



# What's News?

Construction & Infrastructure

27 January 2010

## Latest News

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## Commonwealth

### Confusion surrounds modern award introduction from 1 January 2010

8 January 2010

The Federal Government's modern award system commenced on 1 January. While many aspects of the modern award appear familiar, the switch to the modern award is far from seamless for employers in the residential building industry. [More...](#)

### New Australian mining tax seen burying miners' profits

22 January 2010

Australian miners will face billions of dollars in new taxes that threaten to slash productivity and put at risk billions of dollars in new investment according to sector officials and analysts. [More...](#)

### Rudd argues case for special freight transport routes

20 January 2010

The Prime Minister has pledged to tackle a massive infrastructure backlog in Australia if he is re-elected with a big spending program to develop dedicated roads and rail networks for freight transport. Reform options could include improved rail links to ports and relieving congestion between passenger and freight rail networks by building dedicated lines. [More...](#)

### Construction recovery underway, obstacles remain

20 January 2010

The Australian Bureau of Statistics building activity figures show that the seasonally adjusted value of total construction work done increased 1.6% in the September quarter compared to the previous quarter. All construction sectors remained substantially down on last year's levels, with a 5.3% annual fall in the total value of work done, and a 3.9% fall in the value of residential building work. [More...](#)

### Security of Payment in the construction industry

18 January 2010

All Australian States and Territories have either enacted or are about to enact security of payment legislation for the construction industry, but legislation must provide for decisive, quick and efficient resolution of disputed payments according to an expert. [More...](#)

## Victoria

### Victorian Education Department fined for asbestos incident

20 January 2010

Failing to ensure a tradesman was aware of the presence of asbestos has cost the Education Department \$10,000 as well as being ordered to pay costs of \$3,500. [More...](#)

### Explorers to drill down into Victoria's surface

19 January 2010

Twelve companies will share in \$700,000 Brumby Labor Government funding to assist them explore for new geothermal and mineral resources. [More...](#)

### Successful Peninsula Link private partner announced

15 January 2010

The Southern Way consortium, comprising Abigroup, Bilfinger Berger and the Royal Bank of Scotland, has been awarded the contract to build and deliver the \$759 million toll-free Peninsula Link project. The project is being delivered toll-free and the community will benefit from faster delivery and greater innovation in its design and construction under the Availability Public Private Partnership (PPP) model. [More...](#)

### Applications for Victoria's large-scale solar funding to close in May

14 January 2010

Applications for up to \$100 million in Brumby Government funding for a new solar power station in Victoria have been extended and will close on 24 May 2010. The Brumby Government has extended the deadline for bids to give applicants the opportunity to secure matching Commonwealth funding, available under the \$1.5 billion Solar Flagship Program. [More...](#)

### Loan squeeze cuts building work

10 January 2009

A survey by the Master Builders Association of its commercial members found 57% had lost prospective work when projects fell over in the December quarter because developers had been unable to meet banks' tighter lending conditions. [More...](#)

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### New South Wales

#### Building approvals most difficult to attain in NSW

21 January 2010

NSW is the worst-ranked state in Australia for handling development applications, yet it is building only half the number of homes needed to handle the expanding population. The Property Council of Australia and the Residential Development Council gave NSW 5.2 out of 10 for its handling of applications, ranking it behind Queensland (5.8) and Victoria (6.8). [More...](#)

#### PPP funding model needs an overhaul

21 January 2010

Infrastructure projects are a high-risk game, highlighted by a string of projects that are drowning in red ink - and controversy. [More...](#)

#### Govt puts Sydney Metro project on hold

19 January 2010

NSW Premier Kristina Keneally won't say if the unpopular Sydney Metro project is soon to be axed, even though the government has stopped buying properties to make way for it. She says the government has ceased acquiring land in the Rozelle area until a final decision is made about the inner-city transport project. The Civil Contractors Federation (CCF) welcomed the metro delay, saying it's concerned about the lack of scrutiny of the project. [More...](#)

