Christopher Phillip Barton & Cassie Francis Barton t/a Freeform Builders v John Stiff & Dulcie Stiff

Catchwords : **Building & construction** – contract for design and construction of house – warranty by designer/builder that materials would be good and suitable for the purpose for which used - actual and likely soil and groundwater conditions not such as to give rise to expectation that bricks would be subject to attack by salty groundwater – bricks failed due to attack by salty groundwater – whether designer/builder liable – *Domestic Building Contracts Act 1995* (Vic), s. 8.

JUDGMENT : Hargrave J. Supreme Court of Victoria, Melbourne. 8th November 2006

INTRODUCTION

1 By a building contract dated 5 January 2000 the plaintiffs ("the builders") agreed to construct a new house on land owned by the defendants ("the owners") in Wodonga. Some of the bricks used in the construction of the house, below the damp proof course, failed because they were affected by salty groundwater at the land.

2 The owners sued the builders in the Victorian Civil and Administrative Tribunal. The Tribunal ordered that the builders pay compensation to the owners for breach of the building contract.[1] The builders have appealed, by leave, to this Court.

3 The issue on appeal, and before the Tribunal, is who should bear the cost of rectifying the affected brickwork.

FACTS

4 Under the contract, the builders agreed to construct the house in accordance with plans and specifications prepared and supplied by them and in accordance with engineering designs prepared on their behalf.

5 Under cl. 7.0 of the contract, the builders were required to give the owners a soil test report and engineer's design of the structural aspects of the house, including the footings. As appears hereafter, the only soil test report which existed at the time of construction of the house was one prepared in 1992, eight years before the construction of the house. The owners gave a copy of this report to the builders.

6 Clause 11 of the contract contains express terms which are identical to the statutory warranties specified in s. 8 of the *Domestic Building Contracts Act 1995* (Vic) ("the Act").

7 Clause 11 of the contract relevantly provides:

11.1 The Builder warrants that the work will be carried out in a proper and workmanlike manner and in accordance with the Plans and Specifications set out in the Contract.

11.2 The Builder warrants that all materials to be supplied by the Builder for use in the work will be good and suitable for the purpose for which they are used and that, unless otherwise stated in the Contract, those materials will be new.

11.3 The Builder warrants that the work will be carried out in accordance with, and will comply with, all laws and legal requirements including, without limiting the generality of this warranty, the Building Act 1993 and the regulations made under that Act.

11.4 The Builder warrants that the work will be carried out with reasonable care and skill and will be completed by the date (or within the period) specified by the Contract.

11.5 The Builder warrants that if the work consists of the erection or construction of a home, or is work intended to renovate, alter, extend, improve or repair a home to a stage suitable for occupation, the home will be suitable for occupation at the time the work is completed.

11.6 If the Contract states the particular purpose for which the work is required, or the result which the Owners wishes the work to achieve, so as to show that the Owner relies on the Builder's skill and judgement, the Builder warrants that the work and any material used in carrying out the work will be reasonably fit for that purpose or will be of such a nature and quality that they might reasonably be expected to achieve that result.

8 The "*Particulars of Contract*" state that the house is required for the purpose of a "*residence*".

9 Construction of the house was completed in November 2000 and the owners took possession on 7 December 2000. Soon afterwards, disputes arose between the owners and the builders as to the quality of the building works. There were many and varied complaints.

10 In December 2002 the owners commenced proceedings in the Tribunal against the builders and their insurer. The claim against the insurer was dismissed and has no relevance to the issues arising on appeal.

11 In the proceeding, the owners alleged that there were approximately 60 items of defective work and claimed the costs of rectification. One of the items in respect of which they were successful was a claim that the bricks used by the builders below the damp proof course ("*the bricks*") were not suitable for the purpose for which they were used, with the result that the house was not reasonably fit for its intended purpose.

12 In his written reasons for decision, the tribunal member made the following relevant findings of fact:

(1) The owners made the builders specifically aware that they were relying upon the builders to design and construct "a properly constructed house".[2] In other words, a completed house which was structurally sound so that it would remain habitable for its expected design life of 40 to 50 years.[3]

1 ***Stiff v Barton*** [2005] VCAT 821.
2 [2005] VCAT 821, [5.18].
3 Ibid [5.7].

