

The Application of Contracts in Engineering and Construction Projects by Dr Donald Charrett

With both legal and engineering qualifications, Dr Donald Charrett is well placed to provide guidance on the practical application of contracts on engineering and construction projects. This text is a compilation of papers written by Dr Charrett, with several co-authored chapters, that draw on his project expertise from design through to disputes.

I preface this review by noting that as a construction lawyer, I am not the author's intended audience. This text is principally directed to engineers and construction professionals, and its strength is that it engages with a global audience in the use of case studies and other examples from all over the world, including from Dr Charrett's own experience. As Dr Charrett articulates it, a construction contract is both a legal document and a contract management manual. It is therefore appropriate that this collection traverses both disciplines to deliver a manual to construction contracts for the various industry professionals on a project.

This is a comprehensive collection that could easily be handed to a junior construction professional to give them context to their role on a project – the early chapters cover the elementary nature of an engineer and how that role intersects with the construction contract itself. That being said, the level of engagement with some of the more nuanced aspects of project management make this text equally appropriate for a more advanced professional. While not intended as a text for lawyers per se, I think the context that this collection gives for the role that *all* manner of professionals play on a project would be beneficial for lawyers to appreciate, particularly those without an engineering background. One specific example that immediately comes to mind is Chapter 7 and 8, which look at the distinction between design life and service life mainly in the context of the recent leading UK decision on this point, *Mt Højgaard a/s v E.ON Climate and Renewables UK Robin Rigg East Ltd.*¹ This is, as Dr Charrett articulates perfectly, not a 'trivial exercise for a complex and detailed construction contract' and that 'experienced judges can have different views on the objective meaning of such a contract.'²

With the international rise in mega-projects (those Dr Charrett defines as having a capital cost in excess of US\$1B), chapter 12 will be of importance to construction professionals and lawyers alike globally, despite being one of the shorter chapters in the collection. The chapter focuses on challenges in achieving successful megaprojects. One of the key takeaways Dr Charrett notes in this chapter is the potential for a resourcing schedule to be used over price as the driving factor in procurement decisions. This is a practical and statistics-driven chapter, though given that only 35% of megaprojects were reported in the chapter as being successful, this collection was missing a chapter looking at the (almost inevitable) management of mega-disputes (for example, a discussion of the developing use of technology assisted review, or TAR, in the construction industry).

The projects and case studies used throughout are analysed from a very practical viewpoint, and offer specific working examples through aspects such as design technicalities and project management issues. One has only to look at chapter 14 for an example of this, where the working examples follow the projects (the Sydney Harbour Bridge and Kings Bridge in Melbourne) from

¹ [2017] UKSC 59

² Charrett, 86.

tender through the various iterations of the design. Unlike typical legal case studies, Dr Charrett's examples examine more than issues of liability and instead extend to an analysis of organisational, contractual and managerial aspects of project execution. This multi-disciplinary approach is a particular strength of this collection.

Another highlight of this collection are chapters 16 and 17 on the Canterbury earthquakes and the subsequent Royal Commission Report. Dr Charrett includes a comprehensive review of the report, including helpful breakdowns of the more technical aspects it contains.

Dispute avoidance and resolution is a well-covered topic in this collection, with a particular emphasis on the availability of dispute boards and their various iterations. Dr Charrett covers both the trends in Australia and internationally in the use of dispute boards, and explains the costs and benefits associated with them. Given that this text is directed to construction professionals, Dr Charrett makes the case for dispute boards, contending that they make commercial sense as a form of insurance against the risk of significant disputes.

While the chapters covering evidence are quite Australia-specific, the developments that Dr Charrett discusses in relation to the use of expert assessors and special referees in the Victorian bushfire litigation provide interesting commentary for international practitioners. These innovations are explored in the context of their broader use in construction disputes, particularly technically complex ones. Equally helpful are the comparative charts and tables used in chapter 29 which provide a comprehensive overview of the rules of evidence across the various Australian jurisdictions.

Thanks to Dr Charrett and Informa Law from Routledge for providing me with a copy in exchange for an honest review.

Review by Jaclyn Masters (Director, Society of Construction Law Australia)