

# BUILDING AND CONSTRUCTION LAW JOURNAL

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**Quantum Meruit and Entire Obligations in and after Mann v Paterson Constructions**  
– *Jonathon Moore QC*

A builder terminates a construction contract following repudiation by the owner. Can the builder make a claim in quantum meruit for work for which the builder had already been paid progress payments? On the facts in *Mann v Paterson Constructions Pty Ltd*, the High Court unanimously answered that question in the negative. The contract did not impose an entire obligation on the builder. Accordingly, the builder accrued an unconditional right to be paid the stipulated progress payments as each stage was complete. An article published recently in this journal suggested that that conclusion was wrong. It is submitted here that the criticism is misplaced. The High Court's conclusion was correct. The same conclusion will be reached in any case in which a contract specifies staged progress payments, at least where the contract does not provide that the payments are "on account". ..... 95

**Fitness for Purpose in Design and Construct: A Storm in a Teacup?** – *Matthew Hawke*

Historically the requirement of fitness for purpose was associated with the supply of goods. More recently, fitness for purpose has become a topic of interest in construction. At law, a designer's duty usually goes no further than the application of due care, skill and diligence. However, where the designer is also the construction contractor, and therefore responsible for building from its own design, Australian courts will often find there is an implied term requiring the design and construct contractor to ensure the built form is fit for purpose. This article explains how the Australian law of fitness for purpose has developed in the design and construct context, and considers whether professional indemnity insurance will (or should) indemnify a design and construct contractor for its failure to ensure fitness for purpose. .... 105

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