

BUILDING & CONSTRUCTION

Overview

TressCox has a team of professionals who focus on the needs of those involved in the construction industry. We have the skills our clients need for upstream (contract drafting, reviews and negotiations and tender advice) and downstream work (dispute negotiation and litigation). We can provide a complete service which covers every legal issue from project planning and inception through to completion and beyond, including:

- Project planning
- Drafting tender documentation
- Tender evaluation
- Negotiating and drafting contracts
- Contract administration
- Management of disputes that arise during and after the contract period.

The clients to whom we provide our building and construction law services include developers, financiers, state government departments, local councils, major property owners, retirement village developers and operators, contractors, builders, professionals engaged in the construction industry and insurers.

TressCox is listed as a recommended law firm in the Asia Pacific Legal 500 (2006/07, 2007/08, 2008/09, 2009/10) for Construction.

Services

Project Planning and Implementation

We have substantial experience in this area and have provided advice to many clients about the appropriate way in which to set up a project and we have particular expertise in the law relating to the tender process. We have provided advice to government departments and large corporations regarding the way in which they should conduct their tenders and how to carry out tender evaluation effectively whilst ensuring that all proper probity obligations are met. We can also provide risk management advice, advice on the appropriate contractual forms to be used, and can advise on any trade practices issues that arise in the project planning and implementation process.

Infrastructure

TressCox has experience in advising on all financial and operational aspects of major infrastructure projects. We have regularly provided advice to government departments about major maintenance and upgrade contracts as well as advising on the implementation of BOOT, BOO and BOLT projects. The firm's trade practices expertise means that we are also able to advise on access to facilities issues that arise under Part IIIA of the Trade Practices Act once the relevant piece of infrastructure is in place.

Contract Negotiation and Drafting

We are familiar with all standard form contracts (including the AS Series, the JCC Series and other commonly used forms) as well as being familiar with the tailor-made contracts used by most of Australia's largest builders. We can quickly and effectively highlight high risk areas of any contract and can recommend amendments which will minimise risks for our clients.

Litigation and Alternative Dispute Resolution

We have substantial experience in prosecuting and defending

claims relating to construction industry disputes and, in particular, dealing with delay claims. However, we are also capable of recognising when litigation or arbitration is not appropriate and we can then recommend and manage appropriate means of alternative dispute resolution, including mediation and expert determination.

- **Contractual Disputes:** We have substantial experience in prosecuting and defending claims relating to contractual disputes and, in particular, dealing with delay claims. We have successfully run numerous delay claims for contractors, including several major claims worth many millions of dollars each. However, we have also successfully resisted claims for additional payments under contracts when acting for government departments, property owners and builders.

We also know from experience that no matter how willing the parties are to conduct their affairs in accordance with the terms of the contracts between them, it is more common than not that parties will not strictly adhere to contract provisions. We can advise on whether contractual requirements have been waived or whether the parties are prevented, by their conduct, from relying upon the strict terms of a contract.

- **Construction Industry Insurance:** We have acted for insurers and insureds in dealing with claims made under professional indemnity, public liability, Construction and All Risks, building works and Home Owners Warranty insurance. In particular, the firm has carried out the successful defence of claims against professionals and their insurers - including the defence of several claims worth in excess of \$20 million.

The firm has (through its substantial insurance practice) a detailed knowledge of relevant insurance law, which it can bring to bear either for its insurer clients or for insureds who are meeting resistance to claims on their policies

- **Negligence, Trade Practices and Misrepresentation Claims:** Since there is commonly a gap between clients' expectations and the actual finished project, this is a fertile field for litigation. It is becoming increasingly common for claims to be made by disappointed clients against building industry professionals (and even builders) on the basis that there has been negligent misrepresentation by those involved in the construction process or that there has been a breach of section 52 of the Trade Practices Act or equivalent sections of the Fair Trading Acts in each State (being the sections which prohibit misleading and deceptive conduct in trade and commerce).

Our experience in dealing with insurance claims (which generally arise from allegations of negligence) and our trade practices expertise ensures that we are well-equipped to cope with claims of this sort – whether for plaintiffs or defendants.

- **Alternative Dispute Resolution:** Sometimes litigation is not appropriate and this is when our experience with alternative dispute resolution becomes important. We can recommend mediators who have expertise in construction litigation and appropriate experts to act in expert determinations. Our experience enables us to advise you on whether it is going to be in your best interests to proceed to litigate a matter or proceed by way of alternative dispute resolution in each individual case.

Track Record

Project Planning and Implementation

- Prepared contract documentation and detailed joint venture documentation for the construction of a road in Fiji.
- Tender preparation and evaluation (as well as contract drafting) for the design and construction of 12 ferries.
- Tender preparation and evaluation and contract drafting in regard to the supply, installation and maintenance of new lighting at railway stations.
- Advising a financier on finance arrangements for a joint venture involved in a \$20 million residential development.

Infrastructure

- Advice to a number of pipeline owners and operators on construction and maintenance of facilities.
- Delivery of BOOT scheme for compressed natural gas facilities at a number of bus depots including gas supply, compression facility construction and construction of filling stations.
- Providing advice to a public transport provider on a contract relating to the maintenance of its automatic ticketing system.
- Acting for a public transport provider in regard to the installation of closed circuit television cameras at its facilities around New South Wales.

Contract Negotiation and Drafting

- Acting for a major contractor in the negotiation and redrafting of tailor-made contracts provided to it by major builders.
- Reviewing numerous building contracts for a financier to ensure its interests are properly protected.
- Acting for a retirement village owner and operator in the negotiation, drafting and management of building contracts relating to the construction of substantial retirement village developments.
- Acting for a major pharmaceutical company on the reconstruction and refurbishment of its main manufacturing facility.
- Advising a major firm of architects on appropriate documentation for a substantial design and construction project for a multi-storey development in Sydney.

Litigation and Alternative Dispute Resolution

- Acting for a major civil works contractor on multi-million dollar delay claims on large Sydney projects.
- Acting for a state government department in defending claims made by contractors for works carried out on department property.
- Acting for a multi-national building contractor in variation claims against builders and in a claim against a supplier of defective products.
- Acting for a retirement village operator in regard to claims against builders for defective work.
- Acting for providers of public transport in actions against contractors over failures to achieve specified performance requirements for equipment.

Construction Industry Insurance

- Acting for a retirement village operator in home owners warranty insurance claims.
- Acting for numerous engineers, architects, quantity surveyors, project managers, and others involved in the construction industry in the defence of professional indemnity claims

(instructions generally having been received from insurers).

- Acting for numerous contractors and insurers in public liability claims arising from deep excavations.
- Acting for insurers in the defence of claims made on construction and all risks policies.
- Advising property owners, builders, contractors and professionals on their insurance obligations under various standard form and tailor-made building contracts.

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