

# BUILDING AND CONSTRUCTION LAW JOURNAL

Volume 24, Number 4

August 2008

## EDITORIAL

<b>Leadership and loyalty .....</b>	<b>221</b>
-------------------------------------	------------

## TOPIC OF INTEREST

<b>Guidelines – expert determination submissions – <i>John Tyrill</i> .....</b>	<b>222</b>
---	------------

## ARTICLES

### **Collateral contracts and relationship contracting: Co-operation, teamwork, collaboration ... disputation? – *Trevor Thomas***

This article considers those circumstances in which a collateral contract may arise in a construction project as a consequence of pre-contractual statements or terms. It does so by utilising a form of relationship contracting, known as “partnering”, as an example. While partnering has been adopted with a greater degree of enthusiasm in the United Kingdom than in Australia, the approach of implementing a “partnering charter” as a side document to the main construction contract, serves as a useful illustration of the inherent dangers of collateral contracts. Consequently, the purpose of this article is to explore the issue of collateral contracts rather than draw any definitive conclusions as to the merits or otherwise of partnering. .... 224

### **Settling disputes of an intermediate kind by expert determination – *Barry Tozer***

Expert determination is said to provide an effective means of resolving contract disputes. The process is not arbitration nor valuation but something of an intermediate kind. What limits do the courts place on this dispute resolution method? What are the constraints on control of the process by the expert? To what extent is this process subject to overview and intervention by the courts? This article indicates that a detailed procedure outlined by the parties in their agreement will require more cogent reasoning and explanation by the expert. A closely prescribed procedure will also be subject to more detailed scrutiny by the courts when it becomes necessary to make a decision whether to impugn an expert determination. .... 238

## REPORTS

<b>Stuart Pty Ltd v Condor Commercial Insulation Pty Ltd .....</b>	<b>255</b>
<b>Koompahtoo Local Aboriginal Land Council v Sanpine Pty Ltd .....</b>	<b>272</b>



# Guidelines for Contributors

## Submission and licence agreement instructions

All contributions to the journal are welcome and should be sent, with a signed licence agreement, to the Production Editor, *Building and Construction Law Journal*, Lawbook Co., PO Box 3502, Rozelle, NSW 2039 (mail), 100 Harris St, Pyrmont, NSW 2009 (courier) or by email to [bcl@thomson.com.au](mailto:bcl@thomson.com.au), for forwarding to the Editor. Licence agreements can be downloaded via the internet at [http://www.thomson.com.au/support/as\\_contributors.asp](http://www.thomson.com.au/support/as_contributors.asp). If you submit your contribution via email, please confirm that you have printed, signed and mailed the licence agreement to the attention of the Production Editor at the mailing address noted above.

## Manuscript

- Manuscript must be original, unpublished work that has not been submitted for publication elsewhere.
- Personal details (name, qualifications, position) for publication and a delivery address, email address and phone number must be included with the manuscript.
- Manuscript must be submitted electronically via email or on disk in Microsoft Word format.
- Manuscript should not exceed 10,000 words for articles or 1,500-2,000 words for section commentary or book reviews. An abstract of 100-150 words is to be submitted with article manuscripts.
- Proof pages will be sent to contributors. Authors are responsible for the accuracy of case names, citations and other references. Excessive changes to the text cannot be accommodated.
- This journal complies with the Higher Education Research Data Collection (HERDC) Specifications for peer review. Each article is, prior to publication, reviewed in its entirety by a suitably qualified expert who is independent of the author.

## Style

### 1 Levels of headings should be clearly indicated (no more than four levels).

### 2 Cases:

- Case citation follows case name. Where a case is cited in the text, the citation should follow immediately rather than as a footnote. Give at least two and preferably all available citations, the first listed being the authorised reference.
- Australian citations should appear in the following order: authorised series; Lawbook Co./ATP series; other company series (ie CCH, Butterworths); media neutral citation.
- “At” references should only refer to the best available citation, eg: *Mabo v Queensland [No 2]* (1992) 175 CLR 1 at 34; 66 ALJR 408; 107 ALR 1.
- Where only a media neutral citation is available, “at” references should be to paragraph, eg: *YG v Minister for Community Services* [2002] NSWCA 247 at [19].
- For international cases best references only should be included.

### 3 Legislation should be cited as follows:

*Trade Practices Act 1974* (Cth), s 51AC. The full citation should be repeated in footnotes.

### 4 Books should be cited as follows:

- Macken JJ, O’Grady P, Sappideen C and Warburton G, *The Law of Employment* (5th ed, Lawbook Co., 2002) p 55.
- In footnotes do not use *ibid* or *op cit*. The following style is preferred:  
4. Austin RP, “Constructive Trusts” in Finn PD (ed), *Essays in Equity* (Law Book Co, 1985).  
5. Austin, n 4, p 56.

### 5 Journals should be cited as follows:

- Odgers S, “Police Interrogation: A Decade of Legal Development” (1990) 14 Crim LJ 220.  
Wherever possible use official abbreviations not the full name for journal titles.
- In footnotes do not use *ibid* or *op cit*. The following style is preferred:  
6. Sheehy EA, Stubbs J and Tolmie J, “Defending Battered Women on Trial: The Battered Woman Syndrome and its Limitations” (1992) 16 Crim LJ 220.  
7. Sheehy et al, n 6 at 221.

### 6 Internet references should be cited as follows:

Ricketson S, *The Law of Intellectual Property: Copyright, Designs and Confidential Information* (Lawbook Co., subscription service) at [16.340], <http://subscriber.lawbookco.com.au> viewed 25 June 2002. Underline the URL and include the date the document was viewed.

For further information visit <http://www.thomson.com.au/legal/> or contact the Production Editor.

## SUBSCRIPTION INFORMATION

The *Building and Construction Law Journal* comprises six parts a year.

Customer service and sales inquiries:  
**Tel: 1300 304 195 Fax: 1300 304 196**  
**Web: [www.thomson.com.au/legal/p\\_index.asp](http://www.thomson.com.au/legal/p_index.asp)**  
**Email: [LRA.Service@thomson.com](mailto:LRA.Service@thomson.com)**

Editorial inquiries:  
**Tel: (02) 8587 7000**

**HEAD OFFICE**  
100 Harris Street PYRMONT NSW 2009  
Tel: (02) 8587 7000 Fax: (02) 8587 7100



© Thomson Legal & Regulatory Limited ABN 64 058 914 668 trading as Lawbook Co.

ISSN 0815-6050

Typeset by Lawbook Co., Pyrmont, NSW

Printed by Ligare Pty Ltd, Riverwood, NSW