

Bills and Bank Cheques

The Commercial Lawyers Committee met again on Wednesday 4 August 1999 to discuss a range of issues.

In a decision of Martin CJ delivered on 8 July 1999 his honour determined that, given the current state of the Legal Practitioners (Incorporation) Act, it was not currently possible to incorporate a legal practising company. This inability arises from the requirement in s5 of the Legal Practitioners (Incorporation) Act for the practising company's Memorandum and Articles of Association to contain certain provisions relating to directorships and shares being held by lawyers with an unrestricted practising certificate or (in limited cases) a near relative.

As a result of the Company Law Review Act 1998 Memorandum and Articles of Association were replaced with the requirement that a company have a Constitution. As a newly formed company can only have a Constitution, and not a Memorandum and Articles of Association, the requirements of s5 of the Legal Practitioners (Incorporation) Act cannot be satisfied and therefore a legal practising company cannot be incorporated.

This unreasonable situation is to be addressed by legislative amendments, which have been called for by the Chief Justice and the Law Society.

The Committee notes that anyone seeking to incorporate a dental company (under the Dental Act), an architectural company (under the Architects Act), a medical practising company (under the Medical Act) or a company seeking a licence to operate as a conveyancer, real estate agent or body corporate manager may have similar problems.

Mutli Disciplinary Practices

The American Bar Association and the Association of the Bar of the City of New York (ABCNY) have recently announced support for the concept of MDP's, provided that the 'core values' of the legal profession prevail in any new partnership. The ABCNY went on to

say that MDP's must not provide both audit and legal services because of the irreconcilable differences between the confidentiality obligations of lawyers and the disclosure obligations of auditors.

Proposed Law of Property Act and Land Titles Act

Practitioners are reminded that the Law of Property Bill and the Land Title Bill are still tabled for public comment. A useful article on these bills is contained in Peter Butt's column in Volume 73 of the Australian Law Journal, starting at page 476.

Bank Cheques

It is a common perception that bank cheques are as good as cash however this view is not correct. Though bank cheques offer a higher degree of protection than ordinary cheques a bank cheque may be dishonoured. As a matter of information the Guidelines Relating to the Dishonour of Bank Cheques (issued pursuant to the Australian Paper Clearing Systems Procedures) are reproduced:

1. Forged or counterfeit instruments

Such instruments are not bank cheques and will not be paid.

2. Bank cheque materially altered

A Bank may dishonour a bank cheque which has been materially altered.

3. Bank cheque reported stolen or lost

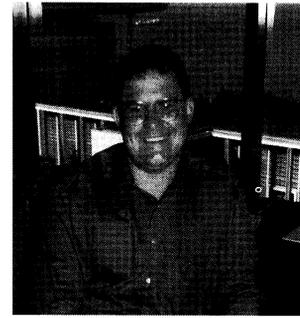
When a Bank is informed and satisfied that a bank cheque was lost or stolen the Bank may not honour it if the Bank Cheque is presented for payment by or on behalf of a party who has no title to it.

4. Court order restraining payment

A bank is compelled to observe an order of a Court restraining a Bank from paying a bank cheque which may be presented for payment while the order is in force.

5. Failure of consideration for the issue of a bank cheque

Where there has been a failure of consideration for the issue of a bank cheque (such as the failure of the Bank to receive



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the funds given for the bank cheque) the issuing Bank may dishonour the cheque only if either:

- (a) the holder has not given value for the bank cheque; or
- (b) if the holder has given value, the holder had at the time of giving value, knowledge of the failure of consideration for the issue of a bank cheque.

The decision to refuse payment of a bank cheque under the above circumstances is to be made at a responsible level within the Bank and with due regard for the necessity to maintain the integrity of bank cheques. Banks are required to readily co-operate with any holder or prospective holder who may want to verify the authenticity and content of any bank cheque purporting to have been issued by them.

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**The Law Society
Annual
General
Meeting
September 9, 1999
will be held at the
Plaza Hotel
Commodore Room
from 4.30pm.**