



Update

Construction & Infrastructure

08 December 2011

What's News?



 PDF FORMAT

News

Senate committee calls for CSG freeze

After conducting a wide-ranging inquiry into the management of the industry across the Murray Darling Basin, the senate committee on rural affairs and transport has recommended the Government freeze all new CSG developments in areas that overlay the Great Artesian Basin until further scientific studies are completed (02 December 2011) [More...](#)

Report: coal a major and indirect hazard to human health

A 2009 report from the Australian Academy of Technological Sciences and Engineering indicates the annual health costs from coal fired power station local air emissions, excluding greenhouse gases have been estimated to be \$2.6 billion in Australia. This makes coal an expensive, as well as harmful, form of power generation (29 November 2011) [More...](#)

Peak of the mining boom, peak of the property market

Academics at Victoria University warn in a new report 'The Resources Boom and Macroeconomic Policy in Australia', that the mining boom has peaked, and the yearly benefits to the broader economy from the mining boom are no longer rising (28 November 2011) [More...](#)

Nagambie Bypass: northern section opens to traffic

Almost two years to the day since the start of work, the first section of the new Nagambie Bypass has today opened to traffic, with the entire \$188 million project on track to be completed by the middle of next year (2012) (01 December 2011) [More...](#)

Privatisations will provide \$10b for infrastructure push

The NSW Treasurer Mike Baird, says the sale of the state's electricity generators is the "final piece" in a three-prong privatisation program that will create an additional infrastructure war chest of \$7 billion to \$10 billion (28 November 2011) [More...](#)

NBN - Regional broadband gets its backbone

The recent completion of the broadband backbone link to Broken Hill will connect regional locations in New South Wales, South Australia and Victoria, with 1150 kilometres of fibre optic infrastructure has been laid out, with connected towns including Mildura, Swan Hill, Echuca/Moama, Kerang and Renmark. (23 November 2011) [More...](#)

Agreement signed to improve safety in construction industry

WorkCover NSW and NSW Public Works have signed an interagency agreement to improve consistency in workplace health and safety standards across more than a billion dollars of public assets. WorkCover will assist NSW Public Works maintain consistency across their main construction and maintenance projects (25 November 2011) [More...](#)

Preferred tender for the Cloncurry Solar Farm project

The Bligh Government has named Ingenero Pty Ltd as preferred tender to design, build and operate a 2.128 megawatt solar farm at Cloncurry. Construction of the solar farm is scheduled to begin in July 2012 subject to Ingenero receiving development approvals and concluding contractual and land lease arrangements, plus network connection and power purchase agreements (02 November 2011) [More...](#)

Queensland land access laws under review

Queensland miners have welcomed a review of laws governing access to private land, warning legal costs could hit compensation payouts to landholders. The Queensland Resources Council panel will consult with key industry and community stakeholders to assess the day-to-day workings and effectiveness of the land access framework (30 November 2011) [More...](#)

Queensland Cyclone shelters out to tender

Tenders have now opened for the Bligh Government's \$60 million cyclone shelter program, Minister for Government Services and Building Industry Simon Finn announced today. More than 20 contractors have been selected to tender for eight of the 10 multi-purpose public cyclone shelters being built (29 November 2011) [More...](#)

New environmental conditions and approvals planned for CSG water

Environmental and landholder protection are the cornerstone of the Bligh Government's draft coal seam water management policy according to the Environment Minister, with the announcement of strict environmental conditions and approvals in place for all coal seam gas companies. The requirements, from drinking water guidelines and the Australian and New Zealand Environment Conservation Council guidelines, take into account the composition of the CSG water and the quality of the water in the watercourse (24 November 2011) [More...](#)

State Government implementing recommendations of the Queensland Floods Commission

An historic Memorandum of Understanding signed last month strengthens cross-border arrangements and improve responses to natural disasters in both

states. With more consultation planned with key councils, this MOU reinforces the relationship between the two States by including all Government services affected by cross-border issues and covers the entire NSW-Queensland border (24 November 2011) [More...](#)

New Projects Approved for Bruce Highway Upgrade

Infrastructure Minister Anthony Albanese has announced that eight new projects have received funding approval as part of the Bruce Highway Safety Package. The largest of the new projects is the construction of "a new two lane road on the western side of the Bruce Highway connecting Frizzo Road with Sippy Creek Road" (22 November 2011) [More...](#)