#### \$427 million expansion of the University of Technology Sydney

18 January 2010

Premier Kristina Keneally today announced approval has been given to a \$427 million plan to redevelop and expand the UTS Broadway campus. The approval also gives the green light to construction on a \$70 million, 21-storey high student housing building. [More...](#)

### Queensland

#### Social housing roll-out boosts Queensland economy

17 January 2010

A massive roll-out of social housing across the state this year commenced as the Bligh Government works to build more than 3000 social housing dwellings by the end of this year. The roll out is part of a Nation Building Plan which will accommodate more than 6200 eligible Queenslanders. The plan is pumping \$ 1.1 billion from the federal government into the state's economy over 3 years to June 2012 and creating 13,000 jobs. [More...](#)

#### Qld mining companies face environment charges

19 January 2010

The Department of Environment and Resource Management has issued statutory notices requiring the mine sites to investigate the cause of the discharges, the suitability of their current water management practices and the potential for improvements. The Department's Assistant Director General Dean Ellwood says the mines were not the only 2 to be investigated, but they will be the first to appear in court in Queensland for environmental harm. [More...](#)

#### Toowoomba Hospital birthing centre tender awarded

20 January 2010

The successful tender for the \$1 million redevelopment of Toowoomba Hospital's new birthing centre has been announced by Deputy Premier and Minister for Health Paul Lucas. The birthing centre's building contract has been awarded to Q-Build - Darling Downs following the closing of the tender in late December. [More...](#)

#### Building height planning claims bogus

13 January 2010

Minister for Infrastructure and Planning Stirling Hinchliffe said claims state planning stipulated that 60 20-storey high-rise buildings be built in Brisbane each year were false. [More...](#)

#### Declaration of the ZeroGen project

11 January 2010

ZeroGen Pty Ltd (ZeroGen) is a company incorporated under the Corporations Act 2001 and wholly-owned by the Queensland Government, which proposes to construct and operate a 400 MW (530 MW gross) commercial-scale power generation facility. The plan will integrate a coal gasification power plant with the capture and storage of carbon dioxide (CO<sub>2</sub>) emissions to generate low emission base-load electricity for the National Electricity Market. [More...](#)

#### Safety blitz targets Queensland insulation installers

21 January 2010

The Industrial Relations Minister has announced inspectors from the Electrical Safety Office (ESO) and Workplace Health and Safety Queensland are well on track to achieve their target of auditing 500 companies by the end of January as part of a statewide safety blitz on insulation installers. [More...](#)

#### Surf Coast unsafe work sites

14 January 2010

WorkSafe spokesperson Michael Birt said he was "disappointed" with a November blitz to check on compliance with occupational health and safety laws at workplaces around the Surf Coast, with an enormous number of Surf Coast employees working at heights without fall protection, constructing unsafe scaffolding and operating unguarded machinery. [More...](#)

#### High-rise glass safety tests for Queensland

12 January 2010

New high-rise glass window panes will be safer when a national test championed by Queensland takes effect on May 1. A new test for new high-rise glass window panes will be phased in over a 12-month period to allow industry to adjust. The test, for glass in all windows more than 5m above floor or ground level, will become mandatory in May 2011. [More...](#)

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### **National high-rise glass test fails on affordability**

The Queensland Government has continued the practice that it established in 2009 of failing to adequately consult with industry before implementing wide ranging changes that will add complexity and cost to new development. [More...](#)

### **Other**

#### **More legal strife for CFMEU**

18 January 2010

The Construction, Forestry, Mining and Energy Workers' Union is being prosecuted over industrial action at 2 Perth building sites.

