

# **Australian Construction Law Newsletter**

**INDEX - 1992**

**Construction Publications Pty Ltd**

A.C.N. 002 872 488

ISSN 1032-0288

Registered by Australia Post - Publication No. NBG 3339

---

## Authors

**Barclay, Andrew**

Private Investment in Victorian Infrastructure - Issue 22, p31

**Barnett, Tony**

Self Regulation for Retail Landlords and Tenants - Issue 22, p35

**Batterby, Adrian**

Confidentiality and Admissibility of Documents or Facts Disclosed During a Negotiation or Other ADR Process - Issue 26, p27

Cost Effective Use of Lawyers in ADR - Issue 26, p23

**Beatty, Andrew**

Book Review - Resolving Conflict: A Practical Approach, Tillett - Issue 24, p4

**Brown, Paul G**

Unfair Dismissal - Issue 22, p25

**Budd, Scott R**

The Queensland Building Services Authority Act 1991 - Issue 25, p20

**Cahill, Frank**

Determination by Independent Expert - Application of Commercial Arbitration Act - Expert to Determine Procedures - Issue 26, p56

JCC - Damages for Delay and Delay Costs - Construction of Clauses 10.09, 10.10 and Appendix L - Issue 26, p58

**Callaghan, Paul**

Superannuation Guarantee Levy - Issue 24, p51

**Casey, Barry**

The Certifier's Role and Liabilities - Issue 26, p10

**Cullen, Alan**

Standard Conditions of Contract in the Building and Construction Industry - Issue 27, p7

**Cusack David**

JCC Building Contracts - MB-CHAA's Concern Over Alterations and Breach of Copyright - Issue 24, p12

**Davenport, Philip**

A Consultant's Nightmare - Issue 25, p64

AS2124-1986 - The 10 Most Misunderstood Provisions - Issue 22, p12

Best Offer Arbitration - Issue 22, p5

Contracts - Agreement to Negotiate is Void - Issue 23, p73

Costs - What is a Sufficient Calderbank Offer? - Issue 23, p74

Enrichment That is Not Unjust - Issue 25, p65

NPWC3 Clause 35.4 - Delay Cost Claims - Issue 22, p18

The Plight of Subcontractors - A Partial Solution - Issue 24, p36

Reliance Damages - Issue 23, p35

The Saga of Renard and the Minister - Issue 24, p55

The Total Cost Claim - Issue 26, p4

Variations - Duty of Fairness to Order - Issue 25, p75

Variations and Restitution - A Neglected Remedy - Issue 23, p67

**Davie, Tom**

Arbitrations and References Under Part 72 - Court's Power to have Arbitrations and References held Concurrently - International Arbitration - Issue 27, p48

Contract - Use of Deleted Clause in Construction of Document Prepared from a Precedent - Issue 27, p51

Delay - The Decision in "Monarch Steamship" and Its Influence on the Construction Industry - Issue 26, p35

Misleading and Deceptive Conduct and Defamation - Whether Declaratory Relief Available - Damages - Issue 27, p52

---

Negligence - Proprietor's Claim Against Manufacturer and Supplier of Allegedly Defective Tiles - Issue 27, p54  
Negligence - Proprietor's Claim Against Subcontractor - Issue 27, p55  
Negligence - Proprietor's Claim Against Subcontractor for Defective Work - Issue 27, p56  
Security for Costs - Issue 27, p57

**Dawson, Philip**

The Court Appointed Referee's Report - Issue 22, p22

**Edghill, Kathryn**

Arbitrators and Referees in a Jam - Issue 26, p48

**Fletcher, Arch**

Subcontract Conditions AS2545-1987: Payments; Variations; Retentions & Security: Main Contractor's Representative - Issue 23, p23

**Floreani, Robert F**

Builder's Obligation to Comply with Architect's Instructions Notwithstanding Dispute - Injunction - Effect on Obligations - Importance of Construction Programme - Issue 26, p53

**Greenham, Phillip**

JCC Contract - Execution Levied - Termination - Issue 24, p62

**Grieve, Kym**

Environmental Liability - Vicarious Liability of Employers - Issue 22, p53

New Construction Noise Code for City of Sydney - Issue 26, p33

**Gyles, Roger Q.C.**

Royal Commission into Productivity in the Building Industry in NSW - The Royal Commissioner's Final Report - Issue 24, p5

**Hibbert, Stephen**

Costs - Issue 25, p5

References Out From Court - Issue 25, p47

**Hinds, Ken**

Smart Ways of Controlling Cash Flow - Issue 24, p45

**Hope, Harold**

Queensland's Contaminated Land Act - Issue 24, p28

**Jumikis, Elizabeth**

Integrated Tourism Resorts - Issue 22, p30

**Laird, Andrew**

Termination - Repudiation - Notice Requirements - Issue 22, p61

**Luchetti, John**

Dispute Resolution in the Building Industry in Australia - Issue 24, p19

**MacIntyre, Amrit**

Determination by Independent Expert - Application of Commercial Arbitration Act - Expert to Determine Procedures - Issue 26, p56

JCC - Damages for Delay and Delay Costs - Construction of Clauses 10.09, 10.10 and Appendix L - Issue 26, p58

**Marquard, Jon**

Banking - Slipping Through the Net - Issue 23, p58

**Massey, Daniel**

Arbitrator's Award - Leave to Appeal - s38(5) of Commercial Arbitration Act 1984 (NSW), As Amended - Issue 23, p69

**McKenzie, Patricia**

Assignment of Benefit of Contract by Proprietor to Financier - Financier May be Liable as Principal - Issue 26, p50

**Megens, Peter**

Arbitrator's Award - Leave to Appeal - Damages - Interest - Issue 22, p48

**Melick, Roy**

Integrated Tourism Resorts - Issue 22, p30

**Miller, Duncan**

The Certifier's Duty of Care to the Contractor - Pacific Associates v Baxter Reconsidered - Issue 27, p25

