
Book Review

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**A Duggan & E Lanyon, *Consumer Credit Law*,
Butterworths,
1999, 570pp**

Laws governing consumer credit throughout Australia have been in an unsatisfactory state for many years. Resulting from investigations into and reports written about the law relating to consumer credit transactions, various State and Territory legislation was passed in the mid to late 1980s. While not identical, the various *Credit Acts* were to a large extent uniform in their coverage and language. However, not all jurisdictions enacted the same or complementary legislation. Further, in the enacting jurisdictions, the legislation was almost inaccessible to all but the most experienced credit law specialists. To this extent, the enactment of the *Consumer Credit Code* saw the dawning of a new era. Not only was the Code to become largely uniform in its application throughout Australia, but the drafting style made it a more understandable piece of legislation. Since the enactment of the Code in 1994 (which commenced operation on 1 November 1996), there have been an overwhelming number of conferences held, papers delivered and other works published in the area. The most recent publication is *Consumer Credit Law* by Professor Anthony Duggan and Ms Elizabeth Lanyon.

The authors have not specifically stated what their aims were in writing *Consumer Credit Law*, nor the market for whom it was written. However, in their preface they comment: "This book concentrates on the Code, but it does cover other related laws as well, including the *Contracts Review Act* 1980 (NSW), the *Trade Practices Act* 1974 (Cth) misleading conduct provisions, the disclosure requirements of the *Insurance Contracts Act* 1984 (Cth) and state and territory laws governing licensing and registration of credit providers and the constitution of tribunals." If these are the aims of the authors, then they have succeeded.

It would appear that the work was designed predominantly for legal practitioners. It is suitable both for lawyers who specialise in lending, as well as those practitioners whose involvement with the Code is more peripheral. Given the detailed analysis of many aspects of the Code, and the extent to which that analysis often draws on the common

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law and related statutory instruments, the extent to which this work will be used by non-lawyers in the credit industry is perhaps questionable. Similarly, because of the complexity of the work, it is unlikely to be prescribed as an undergraduate student text.

Consumer Credit Law is a 570 page text published by Butterworths. The law is stated as at 30 September 1998, but some developments which occurred after that date have been incorporated. In particular, the authors give full coverage of the 1998 amending legislation although the amending legislation did not commence operation until after 30 September. Given the detail and length of the work, it was pleasing to note that the text contains a similarly detailed index which readers will find helpful. The tables of cases and statutes also appear to be up to date and contain relevant authorities up to the date of publication. All references are to paragraph, not page, numbers.

The work contains 14 chapters, most of which correspond to discrete Parts of the Code (more of this will be said later). Quite properly, the heavy emphasis of this work is on the operation and effect of the Code. However, it is not limited to this. In the introductory chapter, the authors outline the history of credit regulation in Australia. This includes a discussion of the old usury and money lending laws, bills of sale and hire-purchase legislation as well as the *Factors Acts*. Despite the reference to the teachings of the Church of England and the Koran in relation to usury laws, the introductory discussion provides a useful context for a work on the more modern form of consumer regulation provided by the Code. An account is given of the deficiencies of these early enactments as well as the *Credit Acts*, the predecessors to the Code, and then of the reform process as it occurred in Australia. Finally, the introductory chapter gives an overview of the purposive approach adopted by the drafters to the provision of credit which falls within the ambit of the Code. The authors devote a separate chapter, chapter 3, to a discussion of the philosophy behind the Code, namely “truth in lending” and how this philosophy manifested itself under the earlier *Credit Acts*, and now under the Code. The extent to which the behaviour of the credit provider is regulated throughout the lifetime of the credit contract as well as in obtaining credit business is discussed in this context.

A separate chapter, chapter 12 Supervision and Administration, deals with administrative matters concerning how the different States and Territories ensure compliance with the Code by credit providers. Focus is on the relevant tribunal or court charged with the various responsibilities under the Code, as well as the role of the particular Government Consumer Agencies.

Of the remaining 11 chapters, chapters 2, 4 – 11 and 13, link directly to different Parts of the Code. In addition, chapter 14, Documents and Notices, deals with requirements imposed by the Code in relation to various documents that are regulated by the Code (such as credit contracts, mortgages and guarantees), and notices which the Code requires to be given to various people.

