

BANKING LAW IN AUSTRALIA by Alan Tyree,
Butterworths, 1990, xxvi+429pp (including index), \$55

The law of banking is the law of the relationship between a banker and his customer; a relationship which by reason of developments, statutory and otherwise, is ever changing. The legal issues which confront today's lawyer accordingly differ markedly from those which confronted Sir John Paget in 1904 in writing the first edition of his landmark treatise on *The Law of Banking*, at a time when a customer was known to his banker and a bank account was a genuine symbol of credit worthiness.

In Australia the banking environment has changed dramatically with the "deregulation" of the monetary and banking system consequent upon the Campbell Report in 1981 and the Martin Review Report in 1983. Contemporary advances in communications, in electronics and in computer technology have also had a major impact on banking practices. The paper based system under which banking has operated is being eroded and replaced by electronic banking systems. Some of the developments, like the introduction of credit and debit cards, automatic bank teller machines and electronic funds transfer systems are well known to consumers but others, like the automatic processes for cheque clearance and systems such as SWIFT, CHIPS, CHAPS and BITS, developed for the handling of periodic payments and of international money transfers, are less familiar.

The statutory environment in which bankers operate has also been altered in recent years. Australia is unique among Commonwealth countries in its introduction of legislation which treats cheques separately from bills of exchange (*The Cheques and Payment Orders Act 1986* (Cth)), controls have been placed on the "improper" use of bank accounts (*Proceeds of Crime Act 1987* (Cth) and *Cash Transactions Reporting Act 1987* (Cth)) and certain consumer-type finance transactions, made between banks and their customers, have been made the subject of recent credit legislation which operates, at present, in each of the States and Territories except for Tasmania and the Northern Territory. At the meeting in July 1990 of the Standing Committee of Consumer Affairs Ministers, it was resolved to extend the credit legislation to a wider range of banking transactions in new legislation to be adopted by all states and territories including the Northern Territory and Tasmania, so that another new area of statutory regulation will need to be addressed by banks. Finally, banks are also subject to the recently introduced unconscionability provisions of the *Trade Practices Act 1974* (Cth), State Fair Trading legislation and, in New South Wales, the *Contracts Review Act 1980* and the *Credit (Home Finance Contracts) Act 1984*.

Professor Tyree's book addresses banking law in the light of and with emphasis upon recent developments and modern banking practices. In broad terms his book examines the structure of banking and its regulation, the bank's position as a paying and collecting agent and its position as a credit provider. In particular, it includes an analysis of the nature, incidents and duties of the banker-customer relationship, the special nature of and legal issues relevant to a current account, the law with respect to cheques, other payment systems (Giro systems, EFT systems, both domestic and inter-

national, and credit cards), negotiable instruments, lending and securities. A final chapter deals with international lending and in particular with *mareva* injunctions and documentary letters of credit.

The book does not have footnotes and so assumes a style which is known to be encouraged by the publisher. It is an approach which may be welcomed by some readers and which may have been deliberately chosen by the author but, because it discourages the provision of references to further authorities and, in particular, to secondary materials, it is, to my mind, unfortunate.

It is difficult in dealing with such a broad topic to deal with every aspect of the law which may be relevant, but the failure to refer to the *Credit (Home Finance Contracts) Act 1984 (NSW)* and Part X of the *Credit Ordinance 1985 (ACT)* is a significant omission. The statement on p40 that executors constitute a single legal entity, although true in the context in which it is made, is potentially misleading without reference to the qualification effected by s153(4) of the *Conveyancing Act 1919 (NSW)*. The reference at p186 to s26 of the *Sale of Goods Act 1923 (NSW)* was presumably intended to be a reference to s27 of that Act. The discussion of s13 of the *Credit Acts* at p347 does not reflect the position in Victoria with respect to s13 where exemptions, different from those discussed, operate and, although at p348, Part 4 of the *Credit Acts* is examined with respect to mortgages, the failure to discuss relevant provisions of Parts 5 and 6 is an unfortunate omission. The implication, which arises from the commentary at p372, that a contract of guarantee may be reopened pursuant to the *Credit Acts* where it is unjust, is misleading. The power to set aside a contract of guarantee arises only where a regulated credit contract or mortgage is found to be unjust. Finally, throughout the text there is a frequent misspelling of the word "payer" (for example, pp232, 233 and 247).

Inevitably, other developments have occurred and have been proposed since the completion of this book. In particular, amendments have been made to the *Registration of Interest in Goods Act 1986 (NSW)*, which was discussed in chapter 9. A scheme involving the appointment of an arbitrator to resolve disputes between credit unions and their members relating to electronic fund transfer services, similar to that operated by the Banking Ombudsman scheme discussed in chapter 8, has been implemented and many of the issues discussed in chapter 7 in relation to the misappropriation of cheques have been considered in *Hunter BNZ Finance Ltd v CG Maloney Pty Ltd* (1990) 18 NSWLR 420. The current attitude of the Commercial Tribunal, referred to at p 319, is better reflected in *Australian Guarantee Corporation v Altman* (1990) ASC 55-953 and a number of unreported judgments; it is usual in the case of trivial contraventions of the *Credit Act* to restore the credit charge. See also, in relation to "minor errors", s86A *Credit Act 1984 (NSW)* which was introduced by the *Credit Amendment Act 1990 (NSW)*.

Banking Law in Australia is both practical and scholarly. The author's style is succinct and lucid and this book, which deals with the law and relevant legal issues in the context of modern banking practices, will be a useful and welcome reference to the practitioner and student alike.

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