Planning Underway for Mackay Ring Road Upgrade

Federal Infrastructure Minister Anthony Albanese and Queensland Main Roads Minister Craig Wallace have announced that AECOM has been engaged to identify a proposed route and prepare a full project plan for the proposed Mackay Ring Road, both of which are necessary for funding approval of the project. This project is intended to form part of the infrastructure investment needed to support economic growth in the area as a result of the resources industry (23 November 2011) [More...](#)

Articles

Management of the Murray Darling Basin

Author: Senate Standing Committee on Rural Affairs & Transport

Interim report: the impact of mining coal seam gas on the management of the Murray Darling Basin with recommendations (November 2011) To view the full report [click here](#)

Creating Places for People

Department of Infrastructure and transport

Creating Places for People is a collaborative commitment to best practice urban design in Australia. The protocol is the result of two years of collaboration between peak community and industry organisations, States, Territories, Local Governments, and the Australian Government (29 November 2011) <http://www.urbandesign.gov.au/>

Australian suburban house building: industry organisation, practices and constraints

Author: Tony Dalton, Australian Housing and Urban Research Institute

While research exists on urban land availability, planning and under utilised land that may be constraining supply, there has been little examination of the operations of the housing industry itself (01 December 2011) [Australian suburban house building: industry organisation, practices and constraints](#)

DPI Compliance report

Author: Department of Planning and Infrastructure

Monthly Auditing and Compliance Activities report for October 2011 (25 November 2011)

[Compliance report - October 2011](#)

Sham Contracting Inquiry: Report 2011

Author: Australian Building and Construction Commissioner (ABCC)

This Inquiry and Report are the continuation of a problem-solving process that has been traversed in various contexts for many years. The findings and recommendations outlined here are intended to inform the ongoing discussion on how best to address the problem of sham contracting (29 November 2011)

[Sham Contracting Inquiry: Report 2011](#)

ABS Publications

The Australian Bureau of Statistics (ABS) has released the following statistical publications:

[Construction Work Done, Australia, Preliminary, September 2011](#) (23 November 2011)

[Production of Selected Construction Materials, October 2011](#) (25 November 2011)

Practice Notes

CRC for Low Carbon Living' successful applicants announced for 2011

The successful applicants of this year's CRC selection round have been announced by the Minister for Innovation Senator Kim Carr and listed here (24 November 2011) [More...](#)

Current Draft Policies and Plans, Announcements

QLD: Asbestos information website from January 2012

The Minister for Government Services Simon Finn and Minister for Industrial Relations Cameron Dick announced that from the beginning of next year, the one-stop-shop phone contact would be provided through 13 QGOV (13 7468) (27 November 2011) [More...](#)

QLD: Consultation - Draft Coal Seam Water Management Policy

The state draft policy which puts aquifer injection as the first priority water management option for this water, has been released for landholder, community and CSG company feedback. Submissions can be made online to ensure the sustainable development of the industry, and more information is available online at www.derm.qld.gov.au (24 November 2011) [More...](#)

QLD: Building newsflash number 486 - Building work under the Mineral Resources Act 1989 and the Petroleum Gas (Production and Safety) Act 2004

To advise on the application of the Queensland Development Code (QDC) Mandatory Part (MP) 3.3 Temporary Accommodation Buildings and Structures, and the assessment of building work carried out under the Mineral Resources Act 1989 (MRA) and the Petroleum Gas (Production and Safety) Act 2004 (PGA) (23 November 2011)

[Building work under the Mineral Resources Act 1989 and the Petroleum Gas \(Production and Safety\) Act 2004](#)

VIC: WorkSafe targets domestic housing construction

Worksafe Victoria is targeting domestic construction sites in Melbourne's west from 8 December. This will be the first of a series of state-wide campaign visits to target basic safety issues, including fall protection, electrical safety, housekeeping, site security and supervision (28 November 2011) [More...](#)

Cases

Helal v McConnell Dowell Constructors (Aust) Pty Ltd (No 3) [2011] FCA 1344

INDUSTRIAL LAW – labour supplied by respondent to sub-contractor – building employees of sub-contractor not regulated by industrial agreement governing respondent – whether discriminatory action taken by respondent against employees of sub-contractor – whether such action was taken on ground that employees not covered by particular kind of industrial instrument – ground must be a “substantial and operative reason” for taking action – no discriminatory action found to have occurred

Building and Construction Industry Improvement Act 2005 (Cth) ss 3, 4, 45,49

Conciliation and Arbitration Act 1904 (Cth) s 5 [More...](#)

Redline Contracting Pty Ltd v MCC Mining (Western Australia) Pty Ltd [2011] FCA 1337

CONTRACT – contract for the installation of pipelines for resources project – unconditional undertaking procured by contractor in favour of the principal – whether negative stipulation in contract – whether contract precludes the principal from calling on unconditional undertaking.