**Newbold, Andrew**

Property Transactions and the Trade Practices Act - Issue 22, p58

**Nicholls, Nicholas A**

Arbitrators' Jurisdiction - Issue 23, p72

**Oakes, John**

The New South Wales Industrial Relations Act 1991 - Important Issues for the Construction Industry - Issue 23, p60

**Pilley, John L**

AS2124 Review 1992 - Summary of Proposed Changes - Issue 23, p4

JCC Contract - Enforcement of Architect's Certificate - Issue 23, p78

**Russell, Tom**

Discovery - The Importance of Being Earnest - Issue 23, p77

**Shelton, Frank**

Arbitration - Stay of Arbitrator's Interim Award - Improper Without a Hearing - Issue 27, p50

**Topfer, John**

ACT Update - Issue 24, p17

**Tyrril, John**

Asbestos Report - Negligence - Misleading or Deceptive Conduct - Issue 22, p51

Book Review - Callahan, et al - Arbitration of Construction Disputes - Issue 25, p17

Book Review - Cushman, et al - Alternative Dispute Resolution in the Construction Industry - Issue 25, p18

Carpet - Implied Warranties - Issue 22, p52

Coastal Planning and Management in NSW - Issue 24, p14

Commercial Arbitration Law and Practice, Jacobs - Issue 22, p6

Conciliation and Mediation of International Commercial Disputes - The Lawyer's Role - Issue 23, p39

Contracts Claims and Disputes - The Contract Superintendent - Issue 22, p7

Cost Adjustment - Recent Problems and Developments - Enterprise Agreements - Issue 27, p13

Federal Government's Building and Construction Industry Reform Strategy - Issue 22, p10

Goods and Services Tax - Issue 22, p39

International Construction Disputes - ADR Conference - Issue 25, p46

JCC B Amended - Head Contract or Construction Management Agreement - Subcontract or Trade Contract for Electrical Work - Issue 25, p66

NSW Public Works Department's New Charter - Issue 22, p9

Project Finance - Misleading or Deceptive Conduct - Issue 22, p57

Public Sector Tendering and Contracting in NSW - Capital Works Tendering & Contracting: Volume B - Issue 22, p40

Referees - Immunity From Suit and From Costs Order - Issue 25, p68

Referee's Report - Adoption by the Court - Issue 25, p70

Referee's Report - Review by the Court - Further Evidence - Issue 25, p73

Schedule of Prices - Contractor's Entitlement to Payment - Issue 22, p59

Security of Payment for Subcontractors - Queensland Discussion Paper - Issue 22, p34

Trade Practices - Limitation Clause - Misleading and Deceptive Conduct? - Issue 25, p74

Unconscionable Conduct and the Trade Practices Act - Issue 22, p44

**Walsh, Martin**

Independent Contractors - HIA Concerns - Issue 26, p38

---

## Subject

### Aboriginal Land Title

Aboriginal Native Land Title Recognised by High Court - Issue 25, p63

### Arbitration

Arbitration - Stay of Arbitrator's Interim Award - Improper Without a Hearing - Issue 27, p50

Arbitrations and References Under Part 72 - Court's Power to have Arbitrations and References held Concurrently - International Arbitration - Issue 27, p48

Arbitrator's Award - Leave to Appeal - Damages - Interest - Issue 22, p48

Arbitrator's Award - Leave to Appeal - s38(5) of Commercial Arbitration Act 1984 (NSW), As Amended - Issue 23, p69

Arbitrators' Jurisdiction - Issue 23, p72

Arbitrators and Referees in a Jam - Issue 26, p48

Best Offer Arbitration - Issue 22, p5

Costs - Issue 25, p5

General Arbitration Course - Issue 22, p6

JCC Arbitration Clause - An Option to Litigate? - Issue 22, p55

Undisclosed Contact - A Cautionary Tale - Issue 22, p63

### Architects

JCC Contract - Enforcement of Architect's Certificate - Issue 23, p78

Liability of Engineers or Architects to Contractors for Negligent Misstatements - Issue 26, p59

### Architect's Instructions

Builder's Obligation to Comply with Architect's Instructions Notwithstanding Dispute - Injunction - Effect on Obligations - Importance of Construction Programme - Issue 26, p53

### AS2124-1986

AS2124-1986 - The 10 Most Misunderstood Provisions - Issue 22, p12

AS2124 Review 1992 - Summary of Proposed Changes - Issue 23, p4

Changes to AS2124 Disappointing - Issue 25, p44

### Assignment

Assignment of Benefit of Contract by Proprietor to Financier - Financier May be Liable as Principal - Issue 26, p50

### Book Review

Callahan, Arbitration of Construction Disputes - Issue 25, p17

Cushman, Alternative Dispute Resolution in the Construction Industry - Issue 25, p18

Resolving Conflict: A Practical Approach, Tillett - Issue 24, p4

### Book Review Update

Jacobs, Commercial Arbitration Law and Practice Subscription Service - Issue 22, p6

### Building Industry

Queensland Building Services Authority Act 1991 - Issue 25, p20

Royal Commission Into Productivity in the Building Industry in NSW - Overview of the Royal Commission's Findings and Recommendations - Issue 25, p34

Royal Commission Into Productivity in the Building Industry in NSW - The Royal Commissioner's Final Report - Issue 24, p5

### Claims and Disputes

Contracts, Claims and Disputes - The Contract Superintendent - Issue 22, p7

The Total Cost Claim - Issue 26, p4

### Class Action

New Class Action Legislation - Issue 22, p8

---

**Commercial Arbitration Act**

Determination by Independent Expert - Application of Commercial Arbitration Act - Expert to Determine Procedure - Issue 26, p56

**Construction Authorities**

NSW Public Works Department's New Charter - Issue 22, p9

**Construction Industry**

Federal Government's Building and Construction Industry Reform Strategy - Issue 22, p10

