of possible determinations than it is to risk the loss of a contested hearing (p160).

Why then, are family lawyers perceived by some clients as creating increased hostility? Ingleby suggests one reason is that by making a client aware of her rights to share in the property, a solicitor may be perceived by the husband as "stirring up trouble" (p141). By empowering a spouse with information about her rights, and by offering the means by which those rights may be vindicated, the solicitor may create conflict. Women, in particular, need more of this sort of conflict.

There has been a tendency in recent years to devalue the work that solicitors do on behalf of their clients. Certainly there are considerable legal costs involved in dealing with the consequences of marriage breakdown. However, Ingleby shows that much of solicitors' activity is directed towards compliance with the procedural requirements of the courts in obtaining a divorce decree. Certain costs are incurred because of the requirements imposed by the law, rather than because of the activities of solicitors in dispute resolution.

Ingleby's book was not written as a defence of family law solicitors. However, it demonstrates the important roles which family law solicitors perform on behalf of their clients. It is a useful book, and adds valuable information about the way family lawyers operate, bargaining as they do, in the shadow of the law.

PATRICK PARKINSON*

INDIRECT DISCRIMINATION IN THE WORKPLACE by
Rosemary Hunter, Sydney, Federation Press, 1992, xxvi +
334pp, \$45, ISBN 186287 0896.

Indirect Discrimination in the Workplace is an extremely useful contribution to the literature on discrimination law in Australia. The subject matter is of great importance. Whilst directly discriminatory conduct against some groups

* Faculty of Law, University of Sydney.

may be beginning to decline, discrimination which results from the disparate impact of apparently neutral requirements or conditions is still pervasive. The frequency with which indirect discrimination is encountered may be a consequence of "educated" discriminators now too clever to make their discrimination overt. However, it is perhaps more likely to be the result of a general lack of understanding of indirect discrimination. Rosemary Hunter's book will be of material assistance in developing greater awareness of this form of discrimination and, hopefully, in reducing its incidence in Australia.

The book is written with great clarity and attention to detail. It is aimed at the diverse audience of "anyone involved with equal opportunity legislation — as an employer, worker, administrator, EEO practitioner, union official or lawyer" (p. xiv). It will certainly be useful to people in all of those roles. It is perhaps strange, however, that the author did not mention its utility to researchers and students since it will also be of value to them. Although it deals with the subject of indirect discrimination in rather more detail than may be needed by the average law student, for instance, this book nevertheless has many qualities which render it useful to students and others approaching issues of discrimination for the first time.

The clarity with which the material is written, organised and presented makes it easy for those new to the area to understand and use the text. The first chapter, for instance, provides an introduction to the basic concepts of discrimination law. The thoroughness with which the material is presented is impressive and adds to its utility. Chapter Two, for example, deals with the development of the legal recognition of indirect discrimination and summarises material from the United States, Canada, New Zealand, Britain and Northern Ireland, and Australia. It includes a consideration of the relationship of the United Kingdom to the European Community which is of significance for anti-discrimination law.

The comprehensive way in which the material is treated gives the book value as a reference tool. The third chapter, for instance, assembles and compares the definitions of indirect discrimination in each Australian state, territory and federal statute. This is most useful to those of us working in the area, if a little tedious to the reader looking for a narrative account. The convoluted issue of jurisdictional conflicts is also dealt with extensively in this chapter. The numerous tables (for example at pp. 34 and 51) and the extensive bibliography also add to the utility of this volume as a work of reference.

Chapter Four deals with equal employment opportunity (EEO) and explains the role of affirmative measures in dealing with indirect discrimination. The coverage of Australian antidiscrimination and EEO measures is completed in the fifth chapter by a review of public service legislation and industrial awards containing anti-discrimination provisions.

Part Three of the book, Chapters Six to Eleven, shows the ways in which apparently neutral employment practices can have a discriminatory impact on the groups protected by anti-discrimination law. Rather than organising the material according to the conventional model of the legislation and dealing with recruitment, hiring, terms and conditions of employment and so on, Hunter adopts the perspective of the protected groups, examining the ways in which those groups are different from dominant groups and the impact of these differences on their experience of employment. This perspective succeeds in giving a clearer picture of the practical realities of indirect discrimination and avoids the seductive but problematic blinkers of a view of the

world through the eyes of dominant groups. Chapter Six, for instance, examines physical and functional characteristics of workers, providing examples of indirect discrimination such as the "standard" tables of height and weight used by medical examiners which had a discriminatory impact against certain racial groups and on women until challenged by litigation. This part of the book, in particular, incorporates many brief illustrative case studies which should assist employers to examine and challenge their own employment practices. Hunter's perspective of the oppressed enables her to treat employment issues of particular relevance to outsider groups with sensitivity. Her insights extend to the experience of discrimination of people with disabilities, a group once neglected on the human rights agenda. Her perspective does not diminish the value of the book for employers. Rather it enhances it, since a capacity for empathy — the ability to see the world from the point of view of another — is one necessary condition of the removal of systemic discrimination.

