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Proportionate Liability: Procedural or Substantive? – *Ella Delany*

Uncertainty remains whether proportionate liability is best characterised as procedural or substantive. This article argues that, with two exceptions, the provisions of the proportionate liability regime are best characterised as substantive. This article explores the implications of the substantive characterisation of the legislation for settlement and the application of choice of law rules. In terms of settlement, given the substantive nature of the legislation, the statutory limitation on defendant liability exists as soon as the liability arises. For this reason, defendants to an apportionable claim are not able to settle an apportionable claim then subsequently seek contribution. The Victorian Court of Appeal decision of *Spowers (Victoria) Pty Ltd v Lincolne Scott Australia Pty Ltd*, which suggests otherwise, should be confined to its facts. 80

Understanding and Administering Co-operation Clauses in Major Australian Project Contracts – *Rebecca Dickson*

Clauses obliging contracting parties to co-operate have featured in contracts for Australian infrastructure projects since at least the Victorian Government contracted Transurban to deliver Melbourne’s first public private partnership (PPP), the City Link toll road, which opened in 2000. However, there is little judicial commentary about the validity, enforceability and actual effect of co-operation clauses. This article examines the use of co-operation clauses in Australian major project contracts, particularly major infrastructure projects delivered via PPP contracting models. It critically examines the operation of co-operation clauses and identifies the value that these clauses bring to the relationship between contracting parties and the ultimate delivery of infrastructure projects. The article concludes that co-operation clauses are valid and enforceable, such clauses can (and do) facilitate positive interactions among the members of project teams, and mutual obligations to co-operate have the potential to minimise contractual disputes. 96

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