

process for High Court judges under the incidental power. The better view is that, while the appointment process can be subjected to consultation, no veto can be imposed on the Governor-General in Council's choice under section 72.

Winterton's essay on the power of State Governors is a valuable contribution to the often neglected topic of State Constitutions. He examines in detail the Letters Patent issued in the 1980's to the State Governors, which accompanied the Australia Acts 1986. He sets at rest a number of inaccuracies as to the interpretation of section 7(5) of those Acts. As he rightly points out, this section cannot deprive a Governor of reserve powers, or the Queen of the few powers residing with Her. Because of the possibility of "hung" parliaments (with Independents holding the balance of power in a Lower House), Winterton undertakes what is probably the most detailed and sophisticated analysis of the Tasmanian constitutional situation of 1989. There is however room for disagreement with his thesis that the request for dissolution by the former Tasmanian Premier, Mr Gray, was not proper. The Australian Labor Party had stitched up an accord (but not a *coalition*) with the Green Independents *after* the election; there was a breach of an electoral pledge, and a Premier defeated pursuant to a vote of no confidence was entitled to establish a case to the Governor for the exercise of his discretion in favour of a new election. It had always been appropriate for a Governor in these circumstances to determine whether a stable alternative government could be formed.

To complete this review of the book it may be mentioned that there are two solid articles on individual rights: Coper on section 92 and Hanks on other guarantees of rights.

There is no doubt that this book of essays, by raising the significant issues of our constitutional system, has provided a foundation for informed analysis of its future direction.

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Review of G Hughes and A Sharpe, *Computer Contracts: Principles and Precedents*, 2nd edn, Sydney: Law Book Company, 1992. \$275.00 plus cost of updates.

The first subject in the area of computer law to attract treatment in monographs was the law of contract. It has now accumulated guides for practitioners in most jurisdictions, often in loose-leaf form, and indeed increasingly backed up by computer-readable versions of the standard forms of such contracts. This is the second edition of the principal Australian text in that mode. Both of its authors have

practical experience and the book has a strong practical bent. Both authors also have a serious interest in the theoretical basis of the law in this area, so this is no mere crib for those who cannot be bothered to draft their own forms.

The book is divided into two largely self-contained parts, the first containing a summary and commentary upon the relevant legal rules, and the second, and larger, part consisting of different contractual forms. The commentary is divided into five chapters, dealing with express terms, implied terms, intellectual property issues, remedies and taxation. Each of these chapters tends to give clear, useful and uncluttered advice in the text, but justifies such advice and commentary by footnotes which reveal a most impressive depth of scholarship and breadth of reading.

Examples are taken from, and citations made to, works and authorities from the whole common law world. Many of these citations are to very recent authorities, but occasionally reference is made to a text which has been superseded by a newer edition or to a case in a form which has since been superseded (eg, a 1979 English decision, the *Warnink Advocaat* case, which appeared in the Appeal Cases for 1979, is still cited in its Weekly Law Reports version). There is a job here for a copy editor. The first section of the commentary, dealing with express terms, describes the different types of contract covered in the book and reflects the selection of forms which has been included in the second part.

The chapter on implied terms is concerned more with the precise form of the terms implied by the different pieces of legislation in Australia, both Commonwealth and State legislation being included. Here there is a helpful checklist relating the various implied terms to the contractual forms set out in the second part of the book. The style of the text differs from that adopted in the first chapter in that much more of the supporting material is incorporated into the text (within brackets). Since each section also has elaborate footnoting, including both argument and authority, the distinction between text and note is sometimes rather indefinite. In principle, the text seems to concern itself with the more essential and fundamental matters, and the authority relating to them, while the footnotes deal with more recondite aspects. This principle of distinction, however, is vague and contentious. One result is that the user must refer both to the text and to the footnotes, since it would be dangerous to rely upon the text alone. In order to avoid too much repetition the chapters must also be read cumulatively. A reader interested in, say, the position in South Australia would also have to read the preceding section dealing with the Trade Practices Act 1974 (Cth) since the commentary on the South Australian legislation frequently refers back for comparative purposes, and concentrates only upon those respects in which the South Australian form differs from that discussed earlier.

The chapter on intellectual property is fuller than might have been expected in a book dealing with the law of contract, though of course contract is the first line of defence for intellectual property. The authors have basically chosen to take this opportunity to provide a practical summary of the relevant law. Although some of the world's leading authorities in this area do come from Australia, and the local view is somewhat unusual in global terms, the majority of recent litigation which raises the most pressing problems is from the United States. The authors have, therefore, devoted considerable space to discussing US topics including the recent "look and feel cases" (eg, *Lotus Development Corp v Paperback Software International* 740 F Supp 37 (1990)) and copyright in databases (eg, the *Feist* case 111 S Ct 1282 (1991)).

It is perhaps dubious whether this is the appropriate vehicle for delivering information to practitioners in such a complex and fast-moving field.

The forms which constitute the second part comprise the most common transactions in relation to computers and software. Each area includes at least two standard forms, one for the supplier and one for the customer. The origin of these forms is not indicated, and they may well be composites put together by the authors. Each such section also includes a useful checklist of things for practitioners to look out for.

The book ends with two final sections, one setting out the standard Government Information Technology Conditions (4th edn, 1991), and the other an Electronic Data Interchange ("EDI") Agreement. The latter form emanates from the EDI Council of Australia and, unlike the other forms, is accompanied by a commentary, though whether by the Council itself, or by the authors, is not immediately apparent. Both of these forms are apparently included for information only, since copyright is explicitly claimed for them.

Although the authors and publishers express an intention to keep the text updated, there is no clear indication of the intervals which are envisaged. This may have a vital effect on some parts of the text, which as indicated above deal sometimes with highly volatile areas. The forms themselves seem sound and should be a great help to practitioners. This is a work which can be recommended, both to practitioners and to academics, as a useful guide to drafting and to understanding computer contracts. It also provides a helpful starting point for further investigation of surrounding areas of law.

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Review of Suzanne B McNicol, *Law of Privilege*, Sydney: Law Book Company Ltd, 1992. HC \$120.00.

Recent years have seen a constantly increasing number of cases and articles relating to the privileges. The need for a comprehensive text is clear and McNicol's detailed coverage of the privileges, including the public interest immunity, will provide a welcome text for practitioners and others.

Coverage of the privileges is carried out in depth. Understandably it is limited to the common law and statutory privileges available in some or all of the Australian jurisdictions. It might be suggested that the brief references to the position of journalists (pp 3-6, 364, 380) could be expanded into a separate chapter, having regard to a number of recent problems. They include the imprisonment for seven days and subsequent \$10 000 fine imposed on a *Sunday Times* journalist by a Perth magistrate and the District Court in 1990 for failing to reveal a source of information.