[More...](#)

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## Publications/Conferences

### **How do I know if I am an independent contractor?**

14 January 2010

If you operate via a labour hire firm, you may not need to manage your own tax or occupational health and safety requirements and other obligations, but are still classed as an independent contractor. It is important to know that independent contractors can still be classed as employees under some state and federal laws. [More...](#)

### **VIC: Proposed accessibility features for all new housing & apartments**

11 January 2010

The Government has released a Regulatory Impact Statement (RIS) outlining details of building requirements for all new houses, villas, townhouses and apartments. [More...](#)

### **VIC: Interim Measures for Bushfire Protection**

Amendment VC65 amends clause 52.43 to clarify that the permit exemptions for vegetation removal apply to existing and not proposed buildings. [More...](#)

### **VIC: New bushfire provisions for public buildings**

Ministerial Direction No. 3 - Bushfire Provisions for Buildings of a Public Nature has been approved and comes into effect on 1 February 2010. It applies to all construction undertaken by Victorian Government departments and agencies. [More...](#)

### **QLD: Electric hot water system replacement: For the greener good**

From 1 January 2010, if you live in a house or townhouse located where piped natural gas is available and your electric hot water system needs to be replaced, you may be required to install a greenhouse efficient hot water system - either gas, solar or heat pump. [More...](#)

### **QLD: New building laws from 1 January 2010**

From 1 January 2010, new regulations come into effect that mandate the completion of a sustainability declaration before a house, townhouse (class 1) or unit (class 2) is marketed for sale; mandate existing houses and townhouses (class 1 buildings) located in a reticulated natural gas area to install a greenhouse efficient hot water system (i.e. gas, solar or heat pump) when an existing electric resistance hot water system needs replacing; mandate electricity sub-metering in multi-residential (class 2) and office (class 5) buildings; and will also prohibit new and some existing covenants and body corporate by-laws from banning certain design and energy efficient features or fixtures of a house, townhouse (class 1a buildings), unit (class 2 buildings) or enclosed garages (class 10a building). [More...](#)

### **QLD: Fire hydrant installations**

24 December 2009

This advises the requirements where a supplementary water storage tank is used to comply with AS2419.1:2005 - Fire hydrant installations—using on-site water storage tanks and pumpsets. The objective of AS2419.1 is to specify minimum requirements for the design, installation and commissioning of fire hydrant systems. [More...](#)



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### Cases

#### ***A J Lucas Drilling Pty Ltd v McConnell Dowell Constructors (Aust) Pty Ltd* [2009] VSCA 310**

Building contracts - Sub-contract determined prior to completion without fault by sub-contractor - Valuation works completed - Pro-rata assessment of contract lump sum to reflect percentage completion of original work scope - Whether trial judge's valuation was precluded by the construction of relevant clauses in the sub-contract - Variations valued on a cost plus margin basis - Changes to work scope and new methodology - Whether variations under sub-contract - Whether error in not allowing full risk component in pro-rata value - Whether sub-contractor accepted the risks associated with changed methodology and the cost of the re-engineering and its implementation - Valuation of variations to the work scope by the changed methodology - Whether the sub-contractor was entitled to compensation for delay. Practice and procedure - Interest at penalty interest rates pursuant to s 58 Supreme Court Act 1986 - Whether the appellant's claim was for a sum certain - Whether appellant's letter constituted a demand - Whether good cause was shown to the contrary. [More...](#)

#### ***Al-Atabi v Zaidi* [2009] NSWCA 433**

Contracts - general contractual principles - construction and interpretation of contracts - lump-sum contract in respect of building work - claim for variations - whether work in variations claim part of work covered by lump-sum contract - whether waiver of contractual variations procedure - whether variations subject of implied or express contract. [More...](#)

#### ***Australian Building & Construction Commissioner v Construction, Forestry, Mining & Energy Union* [2009] FCA 1587**

Industrial law - scope of interlocutory injunction - s 49 of the Building and Construction Industry Improvement Act 2005 (Cth) - minimum relief necessary to do justice between the parties - fact that applicant invested with important statutory role toward improving the building and construction industry is a relevant consideration. [More...](#)

#### ***Bruton Pty Ltd, M. v NSW Land & Housing Corp & Anor* [2009] NSWSC 1431**

Interlocutory injunction - Building contract - Bank guarantee - Defendant entitled to call on guarantee if it becomes entitled to exercise rights to security - serious question to be tried on construction of contract and whether defendant entitled to exercise rights - balance of convenience favours grant of interlocutory injunction. [More...](#)

