

## **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**) to provide a procedure for a subcontractor on a construction project who is claiming progress payments from a defaulting contractor to secure payment of those progress payments by giving notice of the claim to a principal contractor further up the chain of contractors engaged on the project. The principal contractor is then required to withhold payment of money owed by the principal contractor to the defaulting contractor, to give the subcontractor a reasonable opportunity to make use of the recovery procedures provided for under the principal Act and the *Contractors Debts Act 1997*.

### **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.

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### **Explanatory note**

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

**Schedule 1 [1]** establishes the scheme for securing the payment of progress payments described in the Overview. The main features of the scheme are as follows:

(a) a subcontractor who has made an adjudication application under the principal Act for a progress payment owed by a contractor on a construction project (the **defaulting contractor**) will be able to require another contractor on the project (the **principal contractor**) who owes money to the defaulting contractor to withhold payment of money owed to the defaulting contractor,

(b) the principal contractor will then be required to withhold payment to the defaulting contractor (and will become liable with the defaulting contractor for the amount owed to the subcontractor by the defaulting contractor if the principal contractor fails to withhold payment to the defaulting contractor),

(c) the obligation of the principal contractor to withhold payment continues until the subcontractor's claim is withdrawn or, if the claim is successful, for a sufficient period after the claim is finalised to give the subcontractor a reasonable opportunity to recover from the defaulting contractor using procedures under the principal Act or the *Contractors Debts Act 1997*,

(d) the subcontractor will be able to obtain from the defaulting contractor (via the claim adjudication process) the name and contact details of any person who is a principal contractor to the defaulting contractor,

(e) the principal contractor will be protected from any claim for payment by the defaulting contractor while the obligation to withhold payment continues.

**Schedule 1 [2]** makes a consequential amendment.

**Schedule 1 [3]** authorises the making of savings and transitional regulations.

**Schedule 1 [4]** enacts a transitional provision to provide that the scheme extends to matters arising before the commencement of the scheme.