sumer movement has criticised this relationship as profoundly unequal and open to abuse. The guarantor, having no immediate interests in the transaction and receiving no benefit from it, usually takes a passive role in any negotiations. The guarantor is therefore peculiarly susceptible to being misled by either the borrower or the lender, whether actively or by omission. The law in this area has encouraged this 'conspiracy of silence'; the lender is usually best able to protect its own interests by telling the guarantor as little as possible.

The widespread use of guarantees, especially in the 1980s, enabled financial institutions to avoid the more dire consequences of poor lending decisions. Obtaining a guarantee from a person with solid security (typically the family home of the borrower's parent/s) was a substitute for proper credit assessment techniques. While institutions vary in their practice, in my years of experience as a credit lawyer I have seen clear evidence of this. Cases include the bank which lent $200,000 to a 20-year-old business whizz kid for share market speculation, and the bank which lent money to a person called 'Monsieur Le Phone Fun'. (An extremely favourable settlement was negotiated by shaming the bank involved about lending money to someone with such a name.)

Lenders have adopted a number of practices to procure guarantees in situations perhaps not as extreme as these, but nevertheless very disadvantageous to the guarantor. These practices range from the careless or indifferent to the fraudulent. They include not explaining 'all moneys' guarantees where the guarantee is not simply for one advance, as the guarantor commonly believes, but for any advance to the borrower in the future whatsoever. (This is known as 'Love Never Dies'.) They include denying the guarantor access to financial information about the borrower when this same information has led the lender to require a guarantee. Other common scenarios are the lender arming the debtor with the documents to procure the guarantor's signature (the 'Poisoned Chalice'), or the lender bullying the guarantor into signing in order to redeem a failing loan (the 'Python').

In general, lenders have endeavoured to meet the legal obstacles to these practices, not by altering their procedures, but by exploiting the consumer's lack of bargaining power. Most guarantees now sprawl over oceans of words, as the lawyers serving banks and financial institutions draft exclusion clause upon exclusion clause. These clauses are the armour of battle, one between unequal forces.

While there are rounded references in the text to 'The Merchant of Venice', for example, an important part of the history of guarantees has been omitted from this book. In the 19th century the courts, exercising a jurisdiction in equity, were protective of the rights of guarantors. They would readily set aside or discharge guarantees by finding that the bargain had been unfairly struck. Implicit in this approach was a recognition that the relationship between guarantor and lender was one that embodies public policy considerations as to fairness. In the interests of equity, the courts would intervene to imply terms into the contract of guarantee.

These protections have been eroded. The myriad clauses of the modern standard form contract of guarantee represent the response to this history. Lenders have imposed detailed and specific written contractual terms that emasculate these protections. The courts have reverted to the fiction that a contract is a bargain freely negotiated between equals.

It is disappointing that these issues receive no attention in this text. While O'Donovan and Phillip do make some suggestions for reform in other areas, they do not acknowledge the considerable and sustained criticisms of guarantees by the consumer movement. The book uncritically adopts the concept that the consumer will be empowered and informed by reading their text, and to be able to negotiate equally and critically with a lender over the content of any guarantee.

At a time of standard form contracts and a lack of competition in the financial marketplace, this legal fiction disadvantages consumers, and is urgently in need of a new approach.

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Administrative Law Does The Public Benefit?

edited by John McMillan; Australian Institute of Administrative Law, Canberra, 1992; $35.

This book is a collection of papers from the proceedings of the Australian Institute of Administrative Law Forum held in April 1992. It is a diverse and engaging account of the current operation of federal administrative law.

As the title suggests, the focus of the balance of the papers in the volume is individuated justice and the issue of access. As Jill Huck puts it 'the issue of access is intrinsically linked to the issues of individual and general public benefit'.

William de Maria is among the more vocal critics of Australian administrative law. De Maria argues that the AAT's proposed fee increases, which may impede access to the AAT are 'obscene' (p.120) and that its 'legal-managerialist' approach has meant that 'the AAT has now left its community of origin, and is circulating social reality in its own judicial orbit' (p.119).

A less strident tone is adopted by Julian Dine, who argues that improving access is about adopting a 'bottom-up' approach to administrative review (pp.3-4). He redirects the focus of reform onto 'simple, perhaps mundane, practicalities' such as plain English material, 'hot lines' and videos to inform potential users about the system. Concern with ways of improving access also dominate other contributions: Michael Raper considers the importance of costs to the consumer in social security appeals; Jill Huck considers access issues for consumers in remote areas; and Denis Tracey and Loula Rodopoulos, in separate contributions, discuss the operation and implications of the ALRC's Multicultural Project and the AAT's Access and Equity Program.

