

Book review:

Criminal Due Process and Chapter III of the Australian Constitution

Authored by Anthony Gray
The Federation Press 2016

Review by: Lyma Nguyen

Barrister

William Forster Chambers

As riveting as the title might suggest, I decided that a review of Chapter III of the Constitution was timely, given the lack of the national Human Rights Charter in this country.

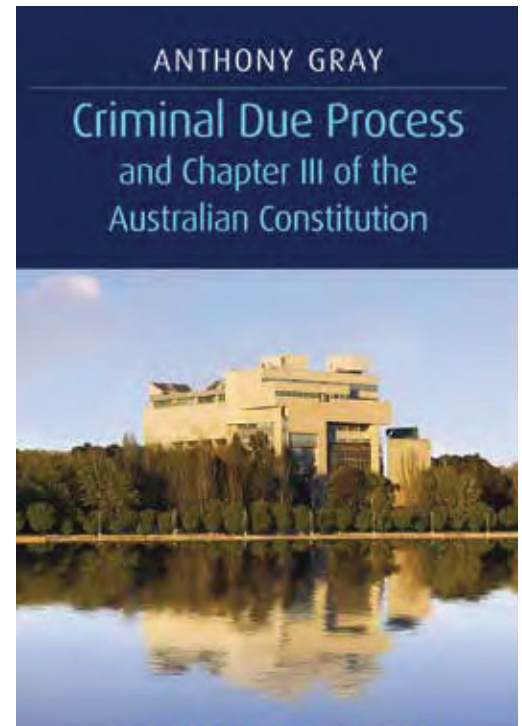
In Australia, fundamental criminal procedural principles such as natural justice, open courts, presumption of innocence, privilege against self-incrimination, criminal standards of proof, right to property and proportionality in sentencing must be teased out in the common law, rather than being enshrined in a fundamental human rights instrument, as is the case in the United States, United Kingdom, New Zealand and Canada.

When the Constitution was formed, the founding fathers (who were white, relatively wealthy, male, and colonialists) largely placed trust on the ballot box to remedy any unfair treading on human rights of the Parliament. Today, with an

audit of Commonwealth laws having found that 48 such laws abrogate the presumption of innocence, 92 eliminate natural justice, 14 remove the right to silence and 108 abrogate the privilege against self-incrimination, there is a valid suggestion that their presumptions were 'naïve' and 'misplaced'.

However, when arbitrary or indefinite detention, mandatory sentencing and executive-power-creep becomes so prevalent, there is no choice but to look to the separation of powers doctrine and (limited) expressed human rights protections that exist in the Constitution, as well as any implied rights which the High Court has interpreted into Australia's highest law.

The author, Anthony Gray suggests that over the past twenty-five years, there have been some development in Australia's legal protection of human rights—via the implied



rights jurisprudence in Australian constitutional law and the growing recognition of judicial independence in Chapter III jurisprudence.

Gray discusses the Constitutional position on rights in its historical context, considers cases in which the High Court has included implied rights and examines how doctrines such as rule of law and general common law principles of statutory interpretation can be effective in the protection of rights.

He concludes that the High Court, if it so wished, has the potential to significantly expand human rights protections in Australia. He also

suggests that the development of Chapter III jurisprudence—through teasing out the implications of the separation of powers doctrine—is a promising way to secure protections of fundamental rights. (This also implies that there is a place for judicial activism).

My observations in practice are that executive power creep has prevailed over human rights and civil liberties in this country, such that miscarriages of justice become commonplace—particularly in the area of mandatory immigration detention and mandatory sentencing. If judicial activism can save the day, it

is very welcome! But first, one must understand how Chapter III of the Constitution gives scope for creative arguments about the place of human rights in this country, to properly invite any such judicial activism. The book is an excellent resource for giving that overview.

Book review:

Step by Step Guide to Operating a Successful Conveyancing / Legal Practice

Authored by Garth Brown

Review by: Carmen Jap

Graduate Clerk
MinterEllison

Garth Brown's latest book *Step by Step Guide to Operating a Successful Conveyancing / Legal Practice* proves a handy tool for practitioners who want to fly solo for the first time.

The book is quite literally a step-by-step guide on almost every factor a practitioner should consider when opening up their own practice. Brown offers advice on numerous areas such as setting up a virtual office, embracing available technologies, social media presence and online marketing. There are also some useful tips on communicating with

clients, especially in relation to costs, vendor/purchaser conveyancing, and risk management. Brown also recommends some of his trusted service providers in areas such as creative media, online marketing and record keeping, which can take new business owners months to find.

The design of the book was however a little outdated, in terms of the size of the hard copy. The typography also makes it hard to read at times. The content is largely conveyancing-specific however contains tips and lifestyle reminders that may

be overlooked or forgotten by professionals involved in busy day-to-day practices.

Overall the book is easy to read, organised and useful. A helpful tool that serves almost as a check-list for opening a new practice.

To purchase a hard copy / electronic copy of *Step by Step Guide to Operating a Successful Conveyancing / Legal Practice*, please go to www.conveyancers.net.au/ebooks_stepbystep.htm