



General

# 20 Key issues for security of payment

Investing in Energy Transition Projects  
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# Purpose

The Security of Payment Acts (**SOPA**) establish a legislative entitlement for Contractors, subcontractors, consultants and suppliers in the contractual chain to receive progress payments when undertaking construction work. The purpose of this paper is to provide a general overview of the operation of the SOPA regime in Australia.

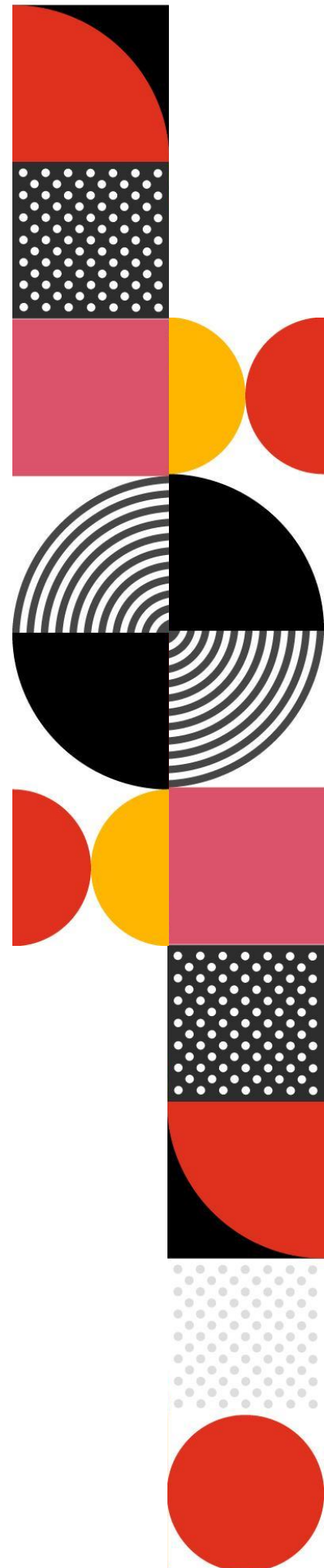
# Basic mechanics

SOPA is primarily aimed at facilitating timely payment by Principals and Contractors down the contractual chain by operating on a 'pay now, argue later' approach. This is achieved through:

- granting claimants the right to apply to court for progress payments where the Principal or Head Contractor has not made payment in accordance with the time period required by the infrastructure contract or enactment (as the case may be)
- establishing a mandatory adjudication scheme for the interim resolution of payment claim disputes.

SOPA applies to contracts for construction work, the supply of related goods and services, and preparatory work done in anticipation of construction (including, for example, design consultancy services). 'Infrastructure contracts', 'construction work' and 'related goods and services' are defined by the enactments to include a wide scope of activities, which vary between the states and territories. The full text of these definitions and extent to which they vary between states and territories is contained in Appendix 1 of this paper.

Security of payment laws run concurrently alongside entitlements under an infrastructure contract and claims for payment can proceed to adjudication even if the formal dispute resolution procedure under the infrastructure contract has commenced.



# State variances

Security of payment laws are in place in every state and territory. However, there is no standardised Australia-wide approach to security of payment. There is a clear delineation between the approach taken by Western Australia and the Northern Territory (**West Coast Model**), and the remaining states and territories (**East Coast Model**).

East Coast Model enactments	
<b>Victoria</b>	Building and Construction Industry Security of Payment Act 2002 and the Building and Construction Industry Security of Payment Regulations 2013
<b>New South Wales</b>	Building and Construction Industry Security of Payment Act 1999 and the Building and Construction Industry Security of Payment Regulation 2020
<b>Australian Capital Territory</b>	Building and Construction Industry (Security of Payment) Act 2009
<b>Queensland</b>	Building Industry Fairness (Security of Payment) Act 2017 and the Building Industry Fairness (Security of Payment) Regulations 2018
<b>South Australia</b>	Building and Construction Industry Security of Payment Act 2009 and the Building and Construction Industry Security of Payment Regulations 2011
<b>Tasmania</b>	Building and Construction Industry Security of Payment Act 2009

