

### CONSTRUCTION LAW IN AUSTRALIA

By Ian Bailey and Matthew Bell (Third Edition Law Book Co. 2011, 384pp. \$119.95 incl. GST)

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The first slim volume of this title was published by Professor Bailey SC in 1981 and followed by a second edition in 1998. The time lapse was certainly no reflection on the popularity of the book. Both were prized as an initial port of call by many, because of their refreshingly clear explanations on the main topics of interest to a construction practitioner. The authors' avowed hope in this edition, that it should be 'a first word' rather than the 'last word' on every subject, is likely to be fulfilled, as it has been in the previous editions. This latest volume has grown in size and sophistication but has not lost the appeal of the previous editions in its consistently clear and concise exposition of the various topics of interest to students, lawyers and any industry participant wanting to know more about the legal workings of the industry.

This volume boasts the addition of Matthew Bell, senior lecturer at Melbourne Law School, University of Melbourne, as a co-author, and the contributions of some well-known construction law practitioners and academics. This is the same partnership who wrote *Understanding Australian Construction Contracts* (2008) and some of that knowledge finds its way into this volume in the chapters on Key issues in construction contracts and Standard form construction contracts.

As with other similar texts designed to assist students of the law, the book commences with a summary of the Australian legal system. In the chapter on Understanding the law there is a helpful table listing the reports, journals and other publications where construction law can be found.

The chapter on Regulation of construction contains a useful snapshot of the regulatory framework in which the industry operates. The chapter can be commended for covering the majority of the significant legislation. The latest developments in security of payment from the *Chase Oyster Bar* case are mentioned. The chapter also explores, somewhat briefly, the consumer overlay provided by the Australian Consumer Law and the residential building Acts in the States and Territories.

Updated chapters reflect developments in the law including the impact of proportionate liability legislation and the *Personal Property Securities Act*. Security of payment legislation is covered, as is relationship contracting (partnering/alliancing).

Of particular usefulness for those wishing to gain a quick overview of day to day construction industry issues are the chapters on Industry participants, Procurement and Key issues in construction contracts. There is also a handy chapter on Professional liability. These chapters all invite close study for the uninitiated for the insights they offer.

The chapter on Tort law is the stuff of standard legal textbooks. The interesting summary of the law of nuisance, could have benefitted from acknowledging that noise cases are now rare because of the statutory oversight

provided by bodies such as the various state environmental protection authorities and councils. On the same theme, the impact of occupational health and safety legislation and insurance on areas of tort law liability such as occupier's liability, could have been mentioned, if not explored in detail.

There are expanded sections on dispute avoidance, management and resolution methods (written by Dr Paula Gerber of Monash University) and conduct of construction disputes which will interest many, given Professor Bailey's wealth of experience in this area.

One other area of increasing significance could have been mentioned—environmentally sustainable design and the ratings provided by the Green Building Council of Australia and the Government Departments with responsibility for NABERS, given the new mandatory disclosure legislation for commercial buildings. This is a counsel of perfection, given that the conciseness of the text is one of its strengths.

The book has been bolstered by a Further reading section which adds weight to its mission as a starting point. This section contains a general listing of useful texts, a chapter by chapter list of resources and is followed by a website listing for a variety of professional bodies and government departments.

All in all, this incarnation of *Building Law in Australia* is the handy reference and admirable starting point for further research that it has always been. It is also a highly instructive text for students and industry participants who want to improve their knowledge of the law without getting bogged down by an overly legalistic approach. It is an essential text for all construction law libraries.