CHANGES TO JURISDICTION OF QUEENSLAND COURTS

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Substantial changes have been made to the jurisdiction of the District and Magistrates Courts in Queensland effective from 1 November 1989.

District Courts may now hear claims involving amounts up to $200,000 and the monetary limit of Magistrates Courts has been increased to $20,000. The monetary limits are exclusive of interest. In relation to District Court cases involving land, the monetary limit is calculated by reference to the most recent valuation of the land by the Valuer-General.

District Courts have also been given a fairly wide equitable jurisdiction so that, for example, actions may now be commenced in the District Courts for certain injunctions and declarations, specific performance and rectification.

Many medium-sized construction disputes will now fall within the jurisdiction of the District Courts and quite a number of building cases have now been transferred from the special building list in the Supreme Court to the District Courts. Unfortunately, no provision has yet been made for a building list in the District Courts so litigants in those Courts will not have the advantage of the streamlined procedures, compulsory mediation conferences, etc which are available in the Supreme Court's building list. A building dispute which falls within the jurisdiction of the District or Magistrates Courts generally cannot be placed on the Supreme Court's building list.

The payment into court procedure has been abandoned in the District Courts in favour of a scheme permitting parties (including plaintiffs) to make offers to settle which, in effect, are treated as being without prejudice save as to costs. Similar changes were made in the Supreme Court in 1988.

"CONSTRUCTION LIST" PRACTICE NOTE AND AMENDMENTS TO THE SUPREME COURT RULES NSW

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In this article, Philip Dawson sets out the key features of the recent NSW Supreme Court Construction List Practice Note and Amendments to the Supreme Court Rules. Interestingly, the Supreme Court will no longer refer part or all of disputes to arbitration but, instead, to Referees for report. The combination of Referee's report on technical and factual issues and judicial determination of legal issues and appropriate remedies is likely to prove an attractive combination for the construction industry; particularly in view of the potential for the Court to exercise a tight control over the time table for the dispute, which has been its recent practice.

Recently, there have been two series of changes to the Supreme Court Rules (NSW) which directly effect practice and procedure under the Construction List (as it is now known). The changes are the first significant changes to the List following administration of the List by the Commercial Division Judges, Rogers C J Com. Div, Brownie, Cole and Giles J J.

The changes were effected by amendments to Part 72 of the Rules (references to Arbitrators) and a new Construction List Practice Note. The amendments took effect from 22 September 1989 and the Building and Engineering (Construction) List Practice Note will take effect on and from 29 January 1990.

Supreme Court Rules Amendment No. 230 of 1989

- The amendments do away with the provisions which allowed the Court to refer a dispute before the Court to an Arbitrator, but continue to allow the Court to refer a dispute to a Referee.

- Where an order is made under Part 72 referring a question to a Referee:
  (i) the parties are obliged to give to the Referee a statement of the findings contended for and the Referee is obliged to annex the statements to his report; and
  (ii) the Court is required (rather than merely "permitted") to direct entry or judgment or such order as the Court thinks fit.

From a different perspective, the amendments remove from Part 72 the distinction between a "Referee" and an "Arbitrator" under a Court reference. This distinction was considered to be meaningless. In *Astor Properties Pty Limited v L'Union Des Assurance De Paris* (Supreme Court of New South Wales unreported 28 April 1989) Cole J said (speaking of Part 72 prior to the amendment):

> "It is clear that Part 72 requires review. In my opinion, the distinction between a Referee and an Arbitrator should be removed from Part 72. References under compulsion of the Court (whether the referee be agreed by the parties or designated by the Court) should be regarded as references. "Arbitration" should uniformly be used to refer to a consensual reference of parties, and the word "arbitrator" should relate to a person hearing such a consensual reference. Further, there is no need in Part 72 for any distinction to be drawn between a determination, or an inquiry".

The amendments do not change and should not be confused with the Court's power under Section 53 of the Commercial Arbitration Act, 1984 to stay Court proceedings and give directions with respect to the conduct of Arbitrations in respect of a matter agreed by the parties to be referred to Arbitration.

Arbitrators are often required to make decisions on