West Coast Model enactments	
<b>Western Australia</b>	<p>The new Building and Construction Industry (Security of Payment) Act 2021 will apply to contracts for the carrying out of 'construction work' or supply of 'related goods and services' after 1 August 2022</p> <p>Construction Contracts Act 2004 and the Construction Contracts Regulations 2004 will continue to apply to 'construction contracts' entered into prior to 1 August 2022.</p>
<b>Northern Territory</b>	Construction Contracts (Security of Payments) Act 2004 and the Construction Contracts (Security of Payments) Regulations 2005



Some key differences between the East Coast Model and West Coast Model include:

- **Overriding contractual mechanisms:** The East Coast Model prescribes a statutory payment scheme that overrides any inconsistent contractual provisions.<sup>1</sup> The West Coast Model only provides legislative assistance where the infrastructure contract does not have agreed payment provisions. This is achieved through the implication of terms relating to payment for construction works where the infrastructure contract is silent.<sup>2</sup> For parties entering into contracts after 1 August 2022, Western Australia has a new statutory progress payment regime under the *Building and Construction Industry (Security of Payment Act) 2021 (WA) (WA SOP Act)*. The new regime, in line with the East Coast Model, is mandatory and cannot be excluded by contract.
- **Procedure for payment claims:** The East Coast Model creates a statutory payment system whereby the claimant must (except in NSW) endorse its payment claim as being made under the relevant Act, and serve it upon the respondent before proceeding in accordance with that Act. Payment claims under the West Coast Model are made pursuant to the procedure of each infrastructure contract, with statutory adjudication available only where a dispute arises during the contractual payment claim procedure. The new WA SOP Act creates a statutory entitlement to a progress payment with a right to make a payment claim under the Act once per month. The payment claim must state that it is made under the Act and can take a variety of forms.
- **Payments able to be claimed:** The East Coast Model provides for recovery of progress payments up the contractual chain. Therefore, the adjudication procedure under East Coast Model enactments may only be used by Contractors and suppliers to recover payment from a Principal or Head Contractor. The scope of the West Coast Model is wider, allowing either party to make an adjudication application for any payment disputes, including debts and damages claims. The new WA SOP Act only permits a party who does construction work or who supplies related goods and services under a construction contract (claimant) to serve a payment claim. There is no right for the party *receiving* construction work or related goods and services to make a payment claim under a contract (such as a claim for liquidated damages for delay).
- **Default penalty:** The East Coast Model penalises a party who fails to respond to a payment claim with a payment schedule by rendering it liable to pay the whole of the claimed amount. The West Coast Model does not impose such a penalty. Under the new WA SOP Act, for parties entering into contracts after 1 August 2022, the full amount of the payment claim becomes a **statutory debt** and the claimant is **entitled to payment in full** if the respondent does not provide a payment schedule within time. There are no exceptions, even if the respondent has genuine reasons for withholding payment or why it failed to provide a payment schedule (which could include oversights or administrative errors).



<sup>1</sup> See, for eg: Vic Act s 48; NSW Act s 34; or SA Act s 33, each of which hold a provision of an agreement void if the operation of the Act is, or is purported to be, excluded, modified or restricted or it may reasonably be construed as an attempt to deter a person from taking action under the Act.

<sup>2</sup> Where a construction contract does not contain written provisions with respect to matters such as variations, payment entitlement progress payments or the mode and manner of making payment claims, *Construction Contracts Act 2004 (WA)* ('WA Act') pt 2 div 3, sch 1 or NT Act pt 2 div 2, sch 1 will imply terms. For a discussion of implied terms, particularly in the context of construction contracts, see *Codelfa Constructions v State Rail Authority of New South Wales* (1982) 149 CLR 337 (although please note the controversy as to the ongoing application of *Codelfa: Mount Bruce Mining Pty Ltd v Wright Prospecting Pty Ltd* [2015] HCA 37).

# Procedure

Security of payment laws only apply to a payment dispute arising out of a contract for construction work. A payment dispute will arise if:

- the amount claimed in a payment claim is due to be paid under the contract, and the amount has not been paid in full, or the claim has been rejected or wholly or partly disputed
- any money retained by a party under the contract has not been paid when it is due to be released, or
- any security held by a party under the contract is due to be returned under the contract, and has not been returned.

The phrase 'due to be paid' is significant. This assumes that time for payment is expressly included in the contract. However, not all contracts contain an express term with respect to time for payment. In these cases, security of payment laws require that the time for payment be a certain number of days from receipt of the payment claim.

