

Editorial

Editorial

John Twyford

KEIRAN TAPSELL MADE THE POINT in *ACLN* issue #71 that commercial law is losing much of its certainty. Justice Rodger Gyles of the Federal Court in addressing a seminar conducted by the Building Science Forum on 28 March 2001 made a similar point. His Honour noted that the principles of estoppel, negligence and the application of the *Trade Practices Act 1974* (Cwth) impacted on of contracts. In commercial transactions, the agreement reached by the parties represents their view on how the transaction should proceed. In particular the agreement allocates any risk inherent in the execution of the transaction. As the law is developing, the agreement reached between the parties does not necessarily determine the extent of their liability to each other or, indeed, to third parties. Two articles in this issue deal with the subject. First, a scholarly discussion by Kelly Godfrey analyzing the High Court's latest pronouncement on the recovery of damages for pure economic loss after a breach of a duty of care. It would seem that the notion of proximity is being supplanted by a new concept of vulnerability in the plaintiff. As was mentioned by another speaker at the Building Science Forum, this does not make the task of a lawyer advising his or her clients any easier. Alan Churley and Roland Natrass pursue the same theme in their discussion of section 51AC of the *Trade Practices Act 1974* (Cwth).

Again the *ACLN* has been well served by our regular contributors. Adrian Bellemore deals with the need to comply with notice provisions in contracts and concludes (appropriately, it is suggested) that a recent decision of the Supreme Court of the Northern Territory is not in accordance with precedent. Phillip Davenport discusses some English precedents that have the potential to throw light on adjudication under the *Building and Construction Industry Security of Payments Act 1999* (NSW).

The NSW Government is again considering amendment of the *Home Building Act 1989* (NSW) and to that end has made public its intentions. Christopher Wong describes in detail those proposals. It remains to be seen if, in the light of the HIH failure,

the Government will remain wedded to the principle of home warranty insurance being provided by the insurance industry.

In addition to these matters, there are some highly significant changes to the law that will require close study in the future. The introduction of moral rights by the Federal Government to the *Copyright Act 1968* (Cwth) will mean that those who intend to renovate or demolish a building will need to be mindful of the moral rights of the original designer. Finally, the Federal Court has recognized that drug addiction is a disability. Victoria Hiley explains the consequences of this.

We regret that the first issue of *ACLN* is appearing a little later than we would have hoped. This was due to the need to find a new Assistant Editor. It is a pleasure to welcome Sally Beech who will be assisting in this regard and the succeeding issues will follow this issue promptly.

The index and binder for the year 2000 will be forwarded with issue #77. ■