involves the higher risks for architects, in fact an increasingly high proportion of claims relate to the architect's administration of the building contract.

As a result of recent decisions, the period of exposure for those in the building industry is now uncertain. The RAIA has been notified of a claim relating to a project completed 24 years ago.

If a person is sued for breach of contract, the limitation period during which the action has to be started, commences to run from the date of the breach.

If a claim is made in tort for negligence, the limitation period commences when the damage complained of is suffered. This may occur many years after the work is completed.

There can be a simultaneous liability for breach of contract and in tort for negligence. It is even more difficult to identify the period of exposure when there is a possibility of a series of events, each founding a separate cause of action and each with its own limitation periods.

What of the future? The professional associations are becoming more active in educating members on the need for professional indemnity insurance and for effective risk management.

The RAIA has been pressing for the introduction of a limitation of the liability period to bring us into line with the UK and a large number of states in the US.

- Karyn Kinsella, Partner, Phillips Fox, Solicitors.

9. ALTERNATIVE DISPUTE RESOLUTION - THE INSTITUTE OF ARBITRATORS INVOLVED

Although the Institute of Arbitrators, Australia published Conciliation Rules several years ago, it is fair to say that the Institute to date has had little involvement in alternative dispute resolution. That appears to be changing.

The Institute has informed members of its intention to establish a Register of Conciliators, Mediators etc. and to publish a List of the names on the Register. This Register and List will be separate from the Institute's List of Arbitrators and its Register of Practising Arbitrators.

Admission to the Register and List will be restricted to Institute members who are either Graded Arbitrators or lawyers who have attended an ADR course conducted by the Institute or comparable course conducted by the Australian Commercial Disputes Centre prior to October 1988. There will be no examination as a prerequisite to admission to the Register and List.

No doubt in support of this decision, the Institute is planning to hold its first alternative dispute resolution training course in October, 1988.

10. COURTING THE PROFESSIONS

The New South Wales Supreme Court Building and Engineering List is looking to the professions to assist it to deal with its heavy workload and backlog.

The Court is seeking experienced professionals from the architectural, building, engineering and quantity surveying professions to act as 1. arbitrators and conciliators; 2. Court appointed experts; and 3. as assessors, i.e. Judge's advisors.

In all three categories, the intention is that the person appointed would be considered a helper of the Court and would be entitled to "due respect and dignity".

11. IMMUNITY FROM THE TRADE PRACTICES ACT EXTENDED TO GOVERNMENT CONTRACTORS

The case of New South Bar Association & Others v Forbes Macfie Hansen Pty Ltd & Others (1988) ATPR 40-875 has implications for contractors to Government, as it extended the immunity from operation of the Trade Practices Act, which State Governments enjoy, to persons contracting commercially with a State Government.

In this case, an advertising agent under contract to the NSW Government to promote Transcover and WorkCover was able to obtain immunity in an action against it and the relevant Ministers for an injunction to stop allegedly misleading advertisements. The action for an injunction was dismissed summarily. The Ministers were held to have immunity both as principal offenders and as aiders and abettors of the allegedly misleading conduct. It was also held that the advertising agent's conduct in performing the contract was immune from the Act.

Although unlikely to have relevance to simple construction contracts, which would probably not attract allegations of breach of the Trade Practices Act, the case could have relevance to other situations such as joint ventures with a Government and development and subsequent lease or sale of Government land.

12. TAXES

In the current political climate and the uncertainty of the taxation debate, there is at least some possibility of the introduction of new taxes, such as a consumption tax on goods and services, which might increase the cost to contractors of performing contracts. As in the case of fringe benefits tax, the cost of such a tax may be extremely difficult to recover, if not impossible, depending upon the terms of the contract. It should not be assumed that the terms of a rise and fall clause would automatically result in full or even partial recovery, nor should it be assumed that recovery would necessarily be possible under the terms of the general conditions of contract.

Contractors should consider the potential effect on them, particularly since such a tax could equal or exceed the contractor's profit margin. There would seem to be the potential that such a tax could result in the bankruptcy or liquidation of some contractors, in the absence of a contractual right to recovery (or to full recovery) and in the absence of an ex gratia payment from the client.

It should also be noted that it would probably be difficult to gain the client's agreement to an ex gratia payment, due to the likely view that the new tax was applicable to the whole community, including the client, and that there was no compelling reason why the client should shoulder the contractor's burden (except perhaps to avoid the adverse consequences of the contractor's impending insolvency).

Consequently, it is recommended that contractors give serious consideration to including a qualification in future tenders in the following terms or similar:

> "If after the date hereof, a State or the Federal Government increases a tax or imposes a new tax other than income tax and thereby the cost to the Contractor of performing the Contract is increased, the Principal shall reimburse the Contractor to the extent that the Contractor is not entitled to be reimbursed under the Contract."

The terminology used in this proposal is based on that in contracts such as NPWC3 and AS2124. The provision would require amendment for other contracts such as JCC-A (which refers to "Builder", "Proprietor" and the "Agreement").

The proposed qualification is framed to entitle the contractor to full recovery, in the event that there would otherwise be no such right under the contract, and also to top-up recovery, in the event that there is a right under the contract to partial recovery. In the event that the contractor has a right under the contract, which entitles full recovery, then the provision would have no operation; the contractor would not get it twice.

Increases in income tax have been excluded on the basis that it