

Commercial Lawyers Committee Column

The October's Commercial Lawyers Committee meeting centred on new laws facing Northern Territory lawyers and their business.

Residential Tenancies Act

At the time of writing, the Residential Tenancies Act had been passed by the Northern Territory Parliament and assented to by the Administrator. The Residential Tenancies Act replaces the Tenancy Act in relation to residential premises, the Tenancy Act continues to apply to commercial premises.

Bank Cheques

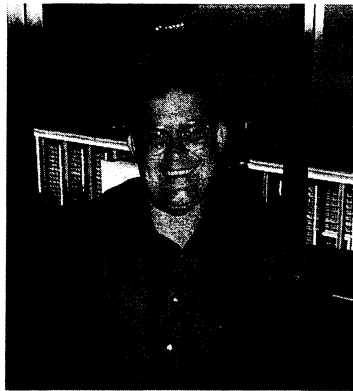
Most contracts involving a settlement require funds to be paid by way of a bank cheque. As a result of amendments to the Commonwealth Act "bank cheque" includes cheques issued by Authorised Deposit-taking Institutions (ADI's) on their own accounts. A list of ADI's can be found on the website www.apra.gov.au and includes the Territory Mutual Building Society and the Northern Territory Credit Union Limited.

As previously reported in this column the same qualifications that apply to bank cheques in relation to forged or counterfeit instruments, bank cheques being materially altered, bank cheques being reported lost or stolen, court orders restraining payment or failure of consideration of the issue of bank cheques apply equally to ADI's as they apply to banks.

GST

The Commercial Lawyers Committee cannot emphasise enough to all lawyers the importance of coming to grips with GST. GST will be important to the lawyer from both the point of view of conducting their own practice and complying with the GST law as well as providing advice and taking into account the GST when acting on behalf of clients.

The Law Society of the Northern Territory has been involved with Law Societies from all Australian jurisdictions to obtain Commonwealth funding from the GST Start Up Office and is in the process of arranging a series of seminars, videos, papers and access to websites in order to focus attention upon GST and its impact.



It is the view of the Commercial Lawyers Committee that the only way to come to grips with GST is to obtain the maximum amount of exposure possible to the relevant concepts and therefore all lawyers should consider attending several seminars and undertake reading to ensure that they are on top of this issue.

One of the issues facing lawyers will be whether to quote their hourly rates inclusive or exclusive of GST. If quoting exclusive of GST it is imperative that the client clearly understands, and contracts on the basis that the GST will be added to the rate quoted. GST inclusive pricing would seem to be the easier of the options however, at this stage, it appears that most lawyers will adopt GST exclusive pricing as a means of demonstrating to clients that rises and fees are as a result of the imposition of a government tax as opposed to lawyers raising charges for their own gain. The Law Society will address the issue of the Supreme Court Scale and GST.

Solicitor's Certificates

Insurers to Northern Territory Legal Practitioners have indicated that in an ideal world they would prefer that lawyers ceased issuing Solicitor's Certificates however the insurers have accepted that such an outcome is commercially unrealistic. The insurers have expressed a preference for some combination of a pro-forma solicitor certificate in conjunction with a registration process for practitioners to be authorised to issue such certificates

following an accreditation process. The general feeling of the Commercial Lawyers Committee is that a pro-forma solicitor's certificate may be appropriate, however, a registration and accreditation process would be bureaucratic, unwieldy and inappropriate.

The Banking Finance and Consumer Credit Committee of the Law Council of Australia has a subcommittee that has taken a lead role in relation to Solicitor's Certificates and the Commercial Lawyers Committee is in the process of making contact with this body to determine exactly how far they have proceeded.

In the interim, the Commercial Lawyers Committee are working on establishing a pro-forma solicitor's certificate for use in the Northern Territory.

Law of Property Act

The Law of Property Act has been tabled in the Northern Territory Parliament. The Law of Property Act contains important consolidations and restatements of the law as well as introducing some significant changes. Commercial lawyers in particular should ensure that they obtain and review this legislation. Any comments or problems with respect to The Law of Property Act may be raised with the Commercial Lawyers Committee.

End of the Millennium

Traditionally the Christmas period is an extraordinarily busy period for commercial lawyers as clients put the weights on their lawyers to have matters completed before the Christmas holidays and before the end of the year. All commercial lawyers should be bracing themselves for an even worse year as clients press for their lawyers to have matters completed before the end of the millennium and not take to the next millennium to act on their instructions.

The Commercial Lawyers Committee takes this opportunity to wish all lawyers the best for the coming festive season and a safe and prosperous new year.

Cheers. Kevin Stephens

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