

### EDITORIAL

John Twyford

A casual observer of this issue could be forgiven for gaining the impression that the construction industry is somewhat paranoid about being paid. This is perhaps correct and understandable. Profit margins are small and disputed payments can cause both head contractors and subcontractors what *Arfer Daley* was happy to call 'grief'. The need to ensure payment is referred to three times in this publication. Stuart Miller summarises well the position with regard to liens and charges in Victoria and probably the rest of Australia. Philip Davenport explains the fine-tuning of the *Building and Construction Industry Security of Payment Amendment Act 2002* (NSW). It is noted that our editorial remarks in issue #87 on the same subject have attracted a riposte. Presently we are investigating the possibility of publishing the results of the research referred to in a later issue.

Greg Steinepreis and Rebecca Lee have provided *ACLN* with a very interesting paper on risk allocation. To some extent the findings of the authors confirm the view of a now sadly deceased member of the NSW bar when he described risk allocation as an application of the 'Golden Rule' that is, the party with the gold gets to make the rules. Another principle that seems to still have currency is to get one's contracting partner to take as much risk as possible: preferably without his or her knowing. Perhaps the most notable statistic to come out of the authors' work is the fact that on average 44% of parties to transactions undertook no formal risk assessment in the tendering process.

For those of our readers who are employers or employees Kelly Godfrey's scholarly article will be of considerable interest. It is still to be seen how the Australian case law will develop. Again for employers, Heechung Sung's note as to the

increase in penalties under the *Occupational Health and Safety Act 2000* (NSW) comes as a timely warning. The issue concludes with discussions of a number of cases dealing with contractual relationships and the *Workplace Relations Act 1996* (Cth).