



New South Wales

Building and Construction Industry Security of Payment Amendment Bill 2013

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Building and Construction Industry Security of Payment Act 1999* (the *Principal Act*) with respect to payments to be made under construction contracts (including the timing of, and other requirements for, those payments).

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Building and Construction Industry Security of Payment Act 1999 No 46

Due date for making progress payments

Section 11 of the Principal Act is amended so that a progress payment to a head contractor by the principal becomes due and payable no later than 15 business days after the payment claim is made, and a progress payment to a subcontractor becomes due and payable no later than 30 business days after the payment claim is made. See **Schedule 1 [3]**.

Section 11 of the Principal Act is also amended so that a construction contract has no effect to the extent it allows payment of a progress payment at a later date. See **Schedule 1 [4]**.

The exemption from the Act that currently applies to a residential construction contract between a head contractor and a consumer (the *main contract*) is extended for the purposes of the amendments to section 11 so that those amendments will not apply to a residential construction contract that is connected with the main contract.

Removal of requirement for statement that a payment claim is made under the Principal Act

Section 13 of the Principal Act is amended to remove the requirement that a payment claim must state that it is made under the Principal Act. The requirement will continue to apply for residential construction contracts that are connected with a residential construction contract between a head contractor and a consumer. See **Schedule 1 [5]**.

Requirement for a payment claim to be accompanied by a supporting statement

Section 13 of the Principal Act is amended to make it an offence:

- (a) for a head contractor to serve a payment claim on the principal unless the claim is accompanied by a supporting statement, or
- (b) for a head contractor to serve a payment claim on the principal accompanied by a supporting statement knowing that the supporting statement is false or misleading in a material particular.

A supporting statement is a statement that is in the form prescribed by the regulations and that includes a declaration to the effect that all subcontractors have been paid all amounts that have become due and payable. See **Schedule 1 [6]**. The new supporting statement requirements do not apply to the head contractor under a residential construction contract with a consumer because those contracts are already exempt from the Principal Act.

Investigation of compliance with provisions regarding supporting statements

Proposed new section 36 of the Principal Act provides for the appointment of authorised officers who may require a head contractor or associated persons to provide information or documents relating to compliance with the new provisions of section 13 about supporting statements. Proposed new section 36A states how documents produced are to be dealt with. Proposed new section 36B provides for secrecy concerning information and documents that are produced. See **Schedule 1 [8]**.

Savings and transitional provisions

Schedule 2 to the Principal Act is amended to authorise regulations to be made prescribing matters of a savings or transitional nature consequent on the amendment of the Principal Act, and to provide that an amendment made by the proposed Act does not apply in relation to a construction contract entered into before the commencement of the amendment. See **Schedule 1 [9] and [10]**.

Other amendments

The Bill contains other amendments to the Principal Act of a minor, consequential or ancillary nature. See **Schedule 1 [1], [2] and [7]**.