The state-by-state variances in procedure are set out in the schedule to this paper.

# Drafting implications

While parties cannot contract out of the obligations created by security of payment laws,<sup>3</sup> the legislation does allow the parties to stipulate how they should apply. The following issues should be considered when drafting payment provisions in infrastructure contracts:

- **Amount of a progress payment**

Under the East Coast Model, there are two ways of determining the amount of a progress payment:

- **Method 1:** Where the infrastructure contract expressly provides a method for calculating the value of a progress payment, it is to be determined in accordance with those terms.<sup>4</sup> In Victoria, this is subject to the following qualifications (notwithstanding anything to the contrary in the infrastructure contract):
  - claimable variations may be taken into account<sup>5</sup>
  - excluded amounts must not be taken into account.<sup>6</sup>
- **Method 2:** Where the infrastructure contract makes no express provision for the amount of a progress payment, the amount will be calculated on the basis of the value of work carried out or undertaken to be carried out.<sup>7</sup> The value of the work is calculated with regard to the contract price, other prices, defects and variations.<sup>8</sup>

For Contractors and Principals who value certainty, stipulating the method for calculation of a progress payment is essential. If the parties do not stipulate a method by which a progress payment should be calculated, the Principal particularly is exposed to the risk that the Contractor may claim any number of expenses which are not agreed.

Under the West Coast Model, where the underlying contract is silent, there will be an implied term that the Contractor has an entitlement to be paid a 'reasonable amount for performing its obligations'.<sup>9</sup> With no specific provision for the valuation of a 'reasonable amount', parties that do not stipulate calculation of progress payment terms in the infrastructure contract may be exposed to significant variations in the amount of a progress payment.



<sup>3</sup> Vic Act s 48; NSW Act s 34; Qld Act s 200; ACT Act s 42; SA Act s 33; Tas Act s 11; NT Act s 10; WA Act s 53.

<sup>4</sup> Vic Act s 10(1)(a); NSW Act s 9(a); Qld Act s 71(a); SA Act s 9(a); Tas Act s 13(1); ACT Act s 11(a).

<sup>5</sup> Vic Act s 10(2).

<sup>6</sup> Ibid s 10(3).

<sup>7</sup> Vic Act s 10(1)(b); NSW Act s 9(b); Qld Act s 71(b); SA Act s 9(b); Tas Act s 13(2); ACT Act s 11(b).

<sup>8</sup> Vic Act s 11; NSW Act s 10; Qld Act s 72; SA Act s 10; Tas Act s 13(2); ACT Act s 12.

<sup>9</sup> WA Act s 14 ('Contractor's entitlement to be paid'); sch 1, div 2 ('Contractor's amount to be paid'); NT Act s 17 ('Contractor's entitlement to be paid'), sch 1, div 2 ('Contractor's entitlement to be paid').

- **Time periods for payment**

Under the East Coast Model, a progress payment becomes payable in accordance with terms of contract.<sup>10</sup> Payment due dates, where the contract makes no express provision for payment, are set out in the table below.

Jurisdiction	Days (after claim is made) when payment due
Victoria	10 business days <sup>11</sup>
Queensland	10 business days <sup>12</sup>
New South Wales	15 business days for Head Contractors <sup>13</sup> 30 business days for subcontractors <sup>14</sup>
South Australia	15 business days <sup>15</sup>
Tasmania	20 business days for claims relating to residential structures, where the respondent is the owner of the land or where the respondent is not a building practitioner <sup>16</sup> 10 business days for any other case <sup>17</sup>
Australian Capital Territory	10 business days <sup>18</sup>

Parties to construction contracts under the East Coast Model should carefully consider whether there are any applicable default payment provisions in the jurisdiction in which they are operating. Parties should ensure that the payment terms outlined in the construction contract do not contravene the relevant statutory payment terms, thereby ensuring the parties are not exposed to default payment provisions.

For parties operating in Western Australia, who entered into contracts before 1 August 2022, and the Northern Territory, it is notable that both jurisdictions prohibit terms in construction contracts that provide for payment to be made more than 50 days after the payment is claimed. In each jurisdiction, the contractual time period is read down to 28 days after payment is claimed.<sup>19</sup>

Under the new WA SOP Act, for parties who entered into a contract after 1 August 2022, the payment date for construction contract and home building work becomes payable in accordance with the terms of the contract.<sup>20</sup> Payment due dates, where the contract makes no express provision for payment is:<sup>21</sup>

- 20 business days after a payment claim is made by a Head Contractor
- 25 business days after a payment claim is made by a subcontractor.

