participants. That is the subject of Chapter 8. A recurring theme of the book that will come as no surprise to construction lawyers is Delmon’s observation that “[t]he construction phase of the project involves the greatest concentration of project risk.”

Specific applications

The final group of chapters considers the issues that arise in connection with particular types of projects: power, transportation, oil and gas, telecommunications, and water and sanitation. Each of the industry-specific chapters provides a good sketch of the landscape, but seems at times a bit disconnected from the general discussion of risk allocation in chapters 1 through 16. One or two case studies of projects in each of the industry-specific chapters would help integrate and illustrate the concepts discussed in the preceding chapters. Ideally, these case studies would include typical contractual language illustrating the risk allocation provisions one is likely to encounter. A promising start in that direction appears in Chapter 18:

‘An example of demand risk gone wrong would be a toll road project in Southeast Asia where the project company replaced an old national roadway (which was considered insufficient for the traffic needs of the region) with a new toll road. The project company planned to recuperate the cost of building and maintaining this roadway through charging toll users over the period of the concession. However, the locals were not happy with the idea of paying tolls on a road which they and their ancestors has used for free for hundreds of years.’

Unfortunately, one is left to wonder exactly how the risks were allocated in the relevant contract documents and how the situation eventually turned out.

Although illustrative case studies would be welcome in a third edition of this fine book, it is a testimony to Delmon’s achievement that one finishes this work wanting more, not different or less, information about the subject matter. The book deserves a place among the reference materials of anyone whose practice touches upon matters of project finance generally and PPPs in particular.

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**Practical Guide to Engineering and Construction Contracts**

**Philip Loots and Dr Donald Charrett**

CCH (2009)


A$95.00

The Australian $100 note bears the likenesses of two antipodeans who gained an international reputation in their respective fields. On one side can be found Dame Nellie Melba, the soprano who became the darling of Covent Garden in the early 20th century. On the other side is Sir John Monash. While Monash is probably most famous for his exploits as a General on the Western Front, he also made a pioneering contribution, as a civil engineer and public servant, to the development of social and economic infrastructure in Australia.

Readers finding themselves in possession of such a banknote would be hard pressed to find a better way to spend it than by buying the new book by Philip Loots and Donald Charrett entitled *Practical Guide to Engineering and Construction Contracts*. As John Sharkey observes in his Foreword, Monash would have valued the text as it is likely to have assisted him in both the administration of projects and in taking on the role of an expert witness. I tend to think also that Monash would have approved heartily of the
publicly-minded spirit which quite palpably underpins this book. The overwhelming impression gained is that Loots and Charrett are seeking to pass on their decades of combined experience in engineering and the law so as to ensure, to the greatest extent possible, that mistakes which have been made in the past are avoided in the future.

The authors lay out before the reader a smorgasbord of construction law-related topics in a manner that is approachable to lawyer and construction professional alike. No prior legal knowledge is assumed: to bring readers from varying backgrounds up to speed, there are introductory chapters outlining the parts of the Australian common law and statutory landscape which are relevant to construction contracting, as well as discussion on key construction contracting features such as the range of standard forms and delivery methods available. There is also a glossary setting out commonly-used acronyms and terms of art.

Following the introductory sections, the book proceeds through some 20 chapters covering the specific legal issues which may be expected to be encountered in relation to construction contracts in Australia. These will be familiar to readers of similar texts in other jurisdictions, such as Keating, Hudson's, Professor Uff's _Construction Law_ and Sweet and Schneier's book: they include the Engineer/Superintendent's role, Subcontractors, Materials and Workmanship, Variations, Payment, Disputes and so forth.

As the authors note at the outset, the treatment of these topics is designed to be concise rather than comprehensive; therefore, the level of detail varies as does the book's coverage of the very latest developments in the case law and statutes. The text is supported by detailed referencing by way of endnotes; whilst this provides a valuable resource in itself, I agree with John Twyford’s comment when reviewing the book ((2009)128 ACLN 59) that footnotes generally make for greater ease of reference than endnotes.

Readers conversant with the FIDIC forms (which, as the authors note, are not so well known in Australia as elsewhere) will note the similarity in the structure of the book with that of the FIDIC major works forms (1999 edition). Indeed, the chapter headings and sub-headings have deliberately been aligned with those in the FIDIC forms. Whilst this approach is generally successful, readers without an intimate knowledge of the forms will be well-advised to refer carefully to the table of contents and index so as not to miss the treatment of important topics such as extensions of time (which, reflecting the FIDIC forms' dispatch of the issue primarily via sub-clause 8.4, is dealt with in a sub-topic; conversely, although force majeure is a concept largely unknown to construction contracting in Australia, an entire (short) chapter is devoted to it in apparent reflection of its treatment in clause 19 of the FIDIC forms).