**Consultants**

A Consultant's Nightmare - Issue 25, p64

**Contracting**

Code of Practice for the Construction Industry - Issue 27, p4

**Contracts**

AS2124-1986 - The 10 Most Misunderstood Provisions - Issue 22, p12

AS2124 Review 1992 - Summary of Proposed Changes - Issue 23, p4

The Certifier's Role and Liabilities - Issue 26, p10

Changes to AS2124 Disappointing - Issue 25, p44

Contract - Use of Deleted Clause in Construction of Document Prepared from a Precedent - Issue 27, p51

Contracts - Agreement to Negotiate is Void - Issue 23, p73

JCC Arbitration Clause - An Option to Litigate? - Issue 22, p55

JCC Building Contracts - MB-CHAA's Concern Over Alterations and Breach of Copyright - Issue 24, p12

JCC Contract - Enforcement of Architect's Certificate - Issue 23, p78

JCC Contract - Execution Levied - Termination - Issue 24, p62

JCC - Damages for Delay and Delay Costs - Construction of Clauses 10.09, 10.10 and Appendix L - Issue 26, p58

JCCB Amended - Head Contract or Construction Management Agreement - Subcontract or Trade Contract for Electrical Work - Issue 25, p66

NPWC3 Clause 35.4 - Delay Cost Claims - Issue 22, p18

Standard Conditions of Contract in the Building and Construction Industry - Issue 27, p7

Subcontract Conditions AS2545-1987 - Issue 23, p23

**Copyright**

Commissioning Work From Contractors: Who Owns the Copyright? Issue 26, p20

Copyright - Management Responsibilities - Issue 26, p22

**Corporations**

Australian Company Number - End of Moratorium - Issue 24, p13

Documents - Corporations and the Privilege Against Self-Incrimination - Issue 22, p53

**Cost Adjustment**

Cost Adjustment - Recent Problems and Developments - Enterprise Agreements - Issue 27, p13

**Costs**

Costs - What is a Sufficient Calderbank Offer? - Issue 23, p74

Security for Costs - Issue 27, p57

**Council Approval**

Council's Approval of Plans and Specifications - Purchaser Beware! - Issue 26, p55

**Damages**

Reliance Damages - Issue 23, p35

**Delay Costs**

JCC - Damages for Delay and Delay Costs - Construction of Clauses 10.09, 10.10 and Appendix L - Issue 26, p58

**Development**

Coastal Planning and Management in New South Wales - Issue 24, p14

Development in Public Recreation Areas - Issue 26, p57

**Discovery**

Discovery - The Importance of Being Earnest - Issue 23, p77

**Dispute Resolution**

ACT Update - Issue 24, p17

Conciliation and Mediation of International Commercial Disputes - The Lawyer's Role - Issue 23, p39

Confidentiality and Admissibility of Documents or Facts Disclosed During a Negotiation or Other ADR Process - Issue 26, p27

Cost Effective Use of Lawyers in ADR - Issue 26, p23

The Court Appointed Referee's Report - Issue 22, p22

Dispute Resolution in the Building Industry in Australia - Issue 24, p19

Expert Determination - Issue 27, p18

Experts and Arbitrators - Letter to the Editor - Issue 23, p56

International Construction Disputes - ADR Conference - Issue 25, p46

References Out From Court - Issue 25, p47

**Economy**

Prime Minister's Statement - Issue 23, p57

**Employment**

Age Discrimination and Employment - Issue 24, p22

Anti Discrimination Act (Qld) Now Far-reaching - Issue 26, p30

Contracts of Employment - Why and How - Issue 24, p24

Unfair Dismissal - Issue 22, p25

**Encroachment**

Building Encroachment - Issue 26, p52

**Engineers**

Liability of Engineers or Architects to Contractors for Negligent Misstatements - Issue 26, p59

**Environment**

Ecologically Sustainable Development - Issue 22, p26

Environmental Liability - Vicarious Liability of Employers - Issue 22, p53

Nature Conservation Act (Qld) - Issue 26, p32

New Construction Noise Code for City of Sydney - Issue 26, p33

Protection of the Environment Administration Act 1991 (NSW) - Issue 24, p26

Queensland's Contaminated Land Act - Issue 24, p28

**Extensions of Time**

Delay - The Decision in "Monarch Steamship" and Its Influence on the Construction Industry - Issue 26, p35

**Finance**

Banking - Slipping Through the Net - Issue 23, p58

Building Societies, Credit Unions and Special Services Providers - Swaps, Options, Futures and Foreign Currency Transactions - Issue 26, p37

Project Finance - Misleading or Deceptive Conduct - Issue 22, p57

**Foreign Investment**

Integrated Tourism Resorts - Issue 22, p30

**Health and Safety**

Deaths Through Legionnaires Disease - A Warning to All - Issue 24, p34

**Housing**

Independent Contractors - HIA Concerns - Issue 26, p38

**Independent Contractors**

Letter to the Editor - Issue 27, p20

**Independent Expert Determination**

Determination by Independent Expert - Application of Commercial Arbitration Act - Expert to Determine Procedures - Issue 26, p56

**Industrial Relations**

Enterprise Bargaining Passes Parliament - Issue 25, p54

The New South Wales Industrial Relations Act 1991 - Important Issues for the Construction Industry - Issue 23, p60

**Infrastructure**

Private Investment in Victorian Infrastructure - Issue 22, p31

Risks for Private Enterprise in Initiating BOT Projects - Issue 27, p21

**Insolvency**

Insolvency in the Building and Construction Industry - A Discussion Paper by AFCC - Issue 25, p56

Notices of Demand - Issue 24, p35

The Plight of Subcontractors - A Partial Solution - Issue 24, p36

**Insurance**

Cover Enlarged Under a PI "claims made and notified" Policy - Issue 24, p41

**Intellectual Property**

Electrical Impulses - Computer Software Case - Issue 24, p42

**JCC Contract**

JCC Arbitration Clause - An Option to Litigate? - Issue 22, p55

JCC Building Contracts - MB-CHAA's Concern Over Alterations and Breach of Copyright - Issue 24, p12

