

FOREWORD

The Hon Justice Chris Maxwell AC
President, Court of Appeal, Victoria

Courts are both instruments and exponents of public law. These are functions of the highest public importance. As Justice Gageler says in these pages, the duty of the court is ‘to declare and enforce the law which limits or conditions the exercise of power conferred by law on another repository’. And, as Chief Justice Allsop says, public law ‘is about how power affects people – their rights, interests and expectations’.

An understanding of the values which underpin public law, and of the terms on which power is distributed, exercised and controlled, is indispensable to both advocacy and adjudication. Put shortly, the practice of public law requires an appreciation both of what it is about and of how it is done.

This collection is ideally suited to that purpose. The papers expose, in a rich variety of ways, the nature and functions of public law. And they provide a rare mix of perspectives from senior judges and senior practitioners.

The breadth of coverage is remarkable. The contributions range from the conceptual and philosophical to the operational and practical. And the reader is reminded that public law principles are as important in the fields of criminal law and bankruptcy law as in the more familiar territory of judicial review.

This collection offers as much to the newcomer to public law as to the seasoned campaigner. The new entrant will find both practical instruction – on the key issues of statutory interpretation and appellate advocacy – and a conceptual framework within which to develop argument. For those hardened by experience, these papers will stimulate and provoke – by challenging accepted notions, exposing doctrinal uncertainties and throwing light on neglected topics.

That such a storehouse of lively thinking has been gathered together bears testimony to the intellectual vitality of the Public Law Section of the New South Wales Bar Association and its commitment to advancing excellence in public law. Fittingly, this collection includes the first four Spigelman Orations. That annual lecture, organised by the Public Law Section,

honours the outstanding contribution of former New South Wales Chief Justice James Spigelman to the development of Australian public law.

Chris Maxwell
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