EDITORIAL

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Issue #94 is the first issue of *ACLN* for 2004. We trust that our readers have had an enjoyable festive season and are now settled in to daily tasks. From the material that we have been able to present in this issue, it appears clear that there will be no shortage of matters to discuss in the forthcoming issues. We would like to remind our readers that we are always interested in hearing from you. This may be by way of suggestions, criticism, correspondence or contributions. Needless to say, we will remain on the look–out for material to publish. In this regard, it is thought that we are off to a good start.

The article by Professor Carter and Dr Peden presents a different view on the appropriate legal basis for a number of decisions of the courts dealing with the notion of 'good faith' in contract law. Many, if not most, of the decisions in this area are from the construction industry and accordingly, the developments in legal theory are of considerable interest.

Brian Farmer has provided our readers with a helpful overview of the 4000 series contracts published by Standards Australia. In particular, he was at pains to point out the ways in which AS4000–1997 improved on AS2124–1992. Even so, there is anecdotal evidence that a number of principals and consultants continue to use AS2124–1992 in preference to AS4000–1997. We would be interested to know if this is so.

The *Building and Construction Industry Security of Payment Act 1999* (NSW) has raised hackles one way or another in the industry. The upshot has been a spate of litigation. Philip Davenport is as well–qualified as any person to review these decisions and he has done so in a most informative way.

Reece Allen summarises the types of security available and describes the impact of the decision of *Boral Formwork v Action Makers* on standby letters of credit used as security in the case. The application of the *Trade Practices Act 1974* (Cth) will now no doubt be tested in other circumstances where a party thinks a security has been improperly called up.

Chris Rumore and Christopher Wong, in separate articles, describe further tinkering at the edge of the New South Wales home warranty scheme. The statutory protection of some clients of the building industry has, since its inception in 1971, undergone an almost indecent number of changes. In some instances, the changes were in response to some stunningly successful pressure groups. Perhaps it is now time to give up and let the industry be regulated by market forces and common sense.

Andrew Shields discusses the arguments put to the High Court by counsel for the appellant in the *Woolcock St Investments* case. It is hoped to extend the application of *Bryan v Maloney* to other than domestic buildings. The decision of the High Court will be received with great interest. It is yet to be established if the duty of care identified in *Bryan v Maloney* arises where a state legislature has provided ongoing remedies for defective domestic buildings (which is most, if not all, mainland states). Brooking JA noted the point in *Zumpano v Montagnese*. If the arguments persuade the High Court, the cat will be very much amongst the construction industry pigeons.

Adrian Bellemore discusses the recent decision of the Supreme Court of New South Wales in *Concrete Constructions v Litevale Pty Ltd and Ors (No. 2)*. The decision revolves around the law of restitution, and the moral of the story is that a contractor who is directed to accelerate, must give notice of an intention to claim