

# BUILDING AND CONSTRUCTION LAW JOURNAL

Volume 28, Number 2

April 2012

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This article looks at an appeal from a decision of the New South Wales Court of Appeal, which raised questions concerning the differences between the nature of the reasons required of an expert for his or her determination on the one hand, and those required of an arbitrator or a court on the other, and the desirability of making expert determinations final and binding. ....	87
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### **Performance anxiety – intention and ability to rectify and the award of rectification damages** – *Simon G Frauenfelder*

The foundational Australian case <i>Bellgrove v Eldridge</i> established that the prima facie measure for defective building works in breach of contract was the amount of damages required to rectify the defective works. However, recent Australian cases have suggested that rectification damages may not be available where a plaintiff does not intend to carry out rectification works or is unable to do so because they no longer own the defective building. After surveying relevant case law, this article argues that contract law should require builders to pay rectification damages irrespective of the plaintiff’s intention or ability to rectify, as doing so will provide appropriate and necessary protection to the plaintiff’s interest in exact contractual performance and will produce favourable risk allocation outcomes. ....	90
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