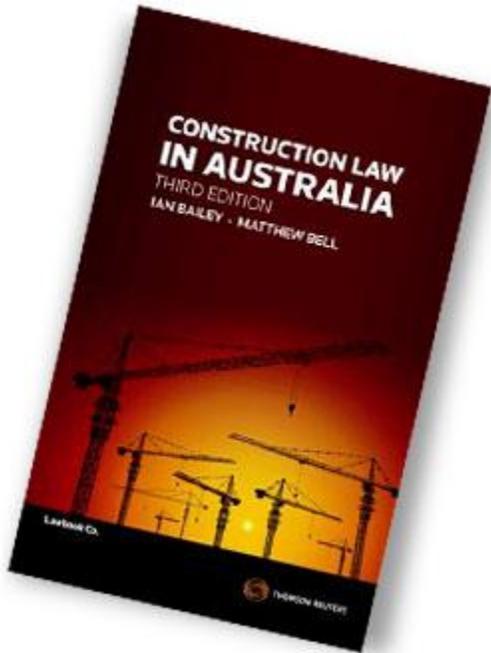


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Construction Law in Australia (3rd Edition)



Authors: Ian Bailey and Mathew Bell

Publisher: Thomson Reuters

Reviewed by Chris Tam

The third edition of *Construction Law in Australia* is a concise and focused guide to a dynamic area of the law.

Co-authors, Professor Ian Bailey SC and Mathew Bell, have updated and refined their previous editions with the assistance of fellow counsel and academics as well as senior solicitors.

Their book is an indispensable first-point guide for further reading and research in an area of the law which involves repeated interplay between common law principles (some of them with an ancient heritage) and diverse specimens of statute law. Differing practices and standards within discrete industries and regions add a further layer of complexity for lawyers and operators.

Largely settled doctrines, rules and principles concerning the interpretation of commercial contracts apply to standard-form contracts in common use throughout Australia. Notwithstanding this, the incidence of highly complex and costly construction litigation either in specialist tribunals or in superior courts has not abated.

Professor John Uff QC – a pre-eminent construction law practitioner and academic – observed in 1991 that construction contracts ‘drafted without full recognition of the possible effects of common law will lead inevitably to difficulty’.¹

Professor Uff observed that the draftspeople of standard-form construction contracts do not ‘face up’ to the legal implications of the content of those documents. One of the reasons for this was a perceived difficulty of reaching consensus between the competing sides of the industry. Professor Uff rejected this as a justification. He said:

“All that matters is that the contractor should be allowed to price what he has asked to undertake. What is important is that the contractor should know with some confidence what it is that he has to price, and that his expectations should not be ordered (or unreasonably enhanced) by the intervention of principles of law which have not been taken in the consideration [by the draftsman].”²

In the foreword to the second edition of *Construction Law in Australia*, then Giles J observed that building disputes often are founded ‘in, or exacerbated by, misunderstandings between the participants or misapprehension of their rights and obligations’.

His Honour’s insight alludes to how complexity in construction disputes takes hold and can take a life of its own. This particularly happens when settled common law principles are applied to circumstances where the participants are not fully apprised of their respective rights and obligations. It also occurs when they misunderstand what is required of them at law and pursuant to the terms of their agreement.

On top of this dynamic is the operation of what Bergin CJ in Eq in her foreword to the third edition describes as ‘modernising’ legislation such as the security of payments Acts.

With all these factors at play, the immense utility of the book as a first-reference tool shines through. The authors have included a particularly useful section at the end of the book which provides references to other books and journal articles (principally from other authors) which are relevant to the topics covered in the previous 13 chapters.

Professor Uff observed that construction contracts generally are concerned with three principal areas – quality, cost and time. The authors have, very helpfully, broken down these three areas in chapter nine (‘key issues in construction contracts’). This is quite possibly the most helpful chapter for practitioners advising in the early stages of a dispute.

The context for chapter nine is provided in the preceding chapters. These provide an

overview of principles relevant to ‘contract’, ‘tort’ and ‘property’. The principles may be second nature to some practitioners but are helpful refreshers, nonetheless.

Perhaps the next most useful sections of the book for practitioners are chapters 12 and 13. Chapter 12 concerns ‘dispute avoidance, management and resolution’. When this fails, recourse may be had to chapter 13 – ‘conduct of litigation’.

The authors expressly acknowledge the complexity and diversity of construction law in the preface to this edition. They described the ‘overarching goal’ of the book as being geared towards promoting ‘understanding’ of the relevant principles and controversies.

They recognise that the ‘daily oscillations’ of the commercial world in which construction projects are planned negotiated and delivered mean that the area of the law is constantly changing.

Their focus is upon the broad themes as well as hard principles but the purpose of the book is really to assist further reading and research. This aim is commendably achieved.

The authors and contributors have produced a practical, focused and highly useable text. It is a valuable companion to their other work, *Understanding Australian Construction Contracts*.

