

BUILDING AND CONSTRUCTION LAW JOURNAL

Volume 34, Number 4

2018

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The Society of Construction Law Australia Annual Conference 2018 251

ARTICLES

Is Conventional Insurance for Construction Projects Fit for Purpose? – *Dr Donald E Charrett*

Insurance is a widely used risk management tool to transfer to a third party specific risks that a contracting party is liable for. In practice, insurance does not always result in payment following the occurrence of an insured event. Instead of preventing disputes as to who is liable for the financial consequences of a risk event, in many situations the insurance itself provokes or complicates disputes. This article discusses why insurance is important for construction contracts. It reviews the current insurance landscape for design and construction risks in Victorian construction projects. A number of problems that arise from the conventional approach to insurance for construction projects are identified. Different approaches to project insurance used in a large project and a civil law jurisdiction are discussed. The benefits that could flow from adopting these different approaches to make insurance more fit for the purpose for which it is intended, are outlined. 253

“All Promise Outruns the Performance”: The Enforceability of Extended Promises in Construction Contracts – *Dominic Fawcett and Hugh Hadgraft*

This article posits that in large construction projects the risks of latent defects and design flaws should be allocated to the contractor. There are, however, three primary difficulties in allocating these risks. First, a latent defect or design flaw may emerge many years after a breach of contract, at which time the principal’s cause of action will be barred by Limitation Acts. Second, although an action in tort overcomes the Limitation Acts, commercially sophisticated principals are unlikely to be owed a duty of care. Third, a majority of the States and Territories have now prescribed limitation periods for causes of action (whether in contract or tort) concerning building work. This article considers potential solutions to these difficulties and the viability of such solutions. 263

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