JCC Contract - Enforcement of Architect's Certificate - Issue 23, p78

JCC Contract - Execution Levied - Termination - Issue 24, p62

JCC - Damages for Delay and Delay Costs - Construction of Clauses 10.09, 10.10 and Appendix L - Issue 26, p58

JCC B Amended - Head Contract or Construction Management Agreement - Subcontract or Trade Contract for Electrical Work - Issue 25, p66

**Joint Ventures**

Joint Venture Agreements - Issue 22, p32

Joint Venture - Promise to Proceed in Good Faith - Issue 22, p56

Joint Venturers Owe Fiduciary Duties - Issue 24, p63

**Leases**

Who Pays the Rent? - Issue 22, p63

**Liability**

Liability of Engineers or Architects to Contractors for Negligent Misstatements - Issue 26, p59

**Local Authorities**

Judicial Review in Queensland and Local Authorities - Issue 26, p40

**Mining**

New Victorian Mining Regime - Issue 22, p33

NSW Mines and Quarries - Operating Unlawfully? - Issue 22, p56

**Negligence**

Asbestos Report - Negligence - Misleading or Deceptive Conduct - Issue 22, p51

Negligence - Proprietor's Claim Against Manufacturer and Supplier of Allegedly Defective Tiles - Issue 27, p54

Negligence - Proprietor's Claim Against Subcontractor - Issue 27, p55

Negligence - Proprietor's Claim Against Subcontractor for Defective Work - Issue 27, p56

**Negligent Misstatements**

Liability of Engineers or Architects to Contractors for Negligent Misstatements - Issue 26, p59

**NPWC3**

NPWC3 Clause 35.4 - Delay Cost Claims - Issue 22, p18



**Occupational Health & Safety**

New National Noise Standard - Issue 26, p41  
Passive Smoking - A Minefield - Issue 26, p42

**Payment**

Schedule of Prices - Contractor's Entitlement to Payment - Issue 22, p59  
Security of Payment for Subcontractors - Queensland Discussion Paper - Issue 22, p34

**Product Liability**

Product Liability - Latest Developments - Issue 24, p44

**Project Delivery**

Smart Ways of Controlling Cash Flow - Issue 24, p45

**Property**

Property Transactions and the Trade Practices Act - Issue 22, p58  
Self Regulation for Retail Landlords and Tenants - Issue 22, p35  
Silence and Half-Truths can be Misleading, Deceptive and Costly - Issue 22, p36

**Referees**

Arbitrators and Referees in a Jam - Issue 26, p48  
Referees - Immunity From Suit and From Costs Order - Issue 25, p68  
Referee's Report - Adoption by the Court - Issue 25, p70  
Referee's Report - Review by the Court - Further Evidence - Issue 25, p73

**Security**

Pulling the Guarantees - Issue 23, p65

**Subcontractors**

Subcontractor's Charge Cancelled for Invalid Certification - Issue 22, p60

**Superannuation**

Increased Disclosure Required for Employer Sponsored Super Funds - Issue 27, p23  
Proposed Superannuation Reform - Issue 23, p66  
Superannuation Guarantee Levy - Issue 24, p51

**Superintendents**

The Certifier's Duty of Care to the Contractor - Pacific Associates v Baxter Reconsidered - Issue 27, p25

**Tax**

AFCC's Proposed Tax Changes Qualification - Issue 24, p53  
Capital Gains Tax - Issue 22, p37  
Goods and Services Tax - Issue 22, p39  
Goods and Services Tax - Issue 26, p44  
New Tax Threat for Leasing - Depreciation Recapture Laws to Change - Issue 24, p54

**Tendering**

Code of Tendering for the Construction Industry - Issue 27, p39  
Public Sector Tendering and Contracting in NSW - Capital Works Tendering and Contracting: Volume B - Issue 22, p40

**Termination**

JCC Contract - Execution Levied - Termination - Issue 24, p62  
The Saga of Renard and the Minister - Issue 24, p55  
Termination - Repudiation - Notice Requirements - Issue 22, p61

**Trade Practices**

Misleading and Deceptive Conduct and Defamation - Whether Declaratory Relief Available - Damages - Issue 27, p52  
Product Liability - The New Law - Issue 27, p42  
Product Liability - Trade Practices Amendment Act 1992 - Issue 26, p46  
Project Finance - Misleading or Deceptive Conduct - Issue 22, p57