(2) There was "fairly severe salt efflorescence and spalling of brickwork" on specified sections of the brick walls beneath the damp proof course.[4]

(3) The source of the salt which had entered the bricks was salty groundwater present at the land.[5]

(4) The bricks were "general purpose" bricks which had a very low ability to resist salt precipitation and the resultant spalling of their surface. Accordingly, the bricks were "unsuitable in an environment where there is salty groundwater".[6]

(5) The tribunal member accepted the evidence of a local building surveyor and a local builder, both of whom had worked in the Wodonga area for many years on numerous housing construction projects near to the land, that they had never encountered salty groundwater in the vicinity of the land.[7] *As a result, the tribunal member found that the presence of salty groundwater at the land was "highly unusual".*[8]

13 In addition to the factual findings made by the tribunal member, there was some uncontradicted evidence before the Tribunal which was not the subject of any factual finding, as follows:

(1) A firm of geotechnical engineers provided a written report dated 22 July 1992 to an entity associated with the vendor of the land to the owners. The 1992 soil report specifically concerns the land and is headed "CLASSIFICATION OF FOUNDATION SOIL CONDITIONS". Relevantly, the 1992 soil report records that a single bore hole was excavated on the land to a depth of 1.5 metres and states that "No groundwater was encountered at the time of the investigation and the site is well drained".

(2) The first plaintiff, Mr Barton, gave evidence that he inspected the land after it had been cut to allow construction of the house and observed the soil conditions. He stated that there was no evidence of moisture in the soil at that time. This evidence was not challenged, notwithstanding that it was given after objection had been taken and the owners were given leave to give further evidence on the issue.

(3) Mr Andrews, a landscape contractor retained by the owners to perform certain works on the land including the installation of retaining walls, gave evidence that he could not recall any evidence of moisture either in the holes dug for the retaining walls or at the land generally.

(4) The Building Code of Australia 1996 ("the Code") was referred to in evidence. In particular, Mr Eerey, a brick expert who gave evidence on behalf of the owners, was asked questions about the Code. Mr Eerey gave evidence that, for the purpose of the Code, general purpose bricks are suitable in all circumstances unless "exposure class" bricks are required by the Code. Relevantly, the Code only requires exposure class bricks to be used where it is expected that the bricks will be subject to attack by salts in the groundwater.

THE TRIBUNAL DECISION

14 The tribunal member decided that the builders were responsible for the cost of replacing those bricks which had failed and rectifying the balance.[9] The process of reasoning adopted by the tribunal member is described below.

15 First, the tribunal member decided that, under both the common law and s. 8 of the Act, it was an implied term of the contract that the work to be performed by the builders, including the design obligation, will be "*competently done*".[10] By "*competently done*", the tribunal member was clearly referring to the obligation on the builders to carry out the services to be provided by them under the contract, including design services, in a proper and workmanlike manner or, in other words, with reasonable care and skill. The tribunal member was obviously correct in this regard. In any event, this was an express term of the contract in this case.[11]

16 Second, in addition to the term that the services provided by the builders under the contract would be carried out with reasonable care and skill, the tribunal member decided that the contract contained what he described as a "*warranty of fitness for purpose*".[12] In this regard, the reasons of the tribunal member are not entirely clear. However, when read as a whole, it is apparent that the tribunal member decided that, under both the common law and s. 8 of the Act, there were terms of the contract that:

(1) the materials supplied by the builders would be of good quality and reasonably fit for the purpose for which they were used;[13] and

(2) as the purpose of the house was made known to the builders, so as to show that the owners were relying on their skill and judgment, the completed house would be reasonably fit for its intended purpose.[14]

4 Ibid [5.1]. *"Spalling"* is a process whereby pieces of brick are repeatedly broken off the exterior face of a brick as a consequence of water movement through the brick. Relevantly, spalling can be caused by mineral salt being deposited in the fine cracks of a brick when the moisture evaporates from the surface of the brick.

5 Ibid [5.5]-[5.7]. The tribunal member rejected evidence given on behalf of the builders that the source of the salt was "*from the bricks themselves*".

6 Ibid [5.6]-[5.7].

7 Ibid [5.11].

8 Ibid [5.23].

9 The tribunal member considered that the bricks which had already spalled were defective and should be removed and replaced. The two courses of bricks below the damp proof course, both original and replaced, should then be treated with a chemical damp proof coursing treatment. Given the amount of spalling in one area of the house, one wall required demolition and reconstruction: [2005] VCAT 821, [5.8]. The cost of these works formed the basis of the monetary order made by the tribunal member with respect to the failure of the bricks.