- **Pay when paid provisions**

Some construction contracts may include terms that seek to make a party's liability under a contract conditional on them receiving payment from another person, whether or not they are a party to the contract (a 'pay when paid' provision). A party would be inclined to include such a clause in order to protect their cash flow in the event that an upstream Contractor failed to make timely payment.

However, under security of payment laws, 'pay when paid' provisions are void or of no effect in each jurisdiction.<sup>22</sup> As a result, parties must carefully plan their expected cash flow and ensure they have contingencies in place to meet liabilities in the event that another party does not pay them.

<sup>10</sup> Vic Act s 12(1)(a); NSW Act s 11(1); Qld Act s 73; SA Act s 11(1)(a); Tas Act s 15(1); ACT Act s 13(1)(a).

<sup>11</sup> Vic Act s 12(1).

<sup>12</sup> Qld Act s 73.

<sup>13</sup> NSW Act s 11(1A)(a).

<sup>14</sup> Ibid s 11(1B)(a).

<sup>15</sup> SA Act s 11(1)(b).

<sup>16</sup> Tas Act ss 15(2), 19(3)(a).

<sup>17</sup> Ibid ss 15(2), 19(3)(b).

<sup>18</sup> ACT Act s 13(1)(b).

<sup>19</sup> WA Act s 10; NT Act s 13.

<sup>20</sup> WA SOP Act s 20(2), (3).

<sup>21</sup> WA SOP Act s 20(1)(a)(b).

<sup>22</sup> See: Vic Act s 13; NSW Act s 12; ACT Act s 14; NT Act s 12; Qld Act s 74; SA Act s 12; Tas Act s 16; WA Act s 9.

# Drafting implications

The application and content of security of payment laws vary from state to state. When drafting payment provisions in a construction contract, parties should ensure that they are aware of the statutory terms that operate alongside express terms in a construction contract, and those which serve to override contractual terms where those terms are not in line with those provided for under statute.

## Liquidated damages clauses and security of payment legislation

### Victoria

The law in Victoria is that liquidated damages cannot be taken into account when assessing the amount of a payment claim made under the *Building and Construction Security of Payment Act 2002 (Vic)* (**Vic SOP Act**). This is because these amounts constitute 'excluded amounts' for the purposes of section 10B of the Vic SOP Act. This is so even where the construction contract provides otherwise: *Seabay Properties Pty Ltd v Galvin Construction Pty Ltd* [2011] VSC 183. The Supreme Court in *Seabay Properties* found that claims for liquidated damages (or any amount claimed under a construction contract for compensation due to time-related costs) are to be resolved under the general law, supported by court or arbitration proceedings, rather than adjudication.

A later decision in *Shape Australia Pty Ltd v The Nuance Group (Australia) Pty Ltd* [2018] VSC 808 further found that a claimant cannot seek to recoup an entitlement to liquidated damages on a reconciliation basis where the items in the payment claim have already been paid for. This means, unless a liquidated damage deduction was immediately taken to adjudication, a subsequent claim for the return of those monies could be characterised as an attempt to 'claw back' or 'recoup' liquidated damages, and be classified as an 'excluded amount'.

However, the more recent decision of the Supreme Court of Victoria in *Goldwind Australia Pty Ltd v ALE Heavylift (Australia) Pty Ltd* [2021] VSC 625 removed the risk for claimants who do not immediately enter into an adjudication for a liquidated damages claim. The Court held that:

- failure to adjudicate an earlier payment claim for work done does not prevent a claimant from recovering payment for that work in a later progress payment
- a subsequent payment claim claiming work done, which may include an amount previously levied for liquidated damages, is not a claim for excluded amounts under section 10B of the Vic SOP Act.

The respondent (Goldwind) deducted liquidated damages for delay in a payment schedule that was issued to the claimant (ALE) in September 2020. The claimant issued a new payment claim under the Vic SOP Act that ignored the delay deduction and made a claim for works performed in September 2020. These works were previously claimed, but unpaid as a result of the delay deduction. The respondent issued another payment schedule, again applying the delay deduction. The claimant then made an adjudication application under the Vic SOP Act.

