EDITORIAL

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We welcome our readers back in 2006 and look forward to your continued support of the ACLN. For our part, we will continue to seek out material of interest. In this regard, we know that we can rely on the professions, academia and industry.

Publications such as the ACLN do not remain static and new ideas are always welcome. In the current issue we have continued our policy of diversity, with discussions of a number of discrete legal issues. Professor Uff's contribution to the first issue of ACLN for 2006 is a timely one. He reminds us of the need for those engaged in construction law to be concerned with questions of ethics. Most have an ethical allegiance to another profession, be it law, engineering or architecture. It is pointed out that the standard of conduct to be expected of a professional person working in construction law 'should amount to not less than the sum of the individual parts' of the existing professional codes. The paper proceeds with an interesting discussion of recent initiatives in the United Kingdom and concludes with Professor Uff's suggestion as to what a code might contain. Two Royal Commissions into the affairs of the construction industry in Australia have more than demonstrated the need for similar initiatives here. It is to be hoped that relevant professional bodies will take up the challenge. ACLN is eager to promote discussion on this issue and accordingly, would like to hear from our readers.

James Morgan–Payler describes the relatively rare instance of a contractor warding off an attempt by a principal to call up a bank guarantee. The court found that there were serious issues to be tried and that the balance of convenience was in favour of maintaining the status quo.

The recent changes in the Australian industrial law, the proliferation of written employment contract and the mobility (and vulnerability) of senior employees has thrown into relief the true nature of the employment contract. Dr Joellen Riley introduces us to the concept 'mutual trust and confidence' operating within such contracts. Dr Riley argues that this principle is more than an implied term but rather 'a principle of interpretation to be applied to all terms of the contract'. This will make it difficult to draft contracts that deny rights to employees. The Australian case law however, is yet to develop on this subject.

Andrew Chew has provided us with helpful advice on drafting alliance contracts. In particular, his comments on good faith, insurance and the relationship with subcontractors to the alliance deserve close scrutiny.

Disputes in the women's fashion industry do not normally merit discussion in the columns of ACLN, however, the litigation in La Donna v Wolford raises some important questions concerning arbitration. Alex Baykitch and Katherine Williams point to the care that must be taken by a party wishing to preserve the right to arbitrate. Particular care is needed in relation to interlocutory proceedings related to injunctions and security for costs. A party wishing ultimately to arbitrate should signal this intention as early as possible. The upshot was that the matter remained in the Victorian Supreme Court thereby depriving the parties (and their legal advisors) of a trip to Vienna.

Nick Rudge and Victoria Foster discuss another decision of the Victorian Supreme Court where it was held that a principal could

not set off counterclaims against progress certificates under the AS4000–1997 form of standard contract. This is apparently also the position under the JCC documents but not under the Property Council's PC–1 1998.

Philip Copeland writes about a matter that is dear to the heart of the building industry, namely, the status of independent contractors. Some of our readers will no doubt remember the outcome of the Burns Inquiry where the Commissioner unequivocally recommended the maintenance of the status of independent contractors in the NSW housing industry. This was supported by research by David Woodhead of the CSIRO who demonstrated the high productivity of the same workers. The Federal Government seems anxious to continue the benefits of the system in the proposed Independent Contractors Bill. It is now not sure if the legislation will be proceeded with as many of the proposals are to be found in the Workplace Relations (Work Choices) Act 2005 (Cth). Apparently the Minister favours the common law approach to the definition of an independent contractor so it may be necessary to revisit the Palais de Danse case. One thing is certain—the building industry will not object to the legislation.

Robert Riddell explains how the Business Professionals Act 2005 (NSW) will work. When the act comes into force, a Building Professionals Board will take over the function of accrediting and regulating building certifiers in NSW. This will be a decided advantage as the function is presently imperfectly performed by no less than four separate instrumentalities. The author suggests that the reform will result in better certification, better quality buildings and cheaper, more accessible insurance.

The NSW Government has released its plan for the development of greater Sydney over the next 25 years. Nick Thomas describes in detail what we might expect from this ambitious plan. It is reminiscent of the Sydney Region Outline Plan of the 1960s. It seems that by the year 2031 we will be sharing our city with another 1.1 million more people.

Stephen Pyman and Roy Groom discuss the remedies available to subcontractors in Queensland where proceeding can be brought under both the Subcontractor's Charges Act 1974 (Qld) and the Building and Construction Industry Payments Act 2004 (Qld). The authors discuss how a subcontractor might have remedies under both statutes.

In a subsequent article, Stephen Pyman provides a useful digest of the law as it stands in Queensland.

Richard Wood and Amanda Adamson describe the system for assessing damages in South Australia for personal injuries arising out of incidents other than motor accidents. The system will no doubt take some of the uncertainty out of claims for damages—and perhaps the speculation.

Norman Xu writes of the development of surety bonds in the Peoples Republic of China. It seems that the use of bonds in the Peoples Republic is as yet in its infancy but likely to develop.

Students of the common law are well aware that the law develops on the basis three steps forward followed by two steps back. Jason Munstermann illustrates this point with great clarity in a short article on the implication of a duty on contractual parties to act in good faith.

Finally, Frazer Moss and Ilsa Kuiper have reviewed Security of Payment in the Australian Building & Construction Industry by Marcus Jacobs QC. This is an important addition to the literature on security of payments.