10 [2005] VCAT 821, [5.14].

11 Clauses 11.1, 11.4.

12 [2005] VCAT 821, [5.16]-[5.23].

13 Ibid [5.21], [5.23].

14 Ibid [5.18].

17 Third, as to the extent of the builders' warranties of fitness for purpose, the tribunal member decided that these were absolute obligations, which could not be satisfied by the builders establishing that they acted with reasonable care and skill in using general purpose bricks below the damp proof course. In this regard, the tribunal member emphasised that he reached this conclusion because the builders were both designers and builders of the house.[15]

18 Fourth, notwithstanding that the tribunal member found the presence of salty groundwater at the land was *"highly unusual"*, the tribunal member concluded that the builders were in breach of their absolute warranty of fitness for purpose.[16] The tribunal member's reasons for reaching this conclusion are not entirely clear. This is because no distinction was drawn between the separate warranties to provide materials of good quality, to provide materials which were suitable for the purpose for which they were used and to provide a completed house which was reasonably fit for its intended purpose.

19 The tribunal member referred to a number of authorities and quoted extensively from a number of texts dealing with these warranties and concluded:

> *5.22 From the point of view of law and from the proper management and apportionment of responsibility in construction contracts... the obligation of the designer builder is absolute and the builders' claim that they only need to perform reasonably is not correct and I consider that the builders are liable for the spalling bricks and are responsible for their rectification.*
>
> *5.23 I make this finding in this case only in respect of the builders because they have a design as well as the build obligation. The design obligation is very important in this case because I accept that the situation is highly unusual to find salty groundwater in this area; however, given the builders' obligation to investigate the site and prepare a competent design, the absolute warranty means that the builders are responsible for any latent defect as is evidenced in this case by the presence of salty groundwater causing the bricks to spall.*[17]

DETERMINATION OF THE APPEAL

20 It was submitted on behalf of the owners that the tribunal member was correct in reaching these conclusions. Reliance was placed upon the express terms of the contract, the statutory warranties under s. 8 of the Act and the existence of implied terms to similar effect. It was submitted that these terms and warranties were all absolute, in the sense discussed by the tribunal member and that the builders could not satisfy their obligations by the mere exercise of reasonable care.

21 I will first consider the builders' warranty that materials of good quality would be used in the construction of the house. It was submitted on behalf of the builders that the tribunal member did not find that the bricks were not good quality general purpose bricks. I accept this submission. The tribunal member decided that the bricks could not withstand salty groundwater because they were general purpose bricks, not exposure grade bricks. In this regard, the tribunal member accepted the evidence of an expert, called on behalf of the owners, that the bricks:

> are unsuitable in an environment where there is salty groundwater. The bricks used are *"general purpose"* bricks... what is required is exposure grade bricks...[18]

22 In my view, the reference in paragraph [5.23] of the tribunal member's reasons to the builders being responsible *"for any latent defect as is evidenced in this case by the presence of salty groundwater causing the bricks to spall"* is not a finding that the bricks were not good quality general purpose bricks. The reference to *"latent defect"* is unexplained and inconsistent with the expert evidence accepted by the tribunal member.[19]

23 I turn to consider the extent of the builders' obligation to supply materials, and a completed house, which were fit for the intended purpose.

24 In ***G.H. Myers & Co v Brent Cross Service Co***,[20] the Court of Appeal in England considered a contract for work and labour and the supply of materials. The case concerned the repair of a motor vehicle. The relevant principle was stated by du Parcq J in the following terms:

> *But it would not be true to say that wherever you find a contract to do work and supply materials it necessarily follows, even apart from special conditions, that the person supplying the materials is liable if some of them are defective by reason of latent defect. That depends upon the terms of the contract, and I think that the true view is that a person contracting to do work and supply materials warrants that the materials which he uses will be of good quality and reasonably fit for the purpose for which he is using them, unless the circumstances of the contract are such as to exclude any such warranty.*[21]

25 The decision of du Parcq J in ***Myers v Brent Cross Service*** was approved and followed by the House of Lords in ***Young & Marten Ltd v McManus Childs Ltd*** [22] and by the High Court in ***Helicopter Sales Pty Ltd v Rotor-Work Pty Ltd.***[23]

15 Ibid [5.22]-[5.23].
16 Ibid.
17 Ibid.
18 Ibid [5.6].
19 Ibid.
20 [1934] 1 KB 46.
21 Ibid [55].
22 [1969] 1 AC 454.
23 (1974) 132 CLR 1.

