EDITORIAL

John Twyford

More than 20 years have elapsed since the enactment by the NSW Parliament of the *Contracts Review Act 1980*. The building industry immediately saw the legislation as a threat to the culture of standard building contracts that had taken it years to evolve. The statute conferred wide powers on the Supreme Court to reopen consumer transactions that were found to be 'unjust'. Contrary to the voices of the prophets of doom the new law did not bring to an end contracting, as the industry understood it. In fact it was several years before a party invoked the Act as a defence. Then the only relief sought was the excision of the arbitration clause! At first the Legislature was cautious restricting the power to grant relief to the Supreme Court. Even so, the potential for the arrangements of parties to be modified was ominous. For these reasons Tyrone Carlin's article is of great interest because it analyses exactly how the legislation worked in practice. Subsequently the Parliament has re-thought its original attitude and extended the jurisdiction to grant relief from the Supreme Court to the District Court, Local Court and Fair Trading Tribunal. The latter extension is of particular significance because it is the Fair Trading Tribunal that deals with most domestic building disputes.

The paper from the Brisbane CII Conference by Tony Sidwell, Dedi Budiawan and Tony Ma underlines the difficulties for principals seeking to negotiate with tenderers after tenders have closed. The legacy of *Hughes Aircraft Systems v Airservices Australia* (1997) 146 ALR 1 is still very much with us. Jonathan Harrison makes some interesting points on natural justice. The rule in question is, the *nemo judex* rule (a party cannot be a judge in his own cause). It seems harder to remove an arbitrator for doubts about his or her impartiality than it is after he or she has made a mistake. The rule has had a rich legal history dating back in documentary form to Rekhmire, Vizier to Thutmose III a Pharaoh who reigned during the 15th Century BC. The rule gets a mention in the book of Genesis and later in the Code of Justinian. Much of the Anglo/Australian law was developed in cases arising out of horse and dog racing. For sheer style in breaking the rule, the prize goes to an English arbitrator who, in arbitrating a dispute arising out of a collision between Portuguese and Norwegian ships said to the parties during counsel's addresses:

Italians are all liars in these cases and will say anything... The same applies to the Portuguese. But on the other side here are Norwegians, and in my experience Norwegians are generally truthful people.

Not surprisingly, the court removed the arbitrator for misconduct, *Owners of Steamship 'Catalina' v Owners Motor Vessel 'Norma'* (1938) 61 Lloyd's Rep. 360.

At the conclusion of this editorial we publish a letter from David Standen rebuking us for a transgression. Our readers are reminded that we are always pleased to receive your comments, advice or contributions.

Dear Editor

In ACLN Issue 76, on page 44, you republished an article that first appeared in RATA Memo, on the Productivity Commission's final report on legislation regulating the architectural profession. In doing so, you have allowed to be repeated a fundamental error that appeared in the original article. The article alleges that the Productivity Commission, as well as recommending repeal of the Architects Acts, recommended as an alternative the establishing of a system of national registration. This is simply not true. It did not recommend registration nationally, alternatively or in any form. It only recommended repeal of the Acts under review.

I add that there are good reasons why the Acts should be repealed, in spite of the efforts of many architects to retain registration.

Yours faithfully
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11 June 2001
