

FACT SHEET

Building and Construction Industry Security of Payment Bill 2009

Following an analysis of the extent of payment problems in the Tasmanian Building and Construction Industry the report '*Security of Payment in the Tasmanian Building and Construction Industry*' was released by consultants Stenning and Associates in October 2006.

This report determined that many participants in the contractual chain are poorly or thinly capitalised, resulting in a significant reliance on cash flow to sustain their business operations.

The range of activities undertaken as part of compiling this report confirmed that the Tasmanian building and construction industry experiences security of payment problems of a non-trivial nature.

A survey undertaken in conjunction with developing the report found that 43% of those surveyed reported experiencing security of payment problems over the previous financial year.

In the sample of businesses surveyed, security of payment problems affected over \$37 million dollars of revenue flow in the previous financial year.

The main objective of this Bill is to reform payment behaviour in the building and construction industry. The bill creates fair and balanced payment standards for building and construction contracts.

The standards include use of progress payments and quick adjudication of disputes. The Bill will speed up payments by removing incentives to delay. Reforms include the power for an unpaid contractor or subcontractor to suspend work and a ban on pay-when-paid clauses.

All states and territories, except Tasmania, have legislated to address the security of payment problem in their building and construction industries. South Australia has tabled a Bill and the Australian Capital Territory is soon to debate their Bill.

The Bill is based on the *Building and Construction Industry Security of Payment Act 1999* of New South Wales.

A key departure from the policy outcomes contained in the New South Wales Act is the ability for builders to claim against residential home owners who potentially have no commercial background in the building and construction industry. This departure is seen as necessary to ensure that all participants in the building and construction industry are treated equally.

Additional mechanisms are introduced by the Bill to ensure these parties are afforded special consideration for their lack of experience in the building and construction industry. These mechanisms include mandatory warnings on claims and 20 business days to consider the content of a progress payment claim, rather than the 10 days afforded building practitioners. This additional time is provided to allow these non-practitioners to consider their options and if necessary to seek assistance or advice concerning the claim process.

Adjudication provides the claimant with important benefits: a prompt interim decision on a disputed payment; impartial assessment of a disputed payment; and the opportunity to progress the matter as a judgement for a debt in court. Failure to pay will also allow the claimant to suspend work.

The adjudicator's decision is only an interim decision until the final financial payments or restitution is determined at the end of the contract under the provisions of the contract.