

BUILDING AND CONSTRUCTION LAW JOURNAL

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The new Australian arbitration regime: Its effect on the building and construction industries – AA de Fina

Recent changes to arbitration law in Australia are being trumpeted as bringing a “new era” of arbitration to this country. As the traditional means of resolving disputes in the building and construction industries, it is appropriate to consider what affect, if any, the new legal regimes will have in making arbitration more appropriate for industry disputes.	387
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Fitness for purpose: A rising tide of liability – Peter Paradise and Richard A Wilkinson

The fitness for purpose requirement in construction contracts can have a substantial effect on risk allocation and scope of work. Once the requirement exists, it can potentially dilute a designer’s or contractor’s sense of certainty with respect to scope and defects liability. This article examines when fitness for purpose requirements are implied into construction contracts, the practical effects of an implied or express requirement and the key difficulties in enforcing a fitness for purpose requirement. It will be seen that a fitness for purpose requirement can be a rising tide of liability for the unwary.	394
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Common claims and risk allocation under construction contracts: The challenging role of section 52 of the Trade Practices Act – Brigid Lloyd

Construction contracts commonly include detailed risk allocation regimes which are intended to govern the parties’ respective rights in connection with familiar construction issues such as delay and changes to scope. However, the practice of supplementing – or even supplanting – what is properly a contractual claim with a claim pursuant to the misleading or deceptive conduct provisions of the Trade Practices Act 1974 (Cth) is becoming more common. This article considers the merit of a statutory claim of misleading or deceptive conduct in circumstances where the relevant contract includes a comprehensive regime to determine the claimant’s entitlement in respect of the claimed matters. A number of decisions dealing with common bases of claims – namely, delay, changes to the scope of work such as during the design process, and latent conditions – are also considered, to illustrate where reliance on the legislation may be particularly problematic, and how the courts have dealt with these issues.	411
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