

2023 KEY CONSTRUCTION DEVELOPMENTS

If you work in the building and construction industry, this factsheet outlines the latest law changes that may impact your business.

AMENDED UNFAIR CONTRACT TERMS



- The definition of standard form contracts and small business contracts has been expanded.
- It now includes Australian Standard Contracts, consultancy agreements, supply agreements, and subcontractor agreements.
- The revised penalties for corporations in breach of Unfair Contract Terms (UCT) include a fine of the greater of \$50 million or three times the value of the benefit obtained from the UCT.

STATUTORY DUTY OF CARE REGIME CHANGES



- Following a recent case, statutory duty of care has been extended.
- Now, all builders, developers and stakeholders involved in constructing a building will owe a statutory duty of care to successive land owners.
- Separately, defendants can seek to have liability limited to an amount reflecting the portion of damage or loss claimed.

UPCOMING NSW CONSTRUCTION REFORMS



- The NSW Government is introducing four draft pieces of legislation that will significantly reform the building and construction services industry.
- The reforms will regulate builders and designers engaged in commercial work; expand the duty of care to all types of building work; and enable adjudicators to obtain an expert report and allow merits review of adjudication decisions.

NSW HOME BUILDING ACT UPDATES



- The Building Bill 2022 will repeal and replace the Home Building Act 1989 (NSW).
- This will create end-to-end accountability for building work and consolidate and regulate several key elements of the building and construction industry. The Bill will govern both residential and commercial buildings.

SECURITY OF PAYMENT NSW AMENDMENTS



- Claimants and respondents can request a determination review under a new adjudication review model.
- Retention funds threshold will drop from \$20 million to \$10 million.
- Homeowners Notice must accompany payment claims for owner-occupiers.
- Adjudicators now authorised to engage experts for investigation purposes.

WA SECURITY OF PAYMENT ACT CHANGES



- The new SOP Act applies to WA construction contracts of \$20,000 or more entered into on/after 1 August 2022.
- The model will reduce the time to make an application from 90 to 20 business days.
- The retention trust scheme protects subcontractors if there is a dispute or if a company becomes insolvent. It will protect subcontractors for contracts over \$1 million from 1 February 2023 to 31 January 2024; and over \$20,000 from 1 February 2024.