The Supreme Court of Victoria allowed the claimant to recover payment under the Vic SOP Act for an amount that had been the subject of an offset for liquidated damages in an earlier payment schedule. The Court allowed this because the claim was characterised as being for works performed, not as a recoupment of liquidated damages. Justice Stynes also rejected the argument that if a claimant fails to immediately dispute the liquidated damages that it somehow changes the nature of the claim to a claim to 'claw back' previously uncontested deductions.

This decision means claimants do not need to dispute the liquidated damages as soon as they are applied. Instead, claimants can make a calculated decision as to when they should apply for an adjudication to recover payment for the works that have been performed but not paid due to the deduction of liquidated damages.

### NSW

The law in New South Wales is that liquidated damages can be taken into account when assessing the amount of a payment claim made under the *Building and Construction Security of Payment Act 1999 (NSW)* (**NSW SOP Act**) so long as the construction contract contains a provision which enables that calculation to be made in assessing a progress payment: *J Hutchinson Pty Ltd v Glavcom Pty Ltd* [2016] NSWSC 126.

In this case, Glavcom (subcontractor) initially served on Hutchison (builder) a payment claim. Hutchison then served a payment schedule in response, which included a significant deduction for liquidated damages for delay. The Court held that Hutchison was not entitled to deduct liquidated damages in its payment schedule. Given the subcontract did not contain a provision which identified how progress payments were to be calculated, the amount of the progress payment was to be determined in accordance with section 9(b) of the NSW SOP Act. Section 9(b) 'says nothing about set-off' and does not entitle a respondent to deduct liquidated damages by way of set-off against the amounts due to a claimant for work it has done.

# How to contact us



If you have any questions about this paper, please contact the editor, Damian McNair, Partner, Energy Transition.

PwC Australia has a dedicated Energy Transition business, consisting of a hub of 132 multidisciplinary and highly-skilled experts helping to facilitate Australia's successful transition to a decarbonised economy by 2050. We are helping accelerate our clients through the energy transition and their related ESG priorities as Australia moves to a net zero economy.

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# Appendix 1

## Variations in definitions

### Scope of application to 'construction contracts'

#### NSW

##### Section 4

**Construction contract** is defined to mean a contract or other arrangement under which one party undertakes to carry out construction work, or to supply related goods and services, for another party.

##### Section 7

The Act applies to any construction contract (written or oral), even if the contract is expressed to be governed by the law of another jurisdiction. The Act does not apply to construction contracts:

- that form part of a loan agreement, contract of guarantee or contract of insurance under which a recognised financial institution undertakes to:
  - lend money or to repay money lent
  - guarantee payment of money owing or repayment of money lent
  - provide an indemnity with respect to construction work carried out, or related goods and services supplied, under the construction contract
- under which it is agreed that the consideration payable is to be calculated otherwise than by reference to the value of the work carried out or the value of the goods and services supplied.

##### Section 7(3)

The Act also does not apply to a construction contract to the extent it contains provisions under which a party undertakes to:

- lend money or to repay money lent
- guarantee payment of money owing or repayment of money lent
- provide an indemnity with respect to construction work carried out, or related goods and services supplied, under the construction contract.

#### VIC

##### Section 7

Substantially the same as NSW. The Act does not apply to contracts governed by the *Domestic Building Contracts Act 1995* (Vic), except:

- contracts where the building owner is in the business of building residences and the contract is entered into during the course of that business
- contract is incidental to work carried out under another construction contract.

#### QLD

##### Section 3

Substantially the same as NSW. The Act does not apply to contracts governed by the *Domestic Building Contracts Act 2000* (Qld).

Note: In Queensland subcontractors may choose between the Act and the *Subcontractors' Charges Act 1974* (Qld). This legislation enables subcontractors to secure a statutory charge over money payable (or to be paid in the future) to them by their Contractor without having first obtained a court judgment for the alleged debt. The giving of a notice of claim of charge under this legislation effectively suspends any rights that a subcontractor may have under the *Building and Construction Industry Payments Act 2004* (Qld) and prevents them from taking any steps to recover outstanding money under that Act.