---

**Property Transactions and the Trade Practices Act - Issue 22, p58**

**\$10 Million Penalty for Breaching TPA - Issue 27, p45**

**Trade Practices - Limitation Clause - Misleading and Deceptive Conduct? - Issue 25, p74**

**Unconscionable Conduct and the Trade Practices Act - Issue 22, p44**

**Unconscionable Conduct - Sanctity Under Siege - Professional Indemnity Cover - Issue 26, p47**

**Trespass**

**Building Work and Encroachment into Adjoining Air Space - Issue 22, p46**

**Unjust Enrichment**

**Enrichment That is Not Unjust - Issue 25, p65**

**Variations**

**Variations - Duty of Fairness to Order - Issue 25, p75**

**Variations and Restitution - A Neglected Remedy - Issue 23, p67**

**Warranties**

**Carpet - Implied Warranties - Issue 22, p52**

**Workers' Compensation**

**The Future of Workers' Compensation in Victoria - Issue 27, p47**

**Increase in NSW Workers' Compensation Benefits - Issue 24, p61**

---

## Standard Industry Contracts Referred To

### AS2124-1981 - General Conditions of Contract

Issue 22, p13

re Clause 11.2

Issue 22, p59, p60

re Clause 40

Issue 22, p60

### AS2124-1986 - General Conditions of Contract

Issue 22, p19

Issue 23, p78

Issue 24, p19, p53

Issue 25, p44, p57, p58

Issue 26, p8, p10, p13, p14, p15, p16

Issue 27, p8, p9

re Clause 5.9

Issue 25, p58

re Clause 9

Issue 25, p58

re Clause 10.6

Issue 25, p58

re Clause 23

Issue 26, p12, p14, p16

re Clause 24

Issue 26, p12

re Clause 35.6

Issue 25, p58

re Clause 35.8

Issue 25, p58

re Clause 40.1

Issue 23, p67

Issue 26, p8

re Clause 42

Issue 25, p58

Issue 26, p16

re Clause 42.1

Issue 26, p15

re Clause 42.2

Issue 26, p15

re Clause 42.3

Issue 26, p15

re Clause 42.4

Issue 25, p59

re Clause 42.10

Issue 26, p15

re Clause 43

Issue 25, p58

re Clause 44

Issue 25, p58

re Clause 44.9

Issue 25, p58

re Clause 44.11

Issue 25, p58

### AS2124 Review 1992

Issue 23, p4

**AS2124 - The Ten Most Misunderstood Provisions**

Issue 22, p12

**AS2545-1987 - Subcontract Conditions**

Issue 25, p57, p58

Issue 27, p9

**AS2545-1987 Subcontract Conditions - Payments; Variations; Retentions & Security; Main Contractor's Representative**

Issue 23, p23

**AS2987- 1987 - General Conditions of Contract for the Supply of Equipment - with or without Installation**

Issue 25, p58

Issue 27, p9

**AS3556 -1987 General Conditions of Contract for the Supply of Equipment**

Issue 27, p9

**E5b - Lump Sum Contract**

Issue 26, p10, p11, p12, p14, p15, p16

**FIDIC - Conditions of Contract for Works of Civil Engineering Construction**

Issue 23, p48

Issue 27, p8

**re Clause 67.1**

Issue 23, p48

**re Clause 67.2**

Issue 23, p48

**ICE Conditions of Contract, 6th Edition**

Issue 23, p50

Issue 27, p8

**re Clause 66(5)**

Issue 23, p50

**re Sub-clause 2**

Issue 23, p50

**re Sub-clause 3**

Issue 23, p50

**re Sub-clause 6**

Issue 23, p50

**JCC - Building Works Contract**

Issue 22, p13, p14, p49, p55

Issue 23, p78

Issue 24, p12, p19, p62

Issue 25, p66

Issue 26, p10, p11, p12, p13, p14, p15, p16, p58

Issue 27, p8

**re Clause 2.04**

Issue 22, p12

**re Clause 5.01**

Issue 26, p11

**re Clause 5.02**

Issue 22, p13

Issue 23, p78

Issue 26, p11

**re Clause 5.07**

Issue 26, p10

**re Clause 10.07**  
Issue 23, p78, 79  
**re Clause 10.09**  
Issue 22, p49  
Issue 26, p58  
**re Clause 10.10**  
Issue 26, p58  
**re Clause 10.14**  
Issue 23, p79  
**re Clause 10.15**  
Issue 23, p79  
**re Clause 12.06**  
Issue 23, p78  
Issue 26, p13  
**re Clause 12.07**  
Issue 24, p62  
**re Clause 13**  
Issue 23, p78  
**re Clause 13.01**  
Issue 22, p55  
**re Clause 13.02**  
Issue 22, p55  
**re Clause 13.06**  
Issue 23, p78

**MBW1 - Major Building Works Contract**

Issue 22, p49

**re Clause 10.09**  
Issue 22, p49

**NCAP - National Cost Adjustment Provision**

Issue 24, p53  
Issue 27, p14, p15, p16

**NPWC3 - General Conditions of Contract**

Issue 22, p13, p17, p18, p19, p21  
Issue 24, p55, p58  
Issue 26, p10, p12, p14, p15, p16  
Issue 27, p8

**re Clause 23**  
Issue 26, p12  
**re Clause 24**  
Issue 26, p12  
**re Clause 33.2**  
Issue 22, p20  
**re Clause 33.3**  
Issue 22, p20  
**re Clause 33.4**  
Issue 22, p18, p20, p21  
**re Clause 34.1**  
Issue 24, p55  
**re Clause 34.2**  
Issue 22, p20  
**re Clause 34.3**  
Issue 22, p20  
**re Clause 34.5**  
Issue 22, p20, p21  
**re Clause 35.4**  
Issue 22, p18, p19, p20, p21

**re Clause 40.1**

Issue 22, p21

**re Clause 40.2**

Issue 22, p19, p20

**re Clause 42.4**

Issue 22, p19

**re Clause 42.6**

Issue 23, p75

**re Clause 44**

Issue 24, p55, p56, p58

**re Clause 44.1**

Issue 24, p57, p59

**re Clause 46**

Issue 26, p15

**SBW2 - Small Building Works Contract**

Issue 24, p12, p19

**SCJCC - Sub-Contract**

Issue 22, p49

**re Clause 10.08**

Issue 22, p49

**SCMBW1 - Sub-Contract**

Issue 22, p49

**re Clause 10.08**

Issue 22, p49

## Cases

### A.

*Ace Ceramics Pty Ltd; CBD Investments Pty Ltd v.*, unreported, Supreme Court of New South Wales, Giles J, 50021 of 1992, 12 June 1992 - Issue 27, p54

*Adour Holdings Pty Ltd (In Liquidation) v Commonwealth Bank of Australia*, Federal Court of Australia, Burchett J, 29 October 1991, (1991) ATPR 41-147 - Issue 22, p57

*Aerospatiale Holdings Australia Pty Ltd & Anor v Elspan International Ltd and Ors*, unreported, Supreme Court of New South Wales, Cole J, 55053 of 1992, 14 August 1992 - Issue 27, p48

*Amatek Ltd; Googorewon Pty Ltd v.*, (1991) 25 NSWLR 330 - Issue 26, p52

*Amdel Ltd; Multiplex Constructions Pty Ltd v.*, Supreme Court of New South Wales, Brownie J, 4 November 1991 (1991) ATPR 41-154 - Issue 22, p51

*Austotel Pty Limited v Turner Corporation Limited*, unreported, Supreme Court of New South Wales, Rolfe J, 55099/92, 14 October 1992 - Issue 27, p57

