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EDITORIAL

Constructive encouragement over destructive criticism 223

ARTICLES

Towards the reduction of construction insolvency: Examining the “supporting statement” requirement in New South Wales – *Jeremy Coggins and Wayne Lord*

Introduced as a measure to improve security of payment, the requirement that a head contractor provide proof that it has paid its subcontractors as a condition precedent to its own entitlement to be paid by the principal has for some time been a common provision in Australian standard form construction contracts. Recognising that allegations of some head contractors swearing false statutory declarations in relation to their contractual proof of payment obligations have been longstanding, the New South Wales Parliament has recently enacted a statutory requirement for head contractors to provide proof of payment in the building and construction industry. By examining the statutory provisions, and analysing their likely implications, this article investigates whether the proof of payment requirements are likely to have more “bite” than their contractual cousins and therefore be more effective at improving security of payment and reducing insolvencies in the building and construction industry. 224

What does fairness have to do with it? A critical jurisdictional comparison regarding the notion of “buildability” – *Oliver Spencer Froböse*

Should the principal be giving an implied warranty of “buildability” in circumstances where the contractor is to carry out the works in strict accordance with the principal’s design/specification? If not, what other laws (should) impact the parties’ ability to contract freely regarding buildability? Should contractors be obliged to do their own engineering prior to putting in a bid? The aim of this article is to discuss the relevant policy considerations arising from the above questions, and to compare how the courts in Australia, the United Kingdom, Canada, and the United States have dealt with them. In addition, this article will consider latent conditions clauses used in some standard form contracts, and how the courts have dealt with disclaimers regarding buildability and site conditions. 238

REPORTS

Lend Lease (Millers Point) Pty Ltd v Barangaroo Delivery Authority 254

