EDITORIAL

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It has been suggested to us by a reader that the *Australian Construction Law Newsletter* has been overly legalistic in the matters that we choose to publish. In this regard, your editor being a lawyer is perhaps too close to the trees to see the wood. From our point of view, all of the material is of interest to those involved with construction law.

There is no doubt that some of the articles bear the stamp of young construction lawyers setting out to make an impact on their peers in the profession. This, however, is to be encouraged, as it would be difficult to persuade busy practitioners to take the time to research the matters that we are able to publish. The articles, in our view, are of uniform high quality. That is not to say that we do not have many respected senior practitioners who make a welcome contribution.

The other source of our material is taken from newsletters, published with the kind permission of the legal firms from which they emanate. This material is varied and of enormous interest. In making the selection we take a *Readers' Digest* approach.

In the last few issues there has been a good deal said about security of payments legislation and how it has worked out in practice. Perhaps this topic is getting to its 'best before' date, but we think it reasonable to give the replication 'what can be of more concern to the industry and its advisors than getting paid?' We would like very much to have our readers' comments on these issues.

In issue #95, Patrick Mead has plumbed the labyrinthine depths of contract works insurance. The author deals with the latest decisions of the courts on the matter and concludes with some sound advice. Where a party to a contract is bound to arrange such insurance in the names of other parties, failure (not uncommon) to do so poses considerable risk. At worst, the defaulting party might make itself the underwriter of those risks with no recourse to its own insurance!

Kathryn Munnings gives some practical, if not down to earth, advice on Design, Development and Construct transactions.

The discussion of the procurement process is continued by Colin Webeck, whose article although generic is highly relevant to the construction industry. Failure to listen to the advice of a probity advisor, as suggested in the article at page 26, led to the litigation in *Hughes Aircraft Systems International v Airservices Australia* (1997) 146 ALR 1.

Two short articles from Colin Biggers & Paisley illuminate the position of developers in regard to sales off a plan and time clauses.

Gavin Denton gives some helpful advice for setting up dispute resolution clauses when contracting in the Peoples' Republic of China.

Dean Jordan and Felicity Slater bring us up to date on what the authors themselves describe as the 'hot topic' of expert evidence. Clearly, this is a developing area of the law and lawyers and expert witnesses need to keep their knowledge up-to-date or face considerable embarrassment.

Joanne Emerson briefly describes the latest requirements imposed on parties to residential building contracts by the *Home Building Act 1989* (NSW). In doing so, the author points to some absurdities in the drafting of the legislation.

Andrew Cardell-Ree brings us up-to-date on the contentious question of a union's right to enter a workplace.

With email becoming the standard mode of business communication, Alan Davidson's warning that 'email is as legally binding and effective as any other form of communication' is timely. The author refers to a wide range of situations where an email might be determinative of the sender's legal position. These situations include: unintended contract formation, defamation and sexual or racial discrimination. The author's point is that blanket disclaimers will not always be effective in these situations, and if a disclaimer is to work at all, it needs to be drafted and positioned with some care.

An article from Allens Arthur Robinson notes that many of the obligations under the *Occupational Health & Safety Act 2000* (NSW) are non-delegable. As serious as this is for building owners and principal contractors, the situation will become of even more concern if industrial manslaughter is introduced into the NSW law.

Security of payments legislation is a fact in the United Kingdom, New Zealand, New South Wales, Victoria and Queensland, and under consideration in Hong Kong and Singapore. Many of our readers will have professional or commercial dealings in a number of these jurisdictions and for that reason Stuart Miller's article will be of considerable interest. The author has, in a scholarly way, presented the philosophy and mechanics of current and proposed laws.