### B.

*Boulderstone Pty Ltd; Mancorp Pty Ltd v.*, unreported, Supreme Court of South Australia, Debelle J, 5 June 1992 - Issue 26, p53

*Benlist Pty Ltd v Olivetti Australia Pty Ltd & Anor*, Federal Court, Burchett J, (1990) ATPR 41-043 - Issue 22, p58

*Bill Acceptance Corporation Ltd and Princess Theatre Holdings Pty Ltd; Holland-Stolte Pty Ltd v.*, Supreme Court of Victoria, Appeal Division, unreported, Fullagar, Brooking and Tadgell JJ, 30 March 1992 - Issue 26, p50

*Broadway Interiors & Shopfitters Pty Ltd; Stonebridge v.*, Supreme Court of Queensland, Full Court, AC 10 of 1990, Shepherdson, Williams and Ambrose JJ, 5 October 1990 - Issue 22, p60

*Brybreach Pty Ltd; Gledhill Contractors Pty Ltd v.*, unreported, Supreme Court of New South Wales, Rolfe J, 22 May 1992 - Issue 26, p58

### C.

*Caltex Refining Company Pty Limited; State Pollution Control Commission v.*, Land & Environment Court of NSW, 50085-90/90, 20 May 1991 (unreported) - Issue 22, p53

*Caltex Refining Company Pty Limited v State Pollution Control Commission*, NSW Court of Criminal Appeal, 60472/91, 3 December 1991 (unreported) - Issue 22, p53

*CBD Investments Pty Ltd v Ace Ceramics Pty Ltd*, unreported, Supreme Court of New South Wales, Giles J, 50021 of 1992, 12 June 1992 - Issue 27, p54

*Child, Fryer, Scott, Mediterranean Products Pty Limited, Aluminium Scaffolds Pty Limited; NZI Capital Corporation Pty Limited v.*, (1991) 23 NSWLR 481 - Issue 27, p51

*City of St Kilda v Evindon Pty Ltd*, Full Court of the Supreme Court of Victoria, Kaye, McGarvie & Ormiston JJ, 3 AATR 361 - Issue 22, p63

*Coal Cliff Collieries Pty Limited, The & Anor v Sijehama Pty Limited & Anor*, NSW Court of Appeal, 5 July 1991 - Issue 22, p56

*Coffs Harbour City Council; Coffs Harbour Environment Centre v.*, unreported, NSW Court of Appeal, JJA Clarke & Sheller, AJA Hope, 6 December 1991 - Issue 26, p57

*Coffs Harbour Environment Centre v Coffs Harbour City Council*, unreported, NSW Court of Appeal, JJA Clarke & Sheller, AJA Hope, 6 December 1991 - Issue 26, p57

*Collow; Rowlands v.*, (1992) 1 NZLR 178 - Issue 25, p64

*Comco Constructions Pty Ltd; Westminster Properties Pty Ltd v.*, Full Court, Supreme Court of Western Australia, 26 April 1991 - Issue 24, p63

*Commonwealth Bank of Australia; Adour Holdings Pty Ltd (In Liquidation) v.*, Federal Court of Australia, Burchett J, 29 October 1991 (1991) ATPR 41-147 - Issue 22, p57

*Commonwealth Bank v Quade* (1991) 102 ALR 487 - Issue 23, p77

*Curran v Greater Taree City Council*, NSW Court of Appeal, Samuels, Handley JJA, Hope AJA, 3 March 1992, (1992) Aust. Torts Reports 81-152 - Issue 26, p55

#### D.

*Davey Offshore Ltd v Emerald Field Contracting Ltd* [1991] 55 Build. LR 22 - Issue 25, p75

*David Mitchell-Melcann Pty Ltd & Anor; KG Vaughan-Taylor v.*, Supreme Court of NSW Court of Appeal 40403/91, 15 November 1991 (unreported) - Issue 22, p56

*De Martin & Gasparini Pty Ltd v Turner Corporation Ltd*, unreported, Supreme Court of New South Wales, Giles J, 55045/92, 29 May 1992 - Issue 27, p50

*Dueeasy Pty Ltd; State of New South Wales v.*, NSW Supreme Court, Giles J, 28 February 1992, unreported - Issue 23, p74

*Durian Pty Ltd v Penrith City Council & Anor*, NSW Court of Appeal, CA 40374/89, Mahoney JA, Clarke JA, Hope AJA, 4 September 1991 - Issue 22, p59

#### E.

*Eddie Mabo and Others v The State of Queensland*, High Court of Australia, 3 June 1992 - Issue 25, p63

*Edgeworth Construction Ltd v ND Lea & Associates Ltd*, (1991) 54 Build LR 11 - Issue 26, p59

*Elspar International Ltd and Ors; Aerospatiale Holdings Australia Pty Ltd & Anor v.*, unreported, Supreme Court of New South Wales, Cole J, 55053 of 1992, 14 August 1992 - Issue 27, p48

*Emerald Field Contracting Ltd; Davey Offshore Ltd v.*, [1991] 55 Build. LR 22 - Issue 25, p75

*Evindon Pty Ltd; City of St Kilda v.*, Full Court of the Supreme Court of Victoria, Kaye, McGarvie & Ormiston JJ, 3 AATR 361 - Issue 22, p63

#### F.

*FAI General Insurance Co Limited v RAI Insurance Brokers Limited*, (1992) ATPR 41-176 - Issue 27, p52

*Federal Airport Corporation; Multicon Engineering Pty Limited v.*, unreported, Supreme Court of New South Wales, Cole J, 7 July 1992 - Issue 26, p48

*Flood; Smith Development Inc v.*, 198 GA App 817, 403 SE 2d 249 - Issue 25, p65

*Form-Quip Ltd v Trafalgar Properties Ltd*, unreported, Supreme Court of NSW, Giles J, 13 December 1991 - Issue 25, p73