## Scope of application to 'construction contracts'

### SA Section 7

Identical drafting to NSW. The Act does not apply to contracts governed by the *Building Work Contractor Act 1995* (SA).

### ACT Section 9

Substantially the same as NSW except as stated below. The Act does not apply to contracts governed by the *Building Act 2004* (ACT).

### TAS Section 7

Substantially the same as NSW except that:

- the Act applies to a supply in Tasmania, even though the construction work is being performed outside Tasmania
- the Act also applies to residential structures and resident owners.

### WA WA Act (Old Act)

#### Section 3

**Construction contract** is defined to mean a contract or other agreement, whether in writing or not, under which the Contractor has one or more of the following obligations:

- carry out construction work
- supply to the site any goods that are related to the construction work
- provide (on or off-site) professional services which are related to the construction work
- provide on-site services that are related to the construction work.

#### Section 7(2)

The Act applies to any construction contract (written or oral or part thereof), irrespective of where the contract was entered into or whether it is expressed to be governed by the law of another jurisdiction.

#### Section 7(3)

The Act does not apply to construction contracts to the extent it contains provisions under which a party undertakes to carry out construction work, or supply related goods and services, as an employee of the party for whom the work is to be carried out or to whom the related goods and services are to be supplied.

### WA SOP Act (New Act) – Applicable for contracts entered into after 1 August 2022

#### Section 5

**Construction contract** is defined to mean a contract, agreement or other arrangement under which one party undertakes to:

- carry out construction work
- to supply related goods and services, for another party.

#### Section 9(2)

The Act applies to any construction contract (written or oral or part thereof), irrespective of where the contract was entered into or whether it is expressed to be governed by the law of another jurisdiction.

#### Section 10(2)

The Act does not apply to construction contracts to the extent it contains provisions under which a party undertakes to carry out construction work, or supply related goods and services, as an employee of the party for whom the work is to be carried out or to whom the related goods and services are to be supplied.

#### Section 10(3)

This Act does not apply to a construction contract to the extent that it provides that a party undertakes to carry out construction work, or supply related goods and services, as a condition of a loan agreement with a recognised financial institution.



## Scope of application to 'construction contracts'

### Section 10(4)

This Act does not apply to a construction contract to the extent that it forms part of a loan, guarantee or insurance agreement under which a recognised financial institution undertakes any of the following or to the extent that it provides that a party to the contract undertakes any of the following:

- to lend money or to repay money lent
- to guarantee payment of money owing or repayment of money lent
- to provide an indemnity with respect to construction work carried out, or related goods and services supplied, under the contract.

### Section 10(5)

This Act does not apply to a construction contract to the extent that it provides that the consideration payable for construction work carried out, or for related goods and services supplied, under the contract that:

- is not monetary consideration
- is to be calculated otherwise than by reference to the value of the work carried out or the goods and services supplied.

### Section 10(6)

This Act does not apply to a construction contract to the extent that it deals with construction work carried out outside Western Australia or with related goods and services supplied for construction work carried out outside Western Australia.

**NT** Sections 5 and 9: Identical drafting to WA Act.



**NSW Section 5(1)**

**Construction work** means any of the following work:

- the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of buildings or structures forming, or to form, part of land (whether permanent or not)
- the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of any works forming, or to form, part of land, including walls, roadworks, power-lines, telecommunication apparatus, aircraft runways, docks and harbours, railways, inland waterways, pipelines, reservoirs, water mains, wells, sewers, industrial plant and installations for purposes of land drainage or coast protection
- the installation in any building, structure or works of fittings forming, or to form, part of land, including heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply, fire protection, security and communications systems
- the external or internal cleaning of buildings, structures and works, so far as it is carried out in the course of their construction, alteration, repair, restoration, maintenance or extension
- any operation which forms an integral part of, or is preparatory to or is for rendering complete, work of the kind referred to in the above paragraphs including:
  - site clearance, earth-moving, excavation, tunnelling and boring
  - the laying of foundations
  - the erection, maintenance or dismantling of scaffolding
  - the prefabrication of components to form part of any building, structure or works, whether carried out on-site or off-site
  - site restoration, landscaping and the provision of roadways and other access works
- the painting or decorating of the internal or external surfaces of any building, structure or works
- any other work of a kind prescribed by the regulations for the purposes of this subsection.