PRACTICE AND PROCEDURE – interlocutory injunction – whether the contractor demonstrated a prima facie case – dismissed [More...](#)

Coe v Roth [2011] NSWSC 1427

Damages assessed in an amount of \$7,047,378.21.

PRACTICE AND PROCEDURE - application for default judgment - where the plaintiff entered into a shipbuilding contract with a shipbuilder for the construction of a vessel - where the defendant is the guarantor of payments due from the shipbuilder - where the vessel was delivered late in breach of the agreement - where the shipbuilder had financial difficulties and sought overpayments from the plaintiff in order to complete the vessel - whether the overpayments by the plaintiff constitute unliquidated damages - where the plaintiff has issued notices of default to both the shipbuilder and the defendant but no payment was made in response - where the shipbuilder has gone into liquidation - the plaintiff seeks unliquidated damages from the defendant [More...](#)

Hanave Pty Ltd -v- Nahas Construction (NSW) Pty Ltd [2011] NSWSC 1476

BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT ACT 1999 (NSW) - adjudicator finds in favour of first defendant having considered and accepted a quantity surveyor's report relied on by the first defendant which contained a disclaimer to the effect that no one except the plaintiff should rely on it - the plaintiff contended that in relying on the report and in not providing adequate reasons for his reliance on it, the adjudicator failed to make a bona fide attempt to discharge his duties or denied the plaintiff natural justice - held that the adjudicator made no error in relying on the report and that his reasons for doing so were adequate [More...](#)

OneSteel Manufacturing Pty Ltd -v- BlueScope Steel (AIS) Pty Ltd [2011] NSWSC 1450

CONTRACT - ss 31, 40 and 50 Sale of Goods Act 1923 (NSW) - contract for the supply and purchase of iron ore - construction of provision entitling buyer to request seller not to load shipments - whether seller's concurrence required - whether buyer breached contract by refusing delivery - provision entitling buyer to reduce level of purchases where caused by requirement for buyer to reline its blast furnace and provided reduction was reasonably proportional to reductions of purchases from other iron ore suppliers - whether buyer exercised its rights under the provision - whether reduction was reasonably proportional - BREACH - whether purchaser breached contract by not being ready and willing to deliver - whether buyer dispensed with requirement for purchaser to be ready and willing - DAMAGES - whether seller suffered damages where it was not ready and willing to deliver - measure of damages - mitigation - whether seller failed to mitigate damages - construction of limitation provision [More...](#)

Mahon v Clear Engineering & Ors (Home Building) [2011] NSWCTTT 537**Barbano v Prego (Home Building) [2011] NSWCTTT 527**

Debt Recovery Home Building - Bankruptcy: Undischarged Bankrupt

Home Building Act 1989; Bankruptcy Act 1966 ; Debt Recovery; [More...](#)

Kavieris v Structural Solutions Group Pty Ltd (Home Building) [2011] NSWCTTT 521

In matter HB 10/19160 I order the respondent to pay the applicant \$17,144.38 2011.

residential building work as defined under the HB Act- proceedings before the Tribunal for an additional payment of \$19,959.00. [More...](#)

Bowen Central Coal Pty Ltd v Aquila Coal Pty Ltd & Anor [2011] QCA 334

EQUITY – EQUITABLE REMEDIES – INJUNCTIONS – INTERLOCUTORY INJUNCTIONS – RELEVANT CONSIDERATIONS – BALANCE OF CONVENIENCE
GENERALLY – where the appellant and first respondent are parties to a joint venture agreement to develop a coal mine – where the agreement contained a procedure by which the parties could put forward and vote upon a resolution for the mine development – where the procedure required two meetings of the Management Committee – where if one party voted against the resolution at both meetings an “option” to buy the other party's interest may arise – where the first respondent voted against the appellant's resolution at the first meeting – where the first respondent brought proceedings against the appellant alleging that the proposal for mine development did not comply with the agreement – where the first respondent alleged that the appellant had breached its obligation of good faith in putting forward the resolution – where the first respondent successfully applied for an interlocutory injunction restraining the second meeting of the Management Committee from taking place – whether the primary judge's discretion in granting the injunction miscarried [More...](#)