Chris Tam

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Footnotes

1. J Uff *The Interplay of Contract Terms and Common Law* paper given to the Society of Construction Law, UK, 5 November 1991, p11-12.

2. Ibid

Construction law is a branch of law that deals with matters relating to building construction, engineering, and related fields. It is in essence an amalgam of contract law, commercial law, planning law, employment law and tort. Construction law covers a wide range of legal issues including contract, negligence, bonds and bonding, guarantees and sureties, liens and other security interests, tendering, construction claims, and related consultancy contracts. Construction law affects many participants in Construction and Infrastructure Law in Australia is the specialist practice area servicing all aspects of the Construction industry and construction projects from inception to completion. It encapsulates all the legal issues which arise during the tender, construction, delivery, and operation and maintenance phases of construction and infrastructure projects such as

- advice in relation to initial concept design documentation;
- guidance in relation to construction tender documentation;
- drafting construction contracts, consultancy agreements, supply agreements, operation and maintenance agreements

Construction law is enforced by the tribunals and courts of each state and territory. Tribunals often have exclusive jurisdiction up to a monetary limit. Beyond that limit (eg, A\$500,000 in NSW), the courts have jurisdiction. Foreign construction professionals must hold the relevant Australian licences and qualifications to perform construction work in Australia. For construction professionals who have acquired their skills and experience overseas, the recognition of prior learning programmes offers an avenue to have such skills assessed and recognised in Australia and a faster path to the relevant Australian qualifications. Foreign construction professionals must hold an appropriate visa permitting them to work in Australia. Project structures and relationships. Project structures.

â€Dale Brackin is without peer in the Brisbane market and rates amongst the best construction lawyers in Australia for his knowledge of construction law and his ability to apply the law strategically to issues.â€™ Key clients. Adigun (JV NZ Government and Auckland Council).â€ Active on matters across the entirety of Australia and New Zealand, Ashurstâ€™s team handles construction projects from concept to delivery across the energy and resources, infrastructure and telecommunications sectors. Sydney-based Georgia Quick and Melbourne-based Grant Rowlands jointly lead the practice which represents public sector clients in addition to those from the private sector, including all three levels of Australian government. Construction Law in Australia book. Read reviews from worldâ€™s largest community for readers.â€ See a Problem? Weâ€™d love your help. Let us know whatâ€™s wrong with this preview of Construction Law in Australia by Ian H. Bailey. Problem: Itâ€™s the wrong book Itâ€™s the wrong edition Other. Details (if other): Cancel. Thanks for telling us about the problem. Return to Book Page. Construction Law in Australia. Updated on August 8, 2018. Editor austine odhiambo misula.â€ In the Australian law of negligence, section 9 of the CLA (QLD) states that a person should not breach duty to take precaution against a risk especially when the risk was foreseeable and significant. The elements of negligence state that; the defendant should exercise reasonable care to the plaintiff and other third parties that may suffer in case of negligence. It also states that there must not be any culpable omission that will result to damages to the plaintiff and the third parts as this will be termed as negligence. Application of the Law. Best Lawyers for Construction / Infrastructure Law in Australia. Search Best Lawyers Now. Find a Lawyer Australia Construction / Infrastructure Law.â€ Construction and Infrastructure Law in Australia is the specialist practice area servicing all aspects of the Construction industry and construction projects from inception to completion. It encapsulates all the legal issues which arise during the tender, construction, delivery, and operation and maintenance phases of construction and infrastructure projects such as

A structured guide to construction contracts in Australia. Generally, construction contracts in the Australian jurisdiction will contain governing law clauses which stipulate that the governing law is the state or territory where the project takes place. However, despite the presence of a governing law clause, parties cannot contract out of certain legislation, such as certain provisions of the Competition and Consumer Act 2010 (Cth) and the security of payment legislation in each state or territory. In certain states and territories, parties will also be unable to contract out of proportionate liability legislation. The only states in which parties c Construction and Infrastructure Law in Australia is the specialist practice area servicing all aspects of the Construction industry and construction projects from inception to completion. It encapsulates all the legal issues which arise during the tender, construction, delivery, and operation and maintenance phases of construction and infrastructure projects such as

- This includes: advice in relation to initial concept design documentation;
- guidance in relation to construction tender documentation;
- drafting construction contracts, consultancy agreements, supply agreements, operation and maintenance agreements, and advising on same (to name but a few);
- advising in relation to Security of Payment legislation; and.

Construction law in Australia is a broad and specialised area. Your lawyer's involvement will range from activities such as: Planning and development applications with the council; Contract drafting and advice; Tenders and negotiations; Joint venture agreements; Dispute resolution and litigation; and. Debt recovery.

Want to know more about construction law in Australia as it applies to you? Get in touch with LegalVision today on 1300 544 755. Was this article helpful? Thanks! We appreciate your feedback – your submission has been successfully received. Can you tell us why you found it helpful? How can we better improve this article? Submit.