**Section 5(2)**

Construction work does not include:

- the drilling for, or extraction of, oil or natural gas
- the extraction of minerals, including tunnelling or boring, or constructing underground works, for that purpose
- any other work of a kind prescribed by the Regulations. Currently, the Regulations do not prescribe any other kind of excluded work.

**Section 6**

**Related Goods and Services** means any of the following goods and services:

- materials and components to form part of any building, structure or work arising from construction work
- plant or materials (whether supplied by sale, hire or otherwise) for use in connection with the carrying out of construction work
- the provision of labour to carry out construction work
- architectural, design, surveying or quantity surveying services in relation to construction work
- building, engineering, interior or exterior decoration or landscape advisory services in relation to construction work
- goods and services of a kind prescribed by the regulations for the purposes of this subsection.



## Scope of application to 'construction contracts'

### **VIC**      **Section 5**

Identical to the NSW definition.

### **QLD**      **Section 65**

Identical to the NSW definition save for some minor wording and syntax changes and the express inclusion of the testing of soils and road making materials.

Also includes building work within the meaning of the *Queensland Building and Construction Commission Act 1991* (Qld), namely:

- the erection or construction of a building
- the renovation, alteration, extension, improvement or repair of a building
- the provision of lighting, heating, ventilation, air conditioning, water supply, sewerage or drainage in connection with a building
- any site work (including the construction of retaining structures) related to work of a kind referred to above
- the preparation of plans or specifications for the performance of building work
- contract administration carried out by a person in relation to the construction of a building designed by the person
- fire protection work
- carrying out site testing and classification in preparation for the erection or construction of a building on the site
- carrying out a completed building inspection
- the inspection or investigation of a building, and the provision of advice or a report, for termite management systems for the building, and termite infestation in the building.

### **SA**      **Section 5**

Substantially the same as the NSW definition and includes fencing work.

### **ACT**      **Section 7**

Substantially the same as the NSW definition.

Also includes building work within the meaning of the *Building Act 2004* (ACT), namely:

- work in relation to the erection, alteration or demolition of a building, and includes disposal of waste materials generated:
  - by the alteration of a building other than a building excluded under the Regulations
  - by the demolition of a building (but not part of the building)
- work in relation to repairs of a structural nature to a building.

### **TAS**      **Section 5**

Incorporates most of the elements of NSW definition but with the addition of passenger and goods lifts, plumbing installations, and alterations in terminology ('docks and harbours' has been replaced by 'marine infrastructure' and 'power lines' has been replaced by 'energy infrastructure').



**WA WA Act (Old Act)**

**Section 4(2)**

**Construction work** means any of the following work on a site in Western Australia, whether on land or off-shore:

- reclaiming, draining, or preventing the subsidence, movement or erosion of, land
- installing, altering, repairing, restoring, maintaining, extending, dismantling, demolishing, or removing, any works, apparatus, fittings, machinery, or plant, associated with any work referred to above
- constructing the whole or a part of any civil works, or a building or structure, that forms or will form, whether permanently or not and whether in WA or not, part of land or the sea bed whether above or below it
- fixing or installing on or in any thing referred above and any fittings forming, or to form, whether permanently or not, part of the thing, including:
  - fittings for electricity, gas, water, fuel oil, air, sanitation, irrigation, telecommunications, air-conditioning, heating, ventilation, fire protection, cleaning, the security of the thing, and the safety of people
  - lifts, escalators, insulation, furniture and furnishings
- altering, repairing, restoring, maintaining, extending, dismantling, demolishing or removing any thing referred to above or any fittings that form part of that thing
- any work that is preparatory to, necessary for, an integral part of, or for the completion of, any work referred to above, including:
  - site or earth works, excavating, earthmoving, tunnelling or boring
  - laying foundations
  - erecting, maintaining or dismantling temporary works, a temporary building, or a temporary structure including a crane or other lifting equipment, and scaffolding
  - cleaning, painting, decorating or treating any surface
  - site restoration and landscaping
- any work that is prescribed by regulations to be construction work for the purposes of this Act.