Ware Building Pty Ltd v Centre Projects Pty Ltd [2011] QSC 343

Application pursuant to the Building and Construction Industry Payments Act by the present

applicant for an injunction restraining the enforcement of an adjudication order – application refused – pending arbitration [More...](#)

Kevin McSweeney Pty Ltd v Brisbane City Council [2011] QPEC 138

ENVIRONMENT AND PLANNING – BUILDING CONTROL – COUNCIL CONSENT AND APPROVAL – MATTERS FOR CONSIDERATION BY COUNCIL – ON APPLICATIONS FOR DEMOLITIONS – where development approval was sought for demolition of a pre-1946 dwelling within a demolition code precinct – whether the ‘Purpose’ of the City Plan was applicable to the demolition code precinct.

ENVIRONMENT AND PLANNING – BUILDING CONTROL – OTHER MATTERS – NOTICES AND ORDERS – DEMOLITION, REMOVAL, REPAIR OR RESTORATION – DEMOLITION OR REMOVAL – where development approval was sought for demolition of a pre-1946 dwelling within a demolition code precinct – code-assessable – whether the “traditional character” of the streetscape had been lost as a result of “unsympathetic” houses – what ‘segments’ of the street constitute the ‘streetscape’ for the purposes of assessment. [More...](#)

Evans v Queensland Building Services Authority [2011] QCAT 543

Application to strike out – direction to rectify having issued – Subsequent direction to rectify – unfairness [More...](#)

Stuart Homes and Renovations v Denton [2011] QCAT 526

Building dispute – whether commercial or domestic building contract – whether written contract contains the agreement between the parties – whether contract for shed or for habitable dwelling [More...](#)

Tassin and Anor v Simpson and Ors [2011] QCAT 548

BUILDING DISPUTE – Master Builder's Minor Works Contract – breach of contract – considerable delay in completing the contract – expenses of delay –

dispute over building methods – reasonable care and skill – legal costs – interest – abuse of process [More...](#)

Greener and Anor v Carew [2011] QCAT 547

Application regarding a dispute over a building contract – whether contract validly terminated by builder – owners' right to compensation if contract not validly terminated - the Respondent pay to the Applicants the sum of \$28,500.00 [More...](#)

Nunn t/a Al Nunn Design Construction Builders v Gavin and Anor [2011] QCAT 546

Self executing order – whether Tribunal functus officio – case management principles grant the respondents leave to file that amended counter application which was filed outside the time [More...](#)

Clark and Anor v Lazaway Pools & Spas (ACN 007 171 520) (Domestic Building) [2011] VCAT 2131

Swimming pool contract, SPASA standard form, variations, prime cost items, provisional sums, foreseeability of collapse of excavation due to rain, suspension, repudiation, cost to complete. [More...](#)

AAW Pty Ltd v Faiman and Anor (Domestic Building) [2011] VCAT 2130

Domestic building – cabinet work – contract not adequately describing work in breach of s31(1)(c)(d) of the Act – repudiation by cabinet maker before instalment due – acceptance of repudiation - consequences – quantum of damage on counterclaim – dismissed [More...](#)

Contact details

Melbourne

Chris Edquist, Partner
T: +61 (0)3 9321 9919
E: chris.edquist@holdingredlich.com.au

Sydney

Amanda Davidson, Partner
T: +61 (0)2 8083 0333
E: amanda.davidson@holdingredlich.com.au

Brisbane

Stephen Pyman, Partner
T: +61 (0)7 3135 0625
E: stephen.pyman@holdingredlich.com.au

Scott Lambert, Partner
T: +61 (0)7 3135 0681
E: scott.lambert@holdingredlich.com.au

Troy Lewis, Partner
T: +61 (0)7 3135 0614
E: troy.lewis@holdingredlich.com.au

Janelle Kerrisk, Partner
T: +61 (0)7 3135 0608
E: janelle.kerrisk@holdingredlich.com.au

"The material contained in this publication is no more than general comment. Readers should not act on the basis of the material without taking professional advice relating to their particular circumstances"

Melbourne

Level 6, 277 William Street, Melbourne VIC 3000
T: +61 (0)3 9321 9999 F: +61 (0)3 9321 9900

www.holdingredlich.com.au

Sydney

Level 65, MLC Centre, 19 Martin Place, Sydney NSW 2000
T: +61 (0)2 8083 0388 F: +61 (0)2 8083 0399

Brisbane

Level 1, 300 Queen Street, Brisbane QLD 4000
T: +61 (0)7 3135 0500 F: +61 (0)7 3135 0599