26 In ***Hancock v Brazier (Anerley) Ltd*** [24] Diplock LJ (sitting as an occasional judge of the Queens Bench Division) considered a contract of sale of land on which the vendor agreed to construct a house "in a proper and workmanlike manner... in accordance with the plan and specification supplied to the purchaser."[25] The plan specified for a concrete floor which was to be laid over "hardcore".[26] Without any fault on the part of the vendor, the hardcore had a component which caused, in the presence of water, a chemical reaction between the hardcore and the concrete. This chemical reaction caused the floor to break up.[27]

27 After reviewing a number of authorities, Diplock LJ concluded that the vendor, in addition to the express warranty to construct the house in a proper and workmanlike manner, impliedly warranted that "the house should be built of materials suitable and fit and proper for the purpose"[28] and, when the express and implied warranties were taken together, an alternative way of stating them was that the house was warranted to be "*habitable and fit for humans to live in*".[29] As the hardcore was not fit, proper and suitable for its purpose, there was a plain breach of the warranty.[30]

28 The Court of Appeal agreed.[31] Lord Denning MR said: ... *when a purchaser buys a house from a builder who contracts to build it, there is a threefold implication: that the builder will do his work in a good and workmanlike manner; that he will supply good and proper materials; and that it will be reasonably fit for human habitation. Sometimes this implication, or some part of it, may be excluded by an express provision... The question in this case is whether the threefold implication is excluded by clause 9. I think not. For this simple reason: clause 9 deals only with workmanship. It does not deal with materials. The quality of the materials is left to be implied. And the necessary implication is that they should be good and suitable for the work. I am quite clear that it is implied in the contract that the hardcore must be good and proper hardcore, in the same way as the bricks must be good and proper bricks. I know the builders were not at fault themselves. But nevertheless this is a contract: it was their responsibility to see that good and proper hardcore was put in. As it was not put in, they are in breach of their contract.*[32]

29 It was submitted by the vendor in ***Hancock v Brazier*** that its obligation was limited to using reasonable skill and judgment in the selection of the hardcore. This submission was firmly rejected by both Diplock LJ [33] and Lord Denning MR.[34]

30 There was no issue in ***Hancock***, as there is here, about the likelihood of the hardcore coming into contact with groundwater.

31 In ***Viking Grain Storage Ltd v TH White Installations Ltd*** [35] Judge John Davies QC (sitting as an official referee of the Queens Bench Division) considered a contract for the design and construction of a grain storage installation which failed due to groundwater condition at the land. As in ***Hancock v Brazier***, there was no issue, as there is in this case, about the likelihood of the groundwater which caused the damage coming into contact with the building. The judge concluded:

> *In the absence of any contrary indication that I can find in the contract, I turn therefore to the positive question: should a term of reasonable fitness for purpose be implied, or is it that in matters of the design, specification and supervision of the works, White's obligation is, as they contend, limited to the exercise of reasonable care and skill. It is worthy of note that they admit an implied obligation, unqualified by negligence, to use materials of good quality and that they also admitted during the hearing the further obligation that those materials should be reasonably fit for the purpose "subject to the terms of the contract". I confess at the outset that I find it difficult to comprehend why an entire contract to build an installation should need to be broken into so many pieces with differing criteria of liability. The virtue of an implied term of fitness for purpose is that it prescribes a relatively simple and certain standard of liability based on the "reasonable" fitness of the finished product, irrespective of considerations of fault and of whether its unfitness derived from the quality of work or materials or design.*
>
> *In my view, such a term is to be implied in this case...*
>
> The suggestion that matters of design should be regarded as involving no higher duty than that of reasonable care was put forward and rejected in ***IBA v EMI*** (1978) 11 BLR 38, where the judgment was delivered by Roskill LJ, where the Court of Appeal could see no good reason for importing into a contract of this nature a different obligation in relation to design from that which plainly exists in relation to materials. To find otherwise in this particular case, where Viking clearly relied, in all aspects, including design, on the skill and judgment of White to produce an end result would, in my view, be to destroy the whole basis of the bargain. The obligation to design a product fit for its purpose is already tempered by the fact that only "*reasonable*" fitness is demanded; to add to

