

CONSTRUCTION LAW IN AUSTRALIA

IAN H. BAILEY



CONSTRUCTION LAW IN AUSTRALIA

For Architects, Engineers, Builders
and Students

by

IAN H. BAILEY

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for Adrienne

PREFACE

The increasing awareness of the legal complications and liabilities associated with the construction industry has often not been accompanied by a commensurate increase in understanding. This book has been written with the purpose of furthering that understanding. It is intended primarily for the participants in the construction industry and also for students in the various professions and disciplines concerned. Its aim is to explain those parts of the law which affect the construction industry with the hope that a greater understanding of the principles involved will assist in the avoidance and resolution of disputes. It is also intended that those chapters dealing with the particular principles in and specific provisions of building and engineering contracts be of value to those members of the legal profession who are unfamiliar with the peculiarities of building disputes.

Whilst my aim has been to present the subject in a concise and readable form I have not avoided the reality that it is a text on the law and hence the language in many parts reflects this. It has been my intention to provide a precise and simple statement of legal principles and to resist the temptation to sweeten the subject with verbal sugar coating.

One of the occupational hazards of writing a legal text is that the law is constantly changing and developing. This occurs through legislative and case law additions and alterations and through the development of new or revised forms of contract. It is therefore important that readers make themselves aware of the changes which occur and understand the reasons for and implications of the changes when they occur. An example of this development process is that in early 1981 a new edition of the National Public Works Conference General Conditions of Contract NPWC-3 will be published. The reasons for the amendments, and the changes which have been made at NPWC-2 are set out in the Appendix with cross references to the text. It is also anticipated that in the near future an amended form of AS 2124 may be issued. This contract is under review by a committee of the Standards Association of Australia but at the date of publication the amendments have not been concluded. Some of the possible amendments being considered and the reasons for them are set out in the Appendix with cross references to the text.

I am grateful to the many colleagues and friends who assisted with helpful suggestions and encouragement during the preparation of this book. I am particularly indebted to my wife Adrienne without whose assistance I could not have undertaken this project and who contributed an immense amount to the form and composition of the text. I also wish to thank my sister Ann who prepared the Tables of Cases.

The extracts and quotations from the standard form contracts are reproduced with the kind permission of: The Royal Australian Institute of Architects; The Master Builders' Federation of Australia Inc.; The Building Owners and Managers Association of Australia Limited; The Housing Industry Association (N.S.W.); and the Standards Association of Australia.

Throughout the text reference is made to R.A.I.A. Practices Notes (PN) and Law Notes (LN) published by the Practice Division of the R.A.I.A. These notes are revised from time to time and a check should be made to ensure that the latest issue is consulted.

IAN H. BAILEY

Sydney, 1980.

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