#### ***Chateau Constructions (Aust) Ltd v Zepinic & Anor (No 3)* [2009] NSWSC 1373**

Equity - equitable remedies - declaration of equitable charge over property - extension of caveat - Chateau now seeks to enforce a charging provision in the building contract to secure the sum that the CTTT found was due to it. [More...](#)

#### ***Building Insurers' Guarantee Corporation v Touma* [2010] NSWSC 4**

Practice and procedure - UCPR 12.7(2) - application to strike out defence where not conducted with due despatch - where defendant has failed to attend to orders for discovery - where plaintiff a stranger to the commercial transaction between the defendant and a third party from which the litigation arises - where proceedings effectively stalled until discovery completed - defence struck out - defective building work. [More...](#)

#### ***Brookes v Ralph & Ors* [2009] QSC 416**

Equity - general principles - fiduciary obligations - particular cases - where the plaintiff and the first and second defendants entered into a commercial venture - whether there was a joint venture agreement between the parties - whether the defendants are in breach of fiduciary obligations. Intellectual property - Copyright - infringement - designs - generally - where the plaintiff claims damages for breach of copyright in his building plans - whether the defendants have breached copyright. [More...](#)

#### ***CJD Equipment v A&C Constructions* [2009] NSWSC 1362**

Building and engineering contracts - construction - terms to be implied where contractual documents limited - whether implied term of fitness for purpose - performance - whether design defective - whether caused damage to constructed premises - whether subcontractors made representations to the principal - whether resultant liability of sub-contractors - remedies - damages - quantification - apportionment of damages between defendants - mitigation - whether plaintiff mitigated loss. Tort - whether duty of care owed - whether plaintiff relevantly vulnerable - scope of duty - whether damage to building properly characterised as economic loss - causation - whether loss complained of caused by design or representations made by defendants - whether plaintiffs' amendments to design a novus actus interveniens. [More...](#)

#### ***Comcare v John Holland Pty Ltd (No 2)* [2009] FCA 1515**

Industrial law - breach of duty of employer to take all reasonably practicable steps to protect health and safety of employees - s 16(1) Occupational Health & Safety Act 1991 (Cth) - death of employee on construction site - determination of pecuniary penalty - seriousness of breach - principles applying to determination of pecuniary penalty - whether mitigating factors can be taken into account. Held: declaration of contravention in terms sought by applicant - pecuniary penalty of \$180,000 imposed. [More...](#)

#### ***Diploma Construction Pty Ltd v Marula Pty Ltd* [2009] WASCA 229**

Building contract - Notice of default served by contractor on subcontractor - Whether notice contained 'details of the default' - Whether subcontractor in default of a 'direction' given by contractor - Meaning of "direction" - Whether subcontractor had repudiated subcontract. [More...](#)

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### ***Edwards v Australian Securities and Investments Commission* [2009] NSWCA 424**

Corporations - insolvent trading - directors' liability - whether quantum meruit liabilities are debts for the purposes of s 588G Corporations Act 2001 (Cth) - whether director aware of debts being incurred - challenges to disqualification order. Contract - whether preliminary building contract entered into after commencement of work and prior to execution of formal contract documents. Restitution - building work commenced at request of developer prior to entry into building contract. [More...](#)

### ***Hosking & Anor v Haas & Anor (No. 2)* [2009] NSWSC 1328**

Equity - building schemes - whether common building scheme exists in Estate - whether breach of covenant - Whether plaintiff entitled to relief. [More...](#)

### ***Filadelfia Projects Pty Limited v EntirTy Business Services Pty Limited* [2009] NSWSC 1468**

Injunctions sought to restrain the defendant from seeking adjudication of a payment claim under the Building and Construction Industry Security of Payment Act 1999 - plaintiff party to contract with third party who subcontracted to defendant - claims made by defendant on third party under the Act - upon termination of subcontract, defendant made claim upon plaintiff - whether an abuse of the processes of the Act. [More...](#)

### ***Floruit Holdings Pty Ltd & Anor v Sebastian - Builders & Developers Pty Ltd* [2009] NSWCA 411**

Costs - Whether appellants entitled to costs of determination of the separate question in the District Court - No question in relation to costs of the appeal. [More...](#)