[24] [1966] 1 WLR 1317.
[25] Ibid 1323.
[26] Ibid.
[27] Ibid 1332, per Lord Denning MR in the Court of Appeal.
[28] Ibid 1327.
[29] Ibid.
[30] Ibid 1328.
[31] Ibid 1331.
[32] Ibid 1332-3.
[33] Ibid 1327.
[34] Ibid 1332-3.
[35] (1985) 33 Build LR 108.

that a requirement of proof of lack of due care seems to me to emasculate, and magnify the uncertainty of, the obligation to such an extent as would be neither acceptable nor realistic in a commercial transaction.[36]

32 In the eleventh edition of *Hudson's Building and Engineering Contracts* it is stated:

> *3.028 In all construction contracts, however, whatever the descriptive terminology, it is now clear that, where an owner can be seen to rely on the contractor for the design, the latter's responsibility in law will be to produce, in the absence of express provision, a final work which, independent of any question of fault on his own part, will be suitable for its required purpose. In case after case at the present day contractors who agree to design as well as build have sought to argue that their liability for design should be one of due or professional care only, on the specious argument that it is unfair to impose a higher duty than that of a professional designer. The courts have constantly rejected these arguments, first on an implied term basis in the case of developer and builder vendors of "houses in the course of erection", and later when advanced by contractors who have expressly agreed to design: It was not merely an obligation to use reasonable care. The contractors were obliged to ensure that the finished work was reasonably fit for the purpose.*[37]

33 There was no dispute as to the above principles. The builders accepted that their warranty of fitness for purpose, whether express or implied, was absolute. However, it was submitted on behalf of the builders that the tribunal member nevertheless made an error of law in his consideration of the intended purpose of the house. It was submitted that:

(1) The tribunal member ought to have considered the intended purpose for which the house was constructed by reference to the particular location of the land.

(2) When the purpose was considered in this context, the intended purpose for which the house was constructed was, relevantly, to meet the groundwater conditions actually prevailing at the time of construction or which were likely to be encountered at the land during the expected design life of the house.

(3) The evidence established that there was no groundwater, salty or otherwise, at the land at the time of construction and the tribunal member found that it was highly unusual to encounter salty groundwater in the vicinity of the land.

(4) Accordingly, the intended purpose for which the house was constructed was, relevantly, to provide a house which was fit for the actual and likely groundwater conditions at the land.

(5) As the actual and likely groundwater conditions at the land were not such as to give rise to the expectation that the bricks would be subject to attack by salts in the groundwater, the bricks were reasonably fit for their intended purpose.

34 I directly asked the builders' counsel if there was any authority supporting these submissions. He said that there was none. My own research has revealed to the contrary.

35 In ***Independent Broadcasting Authority v EMI Electronics Ltd and BICC Construction Ltd*** [38] the Court of Appeal in England considered a claim against a contractor of a television mast who had undertaken design obligations. At first instance, it was held that the contractor was liable in both contract and negligence. On appeal, the Court of Appeal upheld the findings of breach of contract but decided that the contractor had not been negligent. In upholding the trial judge's finding of breach of contract, the Court of Appeal accepted that there was, in the circumstances of the case, an implied obligation as to reasonable fitness for the purpose, and that this obligation was not qualified by a duty to exercise reasonable care only.[39]

36 In *Independent Broadcasting*, Roskill LJ accepted an argument that the television mast was not fit for its intended purpose because it failed to withstand weather conditions which were not out of the ordinary. Roskill LJ said: *We therefore have no difficulty in reaching the conclusion that there is in the contract... an implied obligation as to reasonable fitness for purpose.*

> *But that answer still leaves unresolved what the extent of that obligation is. The learned judge expressed the obligation as an obligation to design, supply and erect a mast that would stand up, subject to proper maintenance, and remain standing up for a reasonable life. We venture to think that the learned judge, on any view, has in this passage expressed the obligation somewhat too widely, for taken literally as he has stated it there would be implied into each contract an obligation that the mast would, for example, withstand being struck by a meteorite or perhaps by some trespassing aircraft. That was obviously not his intention... [Counsel for the owner] contended that the obligation must be measured by the purpose for which the mast was required, and if, as was the case, it was required for the purpose of transmission of television and radio programmes and fell down in ordinary weather conditions, then it was not fit for the purpose for which it was required...*
>
> *We have come to the conclusion that the contractual obligation upon EMI and BIC was to provide a mast which would be proof against any meteorological conditions likely to be encountered in that area.*[40]