#### G.

*Garden City Vinyl and Carpet Centre Pty Ltd & Anor; Russell & Anor v.*, Full Court, Supreme Court of Queensland, 8 August 1990, (1991) ATPR 41-152 - Issue 22, p52

*Gledhill Contractors Pty Ltd v Brybreach Pty Ltd*, unreported, Supreme Court of New South Wales, Rolfe J, 22 May 1992 - Issue 26, p58

*Googoorewon Pty Ltd v Amatek Ltd* (1991) 25 NSWLR 330 - Issue 26, p52

*Greater Taree City Council; Curran v.*, NSW Court of Appeal, Samuels, Handley JJA, Hope AJA, 3 March 1992, (1992) Aust. Torts Reports 81-152 - Issue 26, p55



**H.**

*Haines & Ors; Najjar v.*, NSW Court of Appeal, Kirby P, Clarke JA, Rogers A-JA, 9 July 1991 - Issue 25, p68

*Halton Pty Ltd v Stewart Bros Drilling Contractors Pty Ltd* (1992) ATPR 41-158 - Issue 25, p74

*H.D. Fowles & Ors; L.U. Simon Builders Pty Ltd v.*, Supreme Court of Victoria, Smith J, 18 December 1991, unreported - Issue 23, p78

*Herschell Constructions Pty Ltd (In Liquidation); Woolworths Ltd v.*, Supreme Court of Victoria, No 5996 of 1991, Smith J - Issue 22, p55

*Holland-Stolte Pty Ltd v Bill Acceptance Corporation Ltd and Princess Theatre Holdings Pty Ltd* - Supreme Court of Victoria, Appeal Division, unreported, Fullagar, Brooking and Tadgell JJ, 30 March 1992 - Issue 26, p50

**I.**

*Idemitsu Qld Pty Ltd; Pacific Coal Pty Ltd v.*, Supreme Court of Queensland, 21 February, 1992 - Issue 24, p63

**J.**

*John Goss Projects Pty Ltd v Thiess Watkins White Constructions Ltd (In Liquidation) and Gundadin Pty Ltd*, unreported, Court of Appeal, Supreme Court of Queensland, McPherson and Williams JJA, 28 April 1992 - Issue 25, p66

*John Goss Projects Pty Ltd v Thiess Watkins White Constructions Limited (in Liquidation) and Gundadin Pty Ltd*, unreported, Supreme Court of Queensland, de Jersey J, No 1168 of 1990, 2 October 1992 - Issue 27, p55

**K.**

*KG Vaughan-Taylor v David Mitchell-Melcann Pty Ltd & Anor*, Supreme Court of NSW Court of Appeal 40403/91, 15 November 1991 (unreported) - Issue 22, p56

*Kilpatrick Green Pty Ltd; Leighton Contractors Pty Ltd v.*, Full Court of the Supreme Court of Victoria, Fullagar, McGarvie and Ashley JJ, 22 October 1991 - Issue 22, p48

*Kinder Investments Pty Limited & Anor; Leighton Contractors Pty Limited v.*, unreported, Supreme Court of New South Wales, Cole J, 7 July 1992 - Issue 26, p48

*Kirk Contractors Pty Ltd; Wilson v.*, Supreme Court of Victoria, 21 December 1990, Ashley J - Issue 22, p61

*Kristim Nominees Pty Limited; State Pollution Control Commission v.*, NSW Land & Environment Court, No 50121 of 1990, 9 May 1991 - Issue 22, p53

**L.**

*Leighton Contractors Pty Ltd v Kilpatrick Green Pty Ltd*, Full Court of the Supreme Court of Victoria, Fullagar, McGarvie and Ashley JJ, 22 October 1991 - Issue 22, p48

*Leighton Contractors Pty Limited v Kinder Investments Pty Limited & Anor* unreported, Supreme Court of New South Wales, Cole J, 7 July 1992, Issue 26, p48

*L.U. Simon Builders Pty Ltd v H.D. Fowles & Ors*, Supreme Court of Victoria, Smith J, 18 December 1991, unreported - Issue 23, p78

**M.**

*Mancorp Pty Ltd v Baulderstone Pty Ltd*, unreported, Supreme Court of South Australia, Debelle J, 5 June 1992 - Issue 26, p53

*Marble Tile Company Ltd; National Mutual Life Nominees Ltd v.*, unreported, Supreme Court of New South Wales, Rolfe J, No 55049 of 1992, 28 July 1992 - Issue 27, p56

*Miles; Walford v.*, (1992) 2 WLR 175 [House of Lords, England] - Issue 23, p73

*Multicon Engineering Pty Limited v Federal Airport Corporation*, unreported, Supreme Court of New South Wales, Cole J, 7 July 1992 - Issue 26, p48

*Multiplex Constructions Pty Ltd v Amdel Ltd*, Supreme Court of New South Wales, Brownie J, 4 November 1991, (1991) ATPR 41-154 - Issue 22, p51

**N.**

*Najjar v Haines & Ors*, NSW Court of Appeal, Kirby P, Clarke JA, Rogers A-JA, 9 July 1991 - Issue 25, p68

*National Mutual Life Nominees Ltd v Marble Tile Company Ltd*, unreported, Supreme Court of New South Wales, Rolfe J, No 55049 of 1992, 28 July 1992 - Issue 27, p56

*ND Lea & Associates Ltd; Edgeworth Construction Ltd v.*, (1991) 54 Build LR 11 - Issue 26, p59

*NZI Capital Corporation Pty Limited v Child, Fryer, Scott, Mediterranean Products Pty Limited, Aluminium Scaffolds Pty Limited*, (1991) 23 NSWLR 481 - Issue 27, p51

**O.**

*Olivetti Australia Pty Ltd & Anor; Benlist Pty Ltd v.*, Federal Court, Burchett J, (1990) ATPR 41-043 - Issue 22, p58

**P.**

*Pacific Coal Pty Ltd v Idemitsu Qld Pty Ltd*, Supreme Court of Queensland, 21 February 1992 - Issue 24, p63