### ***Hausman & Anor v Abigroup Contractors Pty Ltd* [2009] VSCA 288**

Practice and procedure - Guarantee by defendants of corporate debt owed to plaintiff - Plaintiff obtained summary judgment on guarantee - Appeal against summary judgment - Claim that defendants induced to give guarantee by misleading or deceptive conduct - Whether term in guarantee prevented defendants from relying upon vitiating conduct - Test for summary judgment - Appeal dismissed. [More...](#)

### ***Phoenix International Group Pty Ltd v Resources Combined No 2 Pty Ltd & Ors* [2009] VSCA 309**

Building and construction law - Construction contracts entered into before 30 March 2007 - Adjudication of payment claims - Consequences of non-compliance with adjudicator's decision - Attempt to recover adjudicated amount - Attempt to challenge on ground that adjudication null and void - Whether claimant entitled to judgment nevertheless - Judge refused to enter judgment - Application for leave to appeal from that refusal - Leave to appeal refused - Building and Construction Industry Security of Payment Act 2002, ss.25 and 27. [More...](#)

### ***Rustom (t/a Snab Home Improvements) v Ismail* [2009] VSC 625**

Administrative law - Natural justice - Reasonable apprehension of bias - Victorian Civil and Administrative Tribunal - Building case - Prior decision by same Tribunal Member concerning same party - Adverse credibility finding made in prior case - Further comments made at outset of present case reflecting adversely on same party's credit - Decision set aside and matter remitted for rehearing. [More...](#)

### ***Mulherin Rigging & Cranes Australia Pty Ltd v Roberts and Schaefer Australia Pty Ltd & Ors* [2009] QSC 429**

Contracts - building, engineering and related contracts - remuneration - Subcontractors' Charges Act (QLD) - where second defendant was served with a notice of charge under the Subcontractors' Charges Act 1974 (Qld) and paid a sum of money into court - where plaintiff was obliged to commence proceedings to avoid the charge being deemed to be extinguished under s. 15(3) of the Act - where plaintiff sought to further amend its statement of claim to increase the amount claimed by it to include GST - where first defendant submitted that the charge was extinguished in respect of the difference between the amount paid into court and the amount claimed by the plaintiff - whether the plaintiff's claim for a lower amount rather than the full amount paid into court had the effect of extinguishing the charge for the amount of the difference - whether amendment of the sum claimed revived the charge - whether GST can be the subject of a charge under the Act. [More...](#)

### ***National Vegetation Management Solutions P/L v Shekar Plant Hire P/L* [2010] QSC 003**

Contracts - building, engineering and related contracts - remuneration - statutory regulation of entitlement to and recovery of progress payments - where respondent was awarded a contract by Powerlink Queensland to carry out land clearing for a power transmission line - where respondent engaged applicant to carry out part of its contract - where applicant submitted invoice to respondent claiming \$511,324.44 - where applicant seeks orders that respondent pay it \$511,324.44, being a debt owing pursuant to Building and Construction Industry Payments Act 1994 (Qld) - where by letter to applicant headed "Without Prejudice" respondent's solicitor disputed amount claimed and offered to pay lesser amount - whether respondent's solicitor's letter a "payment schedule" within the meaning of s 18 of the Building and Construction Industry Payments Act 1994 (Qld) - whether respondent liable to pay amount claimed - whether applicant entitled to recover amount claimed as a debt. Evidence - admissions and declarations - admissions - letters and statements without prejudice - whether letter from respondent's solicitor to applicant headed "Without Prejudice" is inadmissible as a privileged communication. Contracts - building, engineering and related contracts - licences - whether applicant not entitled to progress payment because it did not have a licence under the Queensland Building Services Authority Act 1991 (Qld) - whether applicant required to have a licence - whether work was "building work" within the meaning of that Act. [More...](#)

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### ***Viridian Noosa Pty Ltd v Neumann Contractors Pty Ltd*** **[2009] QSC 398**

