

PROFESSIONAL LIABILITY IN AUSTRALIA

Authors: Stephen Walmsley,
Alister Abadee & Ben Zipser

Review by John Twyford

This work should be of interest to the readership of the *ACLN*. One way or another most of our readers will give professional advice or assistance that could attract liability. For that reason, this work is a timely addition to the Australian literature on the subject. So far as the reviewer is aware, there has been no Australian work on the subject since David Partlett's *Professional Negligence* published in 1985. The present work has the virtue of dealing with all aspects of professional liability. Since 1985, the areas of potential liability have expanded markedly. The book is in effect in two parts with Chapter 1 dealing with general principles, pp1-148. Chapters 2 to 8 deal with specific issues relating to: doctors, solicitors, barristers, accountants and auditors, building professionals, valuers and insurance brokers. The work is notable for its clarity and structure, with each chapter preceded by an overview directing the reader to matters of interest. By way of example, Chapter 1 opens with an explanation of the perplexing question of the meaning of the terms 'profession' and 'professional' pp9-10. At pp141-144 there is an interesting discussion of the professional indemnity insurance crisis in Australia.

Needless to say, the chief concern of *ACLN* is Chapter 6 regarding the position of building professionals. The authors point out that a building professional has a potential liability to his or her client in contract, tort, under statute (most notably the *Trade Practices Act (Cth) 1974* and state regulatory statutes like the *Home Building Act (NSW) 1989*) or by virtue of being an agent. The work is divided into discrete paragraphs dealing with a wide range of topics, including the basis of liability, standard of care and skill, defences, damages, and limitation or exclusion of liability. The positions of architects,

engineers, surveyors and builders are dealt with separately. The development of the Australian case law has made it necessary to include detailed discussions on liability to third parties and the application of the limitation period. All of these matters are dealt with in considerable detail with meaningful analyses of the relevant authorities. Tardy builders will be disconcerted to read at pp642-643 about the potential for a client who has suffered inconvenience, anxiety or distress to recover damages. One matter worthy of brief mention is the reference on p552 and subsequent pages to the fact that an architect 'supervises and administers' a building contract between principal and contractor. Some of the discussion is then predicated on a failure to provide adequate 'supervision'. The correctness of the discussion is not questioned but the point is made that most Australian standard construction contracts deliberately refrain from the use of the expression 'supervision' in an attempt to limit the liability of a person in the position of the architect. The change was a direct result of the High Court decision in *Florida Hotels Pty Limited v Mayo* (1965) 113 CLR 588. The book is recommended to legal practitioners who need to advise clients on their professional responsibilities. In addition, the view is expressed that the work has a wider appeal on the basis of an excellent explanation of the rules relating to negligence.

Stephen Walmsley SC is a judge of the District Court of NSW, Alister Abadee and Ben Zipser are members of the NSW Bar.

Professional Liability in Australia is published by Lawbook Co, 2002.

ISBN 0 455 21861 7; A\$226.00,
771 pages.