*Penrith City Council & Anor; Durian Pty Ltd v.*, NSW Court of Appeal, CA 40374/89, Mahoney JA, Clarke JA, Hope A-JA, 4 September 1991 - Issue 22, p59

*Promenade Investments Pty Limited v State of New South Wales*, New South Wales Court of Appeal, Mahoney, Meagher, Sheller JJA, 18 February 1992, unreported - Issue 23, p69

**Q.**

*Q.H. Tours Limited and Sazalo Pty Limited v Ship Design & Management (Aust) Pty Limited and Gibbons*, Federal Court of Australia, Sydney, Foster J, 17 December 1991 - Issue 23, p72

*Quade; Commonwealth Bank v.*, (1991) 102 ALR 487 - Issue 23, p77

**R.**

*RAIA Insurance Brokers Limited; FAI General Insurance Co Limited v.*, (1992) ATPR 41-176 - Issue 27, p52

*Russell & Anor v Garden City Vinyl and Carpet Centre Pty Ltd & Anor*, Full Court, Supreme Court of Queensland, 8 August 1990, (1991) ATPR 41-152 - Issue 22, p52

*Rowlands v Collow* (1992) 1 NZLR 178 - Issue 25, p64

**S.**

*Ship Design & Management (Aust) Pty Limited and Gibbons; Q.H. Tours Limited and Sazalo Pty Limited v.*, Federal Court of Australia, Sydney, Foster J, 17 December 1991 - Issue 23, p72

*Sijehama Pty Limited & Anor; The Coal Cliff Collieries Pty Limited & Anor v.*, NSW Court of Appeal, 5 July 1991 - Issue 22, p56

*Skinner & Edwards (Builders) Pty Ltd v Telecom*, unreported, Supreme Court of NSW, Cole J, 5 June 1992 - Issue 25, p70

*Smith Development Inc v Flood* 198 GA App 817, 403 SE 2d 249 - Issue 25, p65

*State of New South Wales v Dueeasy Pty Ltd.*, NSW Supreme Court, Giles J, 28 February, 1992, unreported - Issue 23, p74

*State of New South Wales; Promenade Investments Pty Limited v.*, New South Wales Court of Appeal, Mahoney, Meagher, Sheller JJA, 18 February 1992, unreported - Issue 23, p69

*State Pollution Control Commission v Caltex Refining Company Pty Limited*, Land & Environment Court of NSW, 50085-90/90, 20 May 1991 (unreported) - Issue 22, p53

*State Pollution Control Commission; Caltex Refining Company Pty Limited v.*, NSW Court of Criminal Appeal, 60472/91, 3 December 1991 (unreported) - Issue 22, p53

*State Pollution Control Commission v Kristim Nominees Pty Limited*, NSW Land & Environment Court, No 50121 of 1990, 9 May 1991 - Issue 22, p53

*State Pollution Control Commission v Tiger Nominees Pty Limited*, NSW Land & Environment Court, No 50118 of 1990, 9 May 1991 - Issue 22, p53

*The State of Queensland; Eddie Mabo and Others v.*, High Court of Australia, 3 June 1992 - Issue 25, p63

*Stewart Bros Drilling Contractors Pty Ltd; Halton Pty Ltd v.*, (1992) ATPR 41-158 - Issue 25, p74

*Re Stockland (Macquarie) Pty Ltd*, Supreme Court of Queensland, 18 July 1991 - Issue 22, p63

*Stonebridge v Broadway Interiors & Shopfitters Pty Ltd*, Supreme Court of Queensland, Full Court, AC 10 of 1990, Shepherdson, Williams and Ambrose JJ, 5 October 1990 - Issue 22, p60

#### T.

*Telecom; Skinner & Edwards (Builders) Pty Ltd v.*, unreported, Supreme Court of NSW, Cole J, 5 June 1992 - Issue 25, p70

*Thiess Watkins White Constructions Ltd (In Liquidation) and Gunadin Pty Ltd; John Goss Projects Pty Ltd v.*, unreported, Court of Appeal, Supreme Court of Queensland, McPherson and Williams JJA, 28 April 1992 - Issue 25, p66

*Thiess Watkins White Constructions Limited (in Liquidation) and Gundadin Pty Ltd; John Goss Projects Pty Ltd v.*, unreported, Supreme Court of Queensland, de Jersey J, No 1168 of 1990, 2 October 1992 - Issue 27, p55

*Tiger Nominees Pty Limited; State Pollution Control Commission v.*, NSW Land & Environment Court, No 50118 of 1990, 9 May 1991 - Issue 22, p53

*Trafalgar Properties Ltd; Form-Quip Ltd v.*, unreported, Supreme Court of NSW, Giles J, 13 December 1991 - Issue 25, p73

*Triarno Pty Ltd v Triden Contractors Limited*, unreported, Supreme Court of New South Wales, Cole J, 22 July 1992 - Issue 26, p56

*Triden Contractors Limited; Triarno Pty Ltd v.*, unreported, Supreme Court of New South Wales, Cole J, 22 July 1992 - Issue 26, p56

*Turner Corporation Limited; Austotel Pty Limited v.*, unreported, Supreme Court of New South Wales, Rolfe J, 55099/92, 14 October 1992 Issue 27, p57

*Turner Corporation Ltd; De Martin & Gasparini Pty Ltd v.*, unreported, Supreme Court of New South Wales, 55045/92, 29 May 1992 - Issue 27, p50

#### W.

*Walford v Miles* (1992) 2 WLR 175 [House of Lords, England] - Issue 23, p73

*Westminster Properties Pty Ltd v Comco Constructions Pty Ltd*, Full Court, Supreme Court of Western Australia, 26 April 1991 - Issue 24, p62

*Wilson v Kirk Contractors Pty Ltd*, Supreme Court of Victoria, 21 December 1990, Ashley J - Issue 22, p61

*Woolworths Ltd v Herschell Constructions Pty Ltd (In Liquidation)*, Supreme Court of Victoria, No 5996 of 1991, Smith J - Issue 22, p55