While the authors use the FIDIC framework as an organising principle, they are by no means limited in their coverage to the topics dealt with in the FIDIC forms. Rather, there are insightful discussions on topics which are critical to construction law in its Australian context but which do not appear in the FIDIC forms, including the statutory reforms in the realms of proportionate liability and security of payment and the impact of the Trade Practices Act 1974.

Moreover, the text offers detailed comparative studies of dispute resolution options (including alternative/’appropriate’ dispute resolution) and uniquely-valuable case studies of projects which have been ‘successful’ and ‘unsuccessful’, from the Channel Tunnel to Boston’s ‘Big Dig’ and many others which will be well-known to readers of _CLInt._

Consistent with the authors’ apparent desire, noted above, not only to synthesise concisely the existing law but also to contribute to its rational reform, the authors offer guidance throughout as to initiatives which they regard as having the potential to contribute to best practice in construction contracting. These include references to the Australian Contract Code, which was proposed some years ago as a means of avoiding the exigencies of the common law upon contractual performance and interpretation.

All in all, then, this _Practical Guide_ will be a valuable addition to the libraries of construction professionals at all levels of experience. Those who already profess expertise in construction law will find in the book a highly valuable reference tool. This is especially the case as the book not only identifies and places in context the pertinent cases, statutes and commentaries as at mid-2009 but also points readers to resources so as not to miss the treatment of important topics such as extensions of time which, reflecting the FIDIC forms’ dispatch of the issue primarily via sub-clause 8.4, is dealt with in a sub-topic; conversely, although force majeure is a concept largely unknown to construction contracting in Australia, an entire (short) chapter is devoted to it in apparent reflection of its treatment in clause 19 of the FIDIC forms).
better reflect a principal’s or contractor’s preferred risk allocation profile and the comparative tables of dispute resolution methodologies). On the other hand, those new to construction law – for example, with a background as a contracts administrator or a lawyer with expertise in another field – will readily find a pathway to understanding the intricacies of this specialist area.

This leads me to surmise that there is another, and perhaps more fundamental, reason why Sir John Monash would heartily have approved of this book. We are all aware of the gulf of ignorance, as to each other’s perspectives and expertise, which has such a destructive tendency to divide the engineering and legal professions and lead to disputes and other counter-productive results. This book provides, through the generosity of its authors in sharing their expertise and insights, a robust yet flexible bridge across that divide.

Review by Matthew Bell, Co-Editor of CLInt, Lecturer and Co-Director of Studies for Construction Law, The University of Melbourne and Professional Support Lawyer, Construction and Major Projects Group, Clayton Utz (part-time)

Early Contractor Involvement in Building Procurement – Contracts, Partnering and Project Management

David Mosey

Wiley-Blackwell (2009)
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The cherished assumption underlying single-stage competitive tendering is that it delivers value for money for an owner and such market-based efficiency is of benefit to all. Right? Wrong, according to David Mosey of UK law firm Trowers & Hamllins in his recently published book, Early Contractor Involvement in Building Procurement – Contracts, Partnering and Project Management.

David Mosey has been described as ‘partnering guru’ to the UK construction industry, having authored PPC2000, its first standard form of partnering contract. PPC2000 not only provides for all key participants in a construction project to collaborate and deliver the project in accordance with a ‘partnering’ philosophy. Its two-stage procurement and contractual model is absolutely fundamental. Known as early contractor involvement (ECI), this provides for the early appointment of the main contractor alongside the owner’s consultants during the pre-construction phase of a project. Following a competitive tender for that particular role, based mostly on non-cost criteria, the contractor’s skills in relation to buildability, design development and risk evaluation are harnessed and used by the owner and his consultant team to develop a design, specification and programme for the project. The contractor in parallel prepares his priced tender.

From the outset all parties therefore have a detailed understanding of the project’s risks and their allocation, much more so than in the case of the traditional, single-stage, competitive tender. In particular, the contractor should be extremely comfortable with the level of risk contained in his tender and be well-placed to deliver the project on time and to budget if his tender is accepted. If it is, the parties will then enter into a construction-stage agreement along relatively conventional lines. If not, this represents a convenient break-point for the parties. The owner may ultimately take...