**Civil works** includes:

- a road, railway, tramway, aircraft runway, canal, waterway, harbour, port or marina
- a line or cable for electricity or telecommunications
- a pipeline for water, gas, oil, sewage or other material
- a path, pavement, ramp, tunnel, slipway, dam, well, aqueduct, drain, levee, seawall or retaining wall
- any works, apparatus, fittings, machinery or plant associated with any works referred to above.

**Section 4(3)**

**Construction work** does not include any of the following work on a site in Western Australia, whether on land or off-shore:

- drilling for the purposes of discovering or extracting oil or natural gas, whether on land or not
- constructing a shaft, pit or quarry, or drilling, for the purposes of discovering or extracting any mineral bearing or other substance
- constructing any plant for the purposes of extracting or processing oil, natural gas or any derivative of natural gas, or any mineral bearing or other substance
- constructing, installing, altering, repairing, restoring, maintaining, extending, dismantling, demolishing, or removing, wholly artistic works, including sculptures, installations and murals
- work prescribed by the regulations not to be construction work for the purposes of this Act.



### Section 5

**Goods and services are related to the construction work** if they are:

- materials or components (whether pre-fabricated or not) that will form part of any thing referred to in sections 4(2)(b) or 4(2)(c) or of any fittings referred to in section 4(2)(d)
- any fittings referred to in s4(2)(d) (whether pre-fabricated or not)
- plant or materials (whether supplied by sale, hire or otherwise) for use in connection with the carrying out of the construction work at the site of the construction work
- services that are provided by a profession and that relate directly to construction work or to assessing its feasibility (whether or not it proceeds):
  - including surveying, planning, costing, testing, architectural, design, plan drafting, engineering, quantity surveying, and project management, services
  - not including accounting, financial, or legal, services.

### WA SOP Act (New Act)

### Section 6

**Construction work** means any of the following work on a site in Western Australia, whether on land or off-shore:

- the construction of buildings, structures or civil works (whether permanent or not) that form, or are to form, part of land (including the seabed)
- the installation in or on any building, structure or civil work of fittings that form, or are to form, part of the building, structure or civil work, including for:
  - the supply of electricity, gas or water
  - air-conditioning, heating, ventilation, lighting, fire protection, irrigation, sanitation, cleaning, security or communication systems
  - lifts or escalators
- the alteration, repair, restoration, maintenance, extension, demolition, dismantling or removal of any building, structure or civil work referred to in paragraph (a) or fitting referred to in paragraph (b)
- the reclamation, dredging or prevention of subsidence or erosion of land
- any work that is preparatory to, necessary for or an integral part of anything referred to in paragraphs (a) to (d), including:
  - site clearing, excavating, earth-moving, tunnelling or boring
  - laying foundations
  - erecting, maintaining or dismantling cranes, scaffolding or other temporary buildings or structures
  - cleaning, painting, decorating or treating surfaces
  - site restoration and landscaping
- work prescribed by the regulations to be construction work for the purposes of this Act.

**Civil works** includes:

- roads
- railways (including light rail)
- bridges or underpasses
- airport runways
- waterways, harbours, ports or marinas
- electricity or telecommunication lines
- water, gas, oil, sewage or other pipelines



## Scope of application to 'construction contracts'

- dams, levees, aqueducts, drains, seawalls or retaining walls
- pavements, ramps, slipways or tunnels
- works, apparatus or structures associated with the works referred to in paragraphs (a) to (i).

**Construction work** does not include:

- drilling for the purposes of discovering or extracting oil or natural gas, whether on land or not
- constructing a shaft, pit or quarry, or drilling, for the purposes of discovering or extracting any mineral or other substance
- constructing or fitting out the whole or any part of a watercraft
- work prescribed by the regulations not to be construction work for the purposes of this Act.

### Section 7

**Goods and services are related to the construction work** if they are:

- materials or components (whether pre-fabricated or not) that are to form part of any building, structure, civil work or other thing resulting from construction work
- plant or materials (whether supplied by sale, hire or otherwise) for use in connection with the carrying out of construction work
- services of the following kinds:
  - the provision of labour to carry out construction work
  - professional services that relate directly to construction work or the assessment of its feasibility, including surveying, planning, costing, testing, architectural, design, plan drafting, engineering, quantity surveying, and project management services, but not including accounting, financial or legal services
- goods or services prescribed by the regulations to be related goods and services for the purposes of this Act.

NT

### Section 6

Identical drafting to WA Act.







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