

countants who operate traditionally in a partnership context will now be liable for any misleading or deceptive conduct or other such practices engaged in by themselves or their employees in the course of their practices.

Clearly the Fair Trading Act will have important ramifications on how both businesses and professional practices are conducted in the future and will result in a significant increase in the exposure of traders and professionals alike to claims for improper conduct.

- Reprinted with permission from Henderson Trout's HT Update.

## MINISTER ANNOUNCES IMMEDIATE PROTECTION OF HERITAGE BUILDINGS

On Sunday March 11, 1990 the Queensland Environment and Heritage Minister, Mr Pat Comben announced details of legislation to be known as the Historic Buildings Preservation Act.

From that date anybody demolishing, damaging or altering any building contained in a schedule of "Listed Historic Places" will be liable to fines of up to \$1 million as well as a jail term of up to seven years. The government will also prevent new buildings being erected on sites where heritage buildings are demolished.

Effectively this means that a freeze will apply to any proposals involving demolition, subdivision, significant alteration or development of listed properties from Sunday 11 March, 1990 unless permitted by the Minister.

### Which properties are affected?

The Minister has announced that approximately 1100 properties and places considered to be of heritage value and of importance to the community are in the schedule. These include hotels, private dwellings, agricultural and pastoral buildings and structures, cemeteries, engineering works, sawmills and smelters, commercial properties and warehouses, churches and halls.

Recently the full list contained in the schedule to the Historic Places Preservation Bill was made available to the writer.

### The proposed legislation

Queensland will model the proposed legislation on the New South Wales Heritage Act and the Victorian Historic Buildings Act and interim legislation will apply from 11 March, 1990. The legislation will prohibit unauthorised demolition and subdivision, significant alterations or development of listed properties.

**Demolition** will be defined as damaging, defacing, destroying, pulling down or removal of a building or work in whole or in part.

**Subdivision** will be defined as the division of a property containing a listed place into two or more parts.

**Significant Alteration** will be defined to include the making of substantial changes to the internal or external fabric or appearance of a building or work involving:

- refurbishment or renovation;
- painting or plastering except for the purpose of essential repair and maintenance;
- rebuilding, enlargement, extension, removal or replacement of existing structural fabric;
- any changes to the existing landscape of a listed property including changes to natural features or works.

**Development** will be defined to include:

- the erection of a building or the undertaking of which would have an irreversible impact on the heritage values of listed properties;
- the rebuilding, enlargement, extension of a building or work, or the placing or relocating of a building on a listed property.

Owners will be required to ensure that listed properties are maintained in a state of repair at least comparable to that applying at the same time of introduction of the Act.

#### **Appeal Rights**

No announcement has been made regarding appeal rights during the transitional period until the Act is proclaimed, although the Minister has said that full objection and appeal procedures will be included in the Act.

- **Reprinted with permission from Henderson Trout's HT Update.**

## **PROTECTING SUBCONTRACTORS AGAINST THE INSOLVENCY OF THE MAIN CONTRACTOR**

- Philip Davenport

**The recent financial collapse of some large contractors highlights yet again the plight of subcontractors. Frequently the situation is that a subcontractor has done work or supplied materials and prior to payment the main contractor becomes insolvent. Then a bank may appoint a receiver pursuant to a charge given, perhaps years earlier, by the contractor to the bank to secure an overdraft. The receiver collects payment from the Principal for the work or materials and pays the moneys to the bank, leaving the subcontractor unpaid. A recent Canadian case illustrates an approach which protected the subcontractors in such a situation. It seems that it would be in the interests of both subcontractors and Principals to explore whether Australian States should introduce legislation similar to that in Canada.**

The case is *Canadian Commercial Bank v. Simmons Drilling Ltd* [1989] 62 D.L.R.[4th] 243. The legislation which protected the subcontractors was the Builders' Lien Act, S.S. 1984-85-86, the relevant parts of which are:

7(1)

All amounts:

- (a) owing to a contractor, whether or not due or payable; or
- (b) received by a contractor; on account of the contract price of an improvement constitute trust fund for the benefit of:
  - (c) subcontractors who have sub-contracted with the contractor and other persons who have provided materials or services to the contractor for the purpose of performing a contract; and
  - (d) labourers who have been employed by the contractor for the purpose of performing the contract.

- (2) The contractor is the trustee of the trust fund created by subsection (1) and he shall not appropriate or convert any part of the trust fund to his own use or to any use inconsistent with the trust until all persons for whose benefit the trust is constituted are paid all amounts related to the improvement owed to them by the contractor.

- 15. In addition to any other priority which a beneficiary of a trust constituted by this Part may have in law, a beneficiary has priority over all general or special assignments, security interests, judg-