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BOOK REVIEW

## Contract Administration for Construction Professionals

Coggins, J., Schwarz, S., Davies, M., and Ma, T.  
Contract Administration for Construction Professionals.  
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The principal objective of this book is to provide a comprehensive examination of the administration of building contracts as an antipodean contribution to construction law. The contributing authors represent construction academics and legal practitioners in construction law in Australia. They have pooled their collective knowledge and experience in the fields of professional contract administration and contracts management, quantity surveying, and construction law to draft an invaluable text for both construction professionals and students alike. The blending of this experience provides insightful commentary, reliable instruction and thorough analysis across the terms and operation of construction contracts.

The book is comprised of thirteen chapters:

1. An Introduction to Forms of Construction Contract
2. Security
3. Subcontracting
4. Latent Conditions
5. People, Property and the Works
6. Quality and Defective Work

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7. Time
8. Variations
9. Payment under the Contract
10. Security of Payment Legislation
11. Termination of Contract
12. Insolvency
13. Claims and Dispute Resolution

The book includes extracts from materials based on the Australian National Capital Works: NCW4 Standard form of construction contract along with Standards Australia AS 2124 -1992 and AS 4000 – 1997 and the ABIC medium works (MW) 2018 standard form of construction contract. Home building contracts for residential projects such as Housing Industry Association (HIA) contracts are not a feature of this text given the small project size and value and lack of role of a contract administrator on such contracts. Underlying the very comprehensive approach taken by the authors is a case list of more than 100 actual cases dealing with the issues that have led to a court ruling and a list of relevant building statutes over some 8 pages.

Chapter 1 sets an overview and introduction of forms of construction contract, the relevant documentation that supports the formation of a construction contract, such things as regulatory standards, notices, licences, bills of quantities and schedules as well as addressing the ambiguities and discrepancies that can arise in contracts and amendments to contracts.

Chapters 2 to 6 deal with the provision of security, the risk of latent conditions and defective works as well as covering various contracting chains that arise from the prevalence of subcontracting and novation in the industry. Also, in this section of the book a separate chapter is devoted to the protection of people and property and work health and safety. It is the unfortunate case that defective, unsafe and dangerous construction work has received much media attention and industry angst in the past few years in Australia and this text whilst not directly dealing with the responses of regulators and legislators comprehensively examines contract provisions for identification and rectification of unsatisfactory work. The various forms of indemnities, insurances and guarantees are examined as well as discussion on keystone issues of governance, risk management and remedies going beyond any contract into the law of torts. As in other chapters, this section of the book provides highly relevant case law judgements and summary of industrial, commercial and a few residential construction disputes that have been through the courts.

Chapters 7 and 8 deal with all important time considerations and the impact of variations to the original agreed construction plan. The authors note the considerable financial impact which delay can have on a project and that time is perhaps the most disputed contractual issue and issues around time are the subject of major arbitration and court cases. The concept of time is presented as a technically complex matter on a construction project and that understanding the time provisions of a contract is paramount. It is evident in the text and a credit to the authors they have in clear terms explained programming of the works which on large construction projects is a specialist role beyond that of a contract administrator. The intertwining complexity around time and progress requiring differing protocols is thoroughly examined, relevant contract clauses are identified, and guidance is provided on such matters as the application of 'show cause' notices where rate of progress becomes an issue. The many reasons why a construction contract will have variations are outlined and the processes to deal with these under different contracts are comprehensively discussed.

Chapters 9 and 10 discuss payments and the legislation around security of payment that can invoke different legal frameworks due to state jurisdictional differences. The importance of cash flow which makes payment procedures so critical on construction projects is outlined with suitable references to case law. There is room even for a quotation of the influential English judge Lord Denning made famous by the sheer weight of judgements he delivered on commercial disputes and contractual matters involving payment.

The provisional nature of payments adopted by construction contracts is thoroughly examined with clear references to the timing of progress claims, work related to provisional sums and prime cost sums. Provisions with respect to payment for unfixed plant and materials, operation of 'rise and fall' clauses, conditions under which a payment 'set-off' might apply and at completion a final account certificate agreed amongst parties, are all discussed.

The procedures in preparing a construction progress claim under the standard forms of contract are explained and a 'model' suggested format for setting out a progress claim is presented with annotations to help the reader. Older Contract Administration texts that have served in the past as key readings would not have as the text does, an up-to-date examination of the differing approaches adopted across by states and territories in Security of Payment terms and obligations making this a timely publication serving this gap.

The final chapters 11 to 13 discuss the ultimate failure of a project delivery should serious matters arise leading to termination, disputed claims, insolvency and recourse to arbitration and the courts. All of these are of course costly in terms of money, time and reputations and leading to a common belief across the construction industry that disputes are inevitable. It is noted by the authors that insolvency is unfortunately a common occurrence in the construction industry clearly citing *Australian Insolvency Statistics* from the Australian Securities and Investment Commission (ASIC). The authors comprehensively set out the actions and remedies when managing construction projects and the conflicts that arise out of them, to reduce the risk of disputes or the escalation of a risk to dispute resolution.

While most construction contract administrators and project managers may never work with all forms of contracting this book covers, this book provides both students contemplating a career in this area and existing professionals practising construction contract administration with the essential content and knowledge to do so. The issues presented and the discussions that follow are applicable to any size project.

The book is written in plain English not 'legalese', presenting contract terminology in a logical unambiguous style. Clauses from four Australian standard forms of construction contract along with relevant case law and legislation are reviewed and explained in a practical and accessible manner to give readers a full understanding of each topic. Summary lists of strategies and procedures to follow are listed across chapters that follow an intuitive flow. Tutorial and multiple-choice questions for students are included for each chapter, making the book a complete resource to support teaching and learning.

The Construction Law research community will find this text brings to the fore more recent developments in Australian contracts. There are numerous references throughout the book to research in this area, for example a research report from the Melbourne Law School by [Sharkey et. al \(2014\)](#), which seeks to explain how familiarity with standard forms is by far the most important factor in explaining why the industry in Australia chooses to use standard forms. The authors reference some of their own research findings around the case for regulating unfair contract terms and for limiting the common practice of making amendments to standard forms. Power imbalances in the processes of bargaining around contract terms are highlighted with appropriate references to studies and common practices. The text does not however delve deeply into research on client-side considerations, such as findings in recent texts e.g. *Construction Contract Administration for Project Owners (Lancome, 2017)* that for most clients their primary business is not design and construction of buildings placing them at a disadvantage when negotiating, drafting, and administering design agreements and construction contracts, whereas designers and contractors use these documents every day.

This is a student friendly text and would be highly recommended for courses and subjects at both undergraduate and post graduate level. The inclusion of multiple-choice questions and case study style tutorial questions for each chapter will assist both students and tutors immensely. This book would be one to consider for graduate university courses in construction and project management and allied architectural and engineering. Students mastering its lessons will be better prepared for a life's work in construction.

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Starting this learning early such as in undergraduate courses or a cadetship makes sense since it takes many years to gain the experience to manage construction projects in the real world.

In this fast-paced world of modern construction and regulations around contracting and business relationships it would be anticipated that in the future any major changes in standard forms of contract or legislation would be incorporated into future editions. For any professional who will be managing a project or student preparing for a career in construction, this book is one to study, to refresh prior knowledge and expanding thinking.

## References

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