Arbitration - The submission and reference - submission as a ground for stay of proceedings - stay of proceedings - where application to stay proceedings under s 53 Commercial Arbitration Act 1990 - whether parties entitled to litigate despite arbitration clause in contract. [More...](#)

### ***Wilson v Nesbit*** [2009] FCA 1574

Industrial law - employee engaged in contraventions of s44(1) of the Building and Construction Industry Improvement Act 2005 (Cth) - employer engaged in similar contravention by virtue of employee - conduct admitted - penalties to be imposed - consideration of seriousness of conduct - mid-range penalties imposed. [More...](#)

### ***1144 Nepean Highway Pty Ltd v Abnote Australasia Pty Ltd*** **[2009] VSCA 308**

Contract - Construction of dispute resolution clause - Meaning of 'appoint' - Distinction between 'appoint' and 'nominate' - Appointment of independent expert by independent third party - Binding nature of appointment - Terms of appointment - Objection to expert's terms - Indemnity and release - Implied term that the terms of the expert's engagement be 'reasonable' - Certainty of terms - Injunction to compel engagement of expert. [More...](#)

### ***Gregor v CFMEU & Anor*** [2009] FMCA 1266

Industrial law - Penalty hearing - Unlawful building industrial action - Admitted contraventions - Considerations on penalty - Agreed penalty.  
Legislation Cited:  
Building and Construction Industry Improvement Act 2005 (Cth).  
[More...](#)

### ***Marina Cove Pty Ltd (rec's & m'gers app'td) v Pearl Hill Pty Ltd & Ors*** [2009] VSC 621

Real property - Removal of caveats - Large residential project - Building contract between developer and builder - Disputes arising - Heads of agreement entered into to settle disputes - Including provision for acquisition by builder of certain proposed lots - Further disputes - Caveat lodged by builder - Heads of agreement thereafter terminated by builder's acceptance of alleged repudiation - Developer later goes into receivership and administration - Further caveats lodged by companies associated with builder based on disputed contracts of sale - Application by developer for removal of caveats - No relevant accrued rights - No relevant estoppel - Caveators unable to establish serious question to be tried as to continuing proprietary rights in the land - Caveats ordered to be removed. [More...](#)

### ***Permanent Trustee Australia Ltd & Ors v Valeondis & Ors*** **[2009] SASC 37**

Torts - Negligence - Liability for others' negligence - Independent contractors - Appeal against judgment that one of three possible building owners was liable in negligence to first respondent - First respondent suffered injuries when the roof of a lift collapsed - Fourth appellant was managing agent for building - Whether managing agent was independent contractor - Consideration of relationship between building owner and managing agent - Whether building owner vicariously liable for negligence of managing agent. Torts - Negligence - Dangerous premises - Injuries to persons entering premises - Who is liable - Whether the lifts constituted "premises" for the purposes of the Wrongs Act 1936 (SA) s 17C - Whether lifts severable from the rest of the building.

Practice and procedure - Appeal and new trial - Appeal - General principles - Interference with judge's findings of fact - Functions of appellate court - Findings on issue of negligence. Torts - Negligence - Contributory negligence - Whether managing agent was negligent - Whether Judge erred in making various findings of fact and in drawing inferences from primary facts - Whether liability should be reduced on account of contributory negligence. Legislation Cited: Wrongs Act 1936 (SA).

[More...](#)

### ***Brady Constructions Pty Ltd v Everest Project Developments Pty Ltd*** [2009] VSC 622

Civil procedure - Appeal from Victorian Civil and Administrative Tribunal decision - Application for injunction restraining respondent from presenting a bank guarantee refused - Tribunal found a serious issue to be tried - Tribunal not satisfied that the balance of convenience favoured grant of injunction - Serious risk the respondent would not be able to repay the bank guarantee or any part thereof if required to do so in future - The Tribunal failed to have regard to critical material considerations affecting the real prospect of a risk of injustice - Matter remitted for further hearing by a differently constituted division of the Tribunal.

Legislation Cited:

Building and Construction Industry Security of Payment Act 2002 (Vic); Appeals Costs Act 1998 (Vic). [More...](#)

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