For each chapter dealing with a discrete Part of the Code, the format is generally the same. The structure of chapter 6 Securities and Guarantees (which deals predominantly with Part 3 of the Code on Mortgages and Guarantees) will be considered as illustrative of such chapters. First, the chapter is not limited in its coverage to the relevant Code provisions. The chapter commences with an overview of what is meant by the term

“security” and then examines various categories of securities. This is followed by a look at the reform process in the context of securities. The Code treatment of the topic then follows. The Code examination is particularly helpful as it includes references to the common law, commenting on the extent to which the common law position is altered and giving the appropriate case references, as well as referring to any statutory material (such as the Queensland *Bills of Sale and Other Instruments Act 1955* and the various chattel security legislation) which also impacts on the area. Where relevant, reference is made to the various Industry Codes of Practice.

There are many texts and other services written on the Consumer Credit Code. However, it is submitted that to date no other work provides the degree of depth and breadth of coverage as *Consumer Credit Law*. Given the credentials of these authors, the high quality of this work is perhaps not surprising. In a variety of ways explained below, this work achieves a desirable balance. It does this firstly through the topics covered. It does not examine the Code in isolation. The text provides a history of consumer credit regulation in Australia which is helpful to an understanding of the aims of the legislatures in enacting the Code, and consideration of other sources of law that impact on consumer lending, namely the common law and other statutory instruments. For the sake of completeness, it also outlines various administrative structures within which the Code operates in the various jurisdictions. Secondly, there is an appropriate balance struck in the treatment of the various Parts of the Code. While each individual provision is not dealt with in detail, the reader is provided with an overview of the purpose of each Part. Of particular assistance is the ability of the authors to provide background to the enactment of the provision. Although the drafting of the legislation is in plain English, without insight into the purpose for which the provision was inserted, the effect and operation of it is not always apparent. In addition to this historical perspective, reference is made to any relevant common law and statutory principles. Thirdly, while providing sufficient detail on the law relevant to the particular provision, this is not at the expense of a practical focus. The authors have achieved a successful combination of both.

Consumer Credit Law is a timely publication being published shortly after many of the provisions of the 1998 amending legislation came into operation. It is a well written and accessible piece of legal writing. It is testimony to the authors that many of the difficult areas of law which are tackled in this work are readily comprehensible. I have no doubt that this text will be valuable not only to practitioners in the area, but also of assistance to courts and tribunals attempting to attribute meanings to various provisions of the Code.

A book review is, I am told, not complete unless some comment is made on possible weaknesses. In a work of this quality, this is not easy. Nevertheless, the following comments may be made. First, the reader is told in the Preface that this work replaces *Regulated Credit: The Credit and Security Aspects* by Tony Duggan, Elizabeth Lanyon and Simon Begg, and *Regulated Credit: The Sale Aspect* by Tony Duggan. However, *Consumer Credit Law* does not deal with the hire-purchase laws, chattel security legislation, the implied terms provisions of the *Trade Practices Act 1974* (Cth), the fair trading laws or the sale of goods legislation. No reason is provided for omitting these topics. Given the title of this work, perhaps it would have been appropriate for such topics to be considered. Secondly, as the authors themselves recognise, despite the plain

English nature of the drafting, the Code still contains drafting difficulties. While many of these have been identified, perhaps some could have been explored with more rigour (the ambiguity in the drafting of s 37 is but an example). Having said this, however, to contain a work of this kind to a reasonable size, the line has to be drawn somewhere. Thirdly, as perhaps would be expected in any co-authored work, the coverage of some Parts of the Code seems to be more extensive than others for no apparent reason. Finally, on a technical note, in the Table of Statutes the sections of the Consumer Credit Code and Consumer Credit Regulation appear as the first heading under “National Scheme Laws”, yet the amendments to the Code pursuant to the 1998 legislation are listed under the Queensland heading. It may have been more helpful for the references to the amending legislation to appear after the Consumer Credit Code provisions at the beginning of the Table.

As stated by Clifford Pannam QC in the foreword to *Consumer Credit Law*, the Uniform Consumer Credit Code “is perhaps the most important credit control measure ever to be enacted in this country”. Unlike the *Credit Acts*, the Consumer Credit Code is wide in its coverage of credit transactions. It impacts on many aspects of business of those engaged in the provision of credit for personal, domestic or household purposes. For this reason, most lawyers can no longer escape the necessity of coming to grips with the Code’s impact. *Consumer Credit Law* is almost an essential purchase both for lawyers becoming familiar with the legislation for the first time, as well as for those specialising in the area and wanting guidance on the more difficult or controversial aspects of the legislation.