37 In my view, the reasoning in ***Independent Broadcasting*** should be applied to this case. The conclusion in that case as to the content of the obligation as to reasonable fitness for purpose is, in my opinion, a statement as to the way in which the relevant purpose is to be identified. It is not a statement as to the content of the objective standard of

[36] Ibid 117-8.
[37] At [3.028] (citations omitted).
[38] (1978) 11 Build LR 38.
[39] Ibid 50-3.
[40] Ibid 52-3 (emphasis added).

reasonable fitness. Nor does it mean that the warranty of fitness for purpose is not absolute. It means that the absolute warranty of fitness for purpose relates to the purpose as properly identified.

38 The approach by Roskill LJ takes account of unexpected natural disasters and other cataclysmic events, such as cyclone, earthquake or flood. Contracting parties should not be taken to have intended such cataclysmic events to be the subject of a warranty of fitness for purpose; at least where such events are not likely to be expected in the area of the building which is the subject of the contract. This is so whether that warranty is expressed in terms of reasonable fitness for purpose or, in the words of cl. 11.2 of the contract in this case,[41] as a warranty (unqualified by an objective standard of reasonable fitness for purpose) to provide materials which are "*suitable for the purpose*".

39 In this case, there is no cataclysmic event. However, the reasoning in *Independent Broadcasting* is, in my view, applicable. If this is not the case, it would be tantamount to finding that the contract provided for the builders to be insurers of the house. The parties could not have intended this. I hold that the warranties of fitness for purpose in this case required the builders to provide materials, and a completed house, which would be proof against any groundwater conditions likely to be encountered at the land. As the presence of salty groundwater at the land was "*highly unusual*", the failure of the bricks for this reason does not constitute a breach of those warranties.

40 It follows that, by failing to consider the purpose by reference to the likely groundwater conditions as found by him, the tribunal member erred in law. That error was probably caused by the failure to refer the tribunal member to the decision in the ***Independent Broadcasting*** case. The legal issue was a difficult one and the tribunal member was entitled to expect more assistance than he was given. I note that the ***Independent Broadcasting*** case is referred to in the ***Viking Grain*** case, upon which much reliance was placed before the tribunal and this Court.

41 The result of the appeal depends upon the factual finding by the tribunal member that the presence of salty groundwater at the land was highly unusual. This factual finding was criticised by counsel for the owners as not being properly based upon evidence. However, I am satisfied that this factual finding was open to the tribunal member on the evidence before him. The acceptance by the tribunal member of the evidence of a local building surveyor and a local builder, to the effect that they had never encountered salty groundwater in the vicinity of the land, provided an evidentiary basis for this factual finding. Further, the 1992 soil report, and the evidence of Mr Barton and Mr Andrews as to their observations of the actual groundwater conditions at the land at the time of construction, provided some support for the factual finding. In these circumstances, it was not competent for the owners to challenge this factual finding on appeal. Section 148(1) of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) permits an appeal from the tribunal on a question of law only, and then only with leave. This is not a case where it can be said that there is an error of law constituted by making a factual finding without any evidentiary basis.[42]

42 I conclude by referring to the criticisms made by the tribunal member as to the quality of the expert evidence placed before him. The tribunal member said that the expert reports were unhelpful because they were not based upon scientific testing.[43] In these circumstances, the tribunal member was required to do the best he could and decide the case on the evidence put before him. This is what he did. The deficiencies in the expert evidence are attributable to the parties, not to the tribunal member.

43 For the above reasons the appeal will be allowed. I will hear the parties as to costs and as to the form of the judgment.

Mr S Stuckey instructed by Richmond & Bennison For the Plaintiffs
Mr S Smith instructed by Timothy Hemsley & Associates For the Defendants

[41] See also s. 8(b) of the Act.
[42] ***Azzopardi v Tasman UEB Industries Ltd*** (1985) 4 NSWLR 139, 155-157; ***Australian Broadcasting Tribunal v Bond*** (1990) 170 CLR 321, 355-6; ***Roads Corporation v Dacakis*** [1995] 2 VR 508, 517-20; ***S v Crimes Compensation Tribunal*** [1998] 1 VR 83, 89-91.
[43] [2005] VCAT 821, [11.1]-[11.7].