How critical should we be of our administrative law? Is the AAT out of touch or just in need of fine-tuning? Although this volume covers a diverse range of matters, it does not answer these questions. Rather, it discloses an apparent lack of consensus in the administrative law community as to what problems exist and what reforms are necessary to address these problems.

An illustration of this lack of consensus is seen in the fairly recent reforms of AAT procedure. These reforms are set out by Justice Deirdre O'Connor, President of the AAT, and initiator of the reforms, in her contribution 'Future Directions in Australian Administrative Law'.

Justice O'Connor's paper focuses on reforms under way in the AAT, including the introduction of mediation and a General Practice Direction. The Direction sets time standards for the preliminary conferences and for the completion of matters, requiring parties to lodge statements of facts, contentions and certificates of readiness similar to court procedures.

This 'legal-managerialist' approach is trenchantly criticised by de Maria as 'the new face of economic rationalism'. In contrast, Frank Esparraga claims that the evidence available suggests O'Connor's reforms are 'leading to better administrative justice for parties through the elimination of unnecessary delays and to a reduction of costs to the parties' (p.399).

I think the jury is still out on the success of these reforms. It does seem unclear how the introduction of rigorous pre-trial procedures will cut the costs of parties as Esparraga claims — surely such procedures place additional barriers before potential users of the system and discourage them from using what must appear to be a court, rather than an informal and flexible dispute resolution mechanism (which is what the AAT should be).

The question of tribunal efficiency is important in a context of apparently scarce resources. The public should get value for money. But efficiency should not mean that the AAT is increasingly characterised by legalism and a managerial approach to caseloads which may disadvantage individuated justice. It is critical that the parties have full opportunity to acquaint themselves with the system and each other. Efficiency in preparing a matter should be demanded from government and encouraged when dealing with the public. Settlement should not be forced on the parties just because there is a need to handle more cases — rather the tribunal should encourage the parties to settle their differences organically and among themselves. This often occurs and the tribunal has often played this role remarkably well despite time constraints and large caseloads. But only where organic settlement is impossible is it appropriate for the tribunal to advise consumers in preliminary conference as to their likely success at a hearing. This approach heightens the legitimacy of the process for both parties and increases the likelihood that the parties will be happy with the result.

Closely allied to the AAT's increasing legalism is the issue of the cost of administrative justice. In his contribution, Alan Rose says the key to obtaining public benefit from administrative law is 'to let consumers get at' administrative review. Rose runs the line, unpopular among public lawyers, that positive cultural change in bureaucracy can be achieved through privatisation and corporatisation of services. Many readers will flinch at the suggestion that the issues at stake in public law can be effectively reduced to a 'value/price judgment' (p.217).

It seems difficult to reconcile market forces with the need for government accountability and fairness in decision-making — where could a market exist in the fairness of government decisions? Rose argues 'the community is more comfortable with a model of service provision and authority which needs to treat them as clients/customers, not as subjects'. This is true insofar as the public does not want administrative justice dished up in a 'public service' manner. But this issue cannot be resolved by reference to economic rationalism, which will fail many of the 'customers' of the system, who cannot afford and should not be expected to buy administrative justice.

I think the correct distinction is not between customers and subjects, but between citizens and subjects. Our system of administrative justice should 'open the doors' of government without locking the access turnstiles. Although economic rationalism is quickly going out of fashion, Rose's contribution is interesting as an exposition of the policy considerations which have occupied the Commonwealth legal bureaucracy over the last few years.

As well as these 'macro' issues, the collection also contains a number of useful commentaries on the scope of legal protection afforded to individual rights through constitutional interpretation (Gary Rumble), judicial review (Alan Robertson), and the law of standing (Betty Hounslow). The function of administrative agencies in protecting rights is also considered — in the AAT (P.W. Johnston), via human rights agencies (Irene Moss), and via the Ombudsman (Sue Pidgeon).

It is clear from the collection that federal mechanisms of administrative review — especially the AAT — have some vocal critics.

This book recommends itself to students and practitioners as a general sourcebook of information and perspectives on the mechanisms and procedures of federal administrative law. I look forward to the publication of the 1993 Proceedings.

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The Practice of Child Protection – Australian Approaches

edited by Calvert, G., Ford, A., Parkinson, P.; Hale & Iremonger, Sydney, 1992; $24.95.

Gillian Calvert, Adrian Ford and Patrick Parkinson have brought together a wealth of academic and practical experience and background in the contributors to this