Part Four of the book deals with proving indirect discrimination. In four chapters it reviews the elements of indirect discrimination in Australia. This review is timely and helpful given the many important recent cases which have interpreted the meaning of reasonableness in indirect discrimination and the calculations required to establish disparate impact. Relevant United Kingdom and North American authorities are also incorporated into the discussion.

Part Five deals with enforcement procedures and remedies. It includes a discussion of the problems of the complaints-based system and of the relevance of affirmative action legislation, including the limited enforcement mechanisms available under affirmative action legislation.

The book is limited, as its title says, to employment discrimination. This limitation is justified (p. xii) by a number of arguments: whilst discrimination in other areas may be just as frequent, employment carries particular social and economic significance; the significance of employment discrimination is recognised and enhanced by the development of equal employment opportunity provisions in several Australian jurisdictions; the majority of complaints under discrimination legislation have been in the area of employment. These arguments have much force, but there are counter-arguments. One criticism of the restriction to employment matters is that discrimination occurring in other areas is highly relevant to employment for all target groups, having particular force for some. People with disabilities, for instance, are often severely restricted in their ability to take up employment or are prevented from even considering the possibility of employment, because of discrimination in education or in the provision of essential goods and services such as transport. The limitation of the book to employment could also be seen to be accepting of male ideas of what is important by supporting the primacy of the public world of work. However, authorities on discrimination in other protected activities are discussed, and it is perhaps the quality of the book and the thoroughness with which the author deals with employment discrimination which prompt the greatest regret that its ambit was not wider.

It should not be seen as a criticism of this work that it is already out of date. It is up to date to the first of June 1992, but this is an area of law which moves extremely quickly. Any author who waited for a lull in legislative innovation in anti-discrimination law would be destined never to publish. Since June 1992 there has been a major new piece of federal legislation, the *Disability Discrimination Act 1992* (Cth), and significant amendments have been made to federal anti-discrimination legislation by the *Human Rights and*

Equal Opportunity Legislation Amendment Act (No2) 1992 (Cth) and the *Sex Discrimination and other Legislation Amendment Act 1992 (Cth)*. There have also been amendments to state legislation. However, these developments do not invalidate the content of *Indirect Discrimination in the Workplace* which remains an excellent addition to the literature.

HILARY ASTOR*

THE STATUS OF REFUGEES IN ASIA by Vitit

Muntarbhorn, Oxford, Clarendon Press, 1992, viii + 217pp,
\$70, ISBN 019825668X

In his novel, *A History of the World in 10½ Chapters*, Julian Barnes relates the voyage of the passenger liner, *St Louis*, which left Hamburg in May 1939 with over 900 Jewish refugees on board, fleeing Nazi persecution. The liner was destined for Cuba, which had undertaken to accept the refugees pending their resettlement in the United States. After the ship had reached port in Havana, the Cuban government reneged on its undertaking and expelled the refugees from its territorial waters. For several weeks the *St Louis* plied the Atlantic Ocean, as appeals to the United States, Venezuela, Ecuador, Chile, Colombia, Paraguay and Argentina to accept the refugees went unheeded. During the ship's return voyage to Europe, with the refugees still on board, Belgium, Holland, France and Britain finally agreed to accept the passengers of "the ship that shamed the world". After the outbreak of the Second World War, the "passengers" of the *St Louis* shared the fate of other European Jews, their chances rising or falling depending upon the country to which they had been allotted.

Accounts of the migration of people across national borders, whether to flee persecution or economic privation, by no means started with upheavals in Europe this century, yet Barnes' story is a poignant symbol of the way in which European events have shaped our current understanding of the refugee problem world-wide. When the Convention Relating to the Status of Refugees was concluded in 1951, its scope was generally limited to pre-1951 events in Europe. Even states that dispensed with this geographic limitation, by making a declaration under the Convention or acceding to the 1967 Protocol, were bound by a treaty whose concerns were often distinctly Eurocentric. For example, the Convention guarantees refugees the right to social security, public education, and intellectual property, to the extent that these rights are accorded to nationals of the receiving state. However, such provisions are often meaningless in many Asian states, which do not possess a level of material well-being sufficient to grant these rights to their local population.

It is against this background that *The Status of Refugees in Asia* makes a valuable contribution to our understanding of refugee law, policy and practice among Asian states. The importance of the issue arises from the fact that nearly every country in Asia has been a refugee-producer or refugee-receiver since the Second World War. Moreover, numerically Asia accounts for a sub-

* Faculty of Law, University of Sydney.