

[Act 1997 No 110]



New South Wales

## Contractors Debts Bill 1997

### Explanatory note

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

#### Overview of Bill

The object of this Bill is to enable persons (such as tradespersons, labourers and others) to recover debts owed to them for work carried out and materials supplied by them.

The proposed Act is intended to apply when a person (a *principal*) engages another person (a *defaulting contractor*) under contract to carry out work or supply materials and that defaulting contractor then engages other persons to carry out the work or supply the materials, or to carry out any work or supply any materials that are part of or incidental to the work or materials. If the defaulting contractor fails to pay those other persons (*unpaid persons*) for their work or materials, the proposed Act allows the unpaid persons to obtain payment of the debts owed to them out of money owed to the defaulting contractor by the principal in connection with the work or materials.

There are 2 steps to recovery of a debt under the proposed Act.

First, the unpaid person must successfully sue the defaulting contractor for the debt that is owed to the unpaid person for work carried out or materials supplied by the unpaid person and obtain a certificate from a court that certifies the amount owed to the unpaid person by the defaulting contractor.

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Second, the unpaid person must serve a notice of claim on the principal. Service of the notice effects an assignment to the unpaid person of the obligation of the principal under the contract to pay the defaulting contractor money that is payable to the defaulting contractor for or in respect of work carried out or materials supplied by the unpaid person. This means that the principal is obliged to pay the unpaid person the debt that is payable to the defaulting contractor under the contract until the debt owed to the unpaid person is discharged. If the principal fails to pay, the unpaid person can sue for and recover the money from the principal as if the debt owed to the defaulting contractor under the contract with the principal were owed directly to the unpaid person.

The Bill repeals and replaces the *Contractors' Debts Act 1897*.

## Outline of provisions

### **Part 1 Preliminary**

**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.

**Clause 3** defines certain words and expressions used in the proposed Act.

**Clause 4** provides that notes do not form part of the proposed Act.

### **Part 2 Obtaining payment of debt**

**Clause 5** allows an unpaid person to obtain payment of a debt owed to the unpaid person for work or materials out of any money that is payable to the defaulting contractor by the principal in connection with that work or those materials.

**Clause 6** sets out the procedure for obtaining payment. The unpaid person must obtain a certificate in respect of the debt (see clause 7) and then serve a notice of claim on the principal.

**Clause 7** allows a court in which any proceedings are taken for the recovery of a debt owed to a person for work or materials to certify that the debt is owed to the person.

**Clause 8** provides that service of a notice of claim effects an assignment to the unpaid person of the obligation of the principal to pay the money owed to the defaulting contractor in connection with work carried out or materials supplied by the unpaid person. The assignment is limited to the amount certified in the debt certificate.

**Clause 9** requires a principal who is served with a notice of claim to pay the debt owed to the unpaid person by the defaulting contractor out of the money that the principal owes to the defaulting contractor.

**Clause 10** provides for priority of assignments under the proposed Act.

**Clause 11** allows the unpaid person to sue for and recover from the principal the debt assigned to the unpaid person under the Act.

**Clause 12** provides that an assignment ceases to operate when the debt owed to an unpaid person is discharged or the judgment or order pursuant to which the debt certificate is issued is set aside.

**Clause 13** requires an unpaid person to give a discharge notice to a person who makes a payment in discharge of the debt owed to the unpaid person.

### **Part 3      General**

**Clause 14** allows a court in which proceedings are commenced by an unpaid person for the recovery of a debt owed to the unpaid person for work carried out or materials supplied by the unpaid person to make an attachment order against any other person from whom the unpaid person may be able to recover the debt under the proposed Act. Such an order requires the principal to refrain from paying the defaulting contractor until the proceedings are finalised.

**Clause 15** requires a defaulting contractor who owes a person money for work carried out or materials supplied by the person to give the person information concerning any person from whom the person may be able to recover the debt under the proposed Act. The provision of false or misleading information will be an offence.

**Clause 16** allows an unpaid person to seek payment of a debt from other persons. For example, if a person engages another person (a contractor) to carry out work or supply materials and the contractor then engages another person (a subcontractor) to carry out the work or supply the materials, a person engaged by the subcontractor can recover money owed to the person by the subcontractor in accordance with the proposed Act from the contractor. If the contractor fails to pay, this section allows the unpaid person to then seek payment from the person who engaged the contractor.

**Clause 17** provides for a limitation period of 12 months for proceedings under the proposed Act.

**Clause 18** prevents persons from contracting out of their obligations under the proposed Act.

**Clause 19** makes it clear that the proposed Act does not affect any other remedies, rights or obligations that a person may have.

**Clause 20** provides that proceedings for an offence against the proposed Act are to be dealt with summarily before a Local Court.

**Clause 21** contains a general regulation-making power.

**Clause 22** repeals the *Contractors' Debts Act 1897*.

**Clause 23** gives effect to Schedule 1, which contains savings and transitional provisions.

**Clause 24** requires the Minister to review the operation of the proposed Act 5 years after its enactment.

**Schedule 1** contains savings, transitional and other provisions.