



THOMSON REUTERS

Update Summary

PLEASE CIRCULATE IMMEDIATELY!

UPDATE 206

MAY 2024

COMMERCIAL ARBITRATION LAW AND PRACTICE

MS Jacobs QC

Material Code 42608612

Print Post Approved PP255003/00342

© Thomson Reuters (Professional) Australia Limited 2024

Looseleaf Support Service

You can now access the current list of page numbers at

<http://www.thomsonreuters.com.au/support/product-support.aspx?id=/mediaTree/58599>. If you have any questions or comments, or to order missing pages, please contact Customer Care LTA ANZ on 1300 304 195

Fax: 1300 304 196 Email: Care.ANZ@thomsonreuters.com

UPDATE SUMMARY

Building and Construction Industry Security of Payment Act 2002 (VIC)

Damien Cremean has provided new commentary on the Building and Construction Industry Security of Payment Act 2002 (VIC). Highlights include:

- New section on “contract or other arrangement” – see [SOPAVIC4.30]
- New section on Construal of contracts – see [SOPAVIC 4.35]
- New and updated commentary on Reference date – see [SOPVIC 9.30]
- New and updated commentary on Form of payment claim – [SOPVIC14.30]
- New and updated commentary on The adjudicator’s determination – [SOPVIC22.30]

Building and Construction Industry Security of Payment Act 1999 (NSW)

Vikram Misra has provided new commentary on the Building and Construction Industry Security of Payment Act 1999 (NSW)

- Updated commentary on general introduction of *Building and Construction Industry Security of Payment Act 1999* (NSW) – see [SO 1.10]
- Updated commentary on The legislative differences between the East Coast and West Coast models – see [SOP2.60]
- New commentary on Adjudication process – see [SOP3.130]
- Updated commentary on Section 5(2)(b) – “mining exception” – see [SOP5.95]
- New section on SOP Act takes precedence over any condition precedent to payment – see [SOP 11.80]
- New commentary on Section 13(1C)...no room for the concepts of approbation and reprobation – see [SOP13.15]
- New commentary on The status of “... a payment claim ...” – does not constitute a representation – see [SOP13.95]
- New commentary on letter of demand satisfied requirements for a valid payment claim – see [SOP13.100]
- New section on whether an email constitutes a valid payment schedule for purposes of s 14 depends on the particular words used in the document in question – see [SOP14.91]
- New section on effect of a document marked “without prejudice” on document purporting to be payment schedule – see [SOP14.92]
- New section on jurisdictional error may be committed by adjudicator where there is a failure to consider matters in s 22(2) of the SOP Act – see [SOP22.11]

- New commentary on ...jurisdictional error may be committed by adjudicator where there is a failure to consider matters in s 22(2) of the SOP Act... – see [SOP 22.12]
- New and updated commentary on Principles of injunctions restraining the registration of a judgment based on an adjudication determination – see [SOP25.663]
- New annotation on “... not entitled ... to challenge the adjudicator's determination ...” – see [SOP25.70]
- New section on heavy burden on a party who seeks injunctive relief or a stay pending the outcome of proceedings contemplated by s 32 on the basis that a payment may become unrecoverable due to the possible or even likely insolvency of the payee at a later date – see [SOP32.100]
- New section on Section 32A operates to sever the part of the determination affected by judicial error and leave the remainder which was not affected by jurisdictional error as legally effective from the time the determination was made – see [SOP32A.01]
- New section on insolvent company subject to a deed of company arrangement entitled to pursue claim under the SOP Act...not precluded by s 32B – see [SOP32B.01]
- New commentary on an adjudication determination does not stand in the way of the principal making a demand on security – see [SOP34.80]

Building and Construction Industry Security of Payment Act 2002 (TAS)

Damien Cremean has provided new commentary on the Building and Construction Industry Security of Payment Act 2002 (VIC). Highlights include:

- New and updated commentary on Application of Act – see [SOPTAS7.110]
- New and updated commentary on reference date – [SOPTAS12.122]
- New and updated commentary on Requirements of payment claim – [SOPTAS17.131]
- New and updated commentary on The adjudicator's determination – [SOPTAS25.110]

Construction Contracts (Security of Payments) Act 2004 (NT)

Damien Cremean has provided new commentary on the Construction Contracts (Security of Payments) Act 2004 (NT). Highlights include:

- New commentary on Construction contract – see [SOPNT1.120]

- New commentary on Payment claims – see [SOPNT1.140]
- New commentary on No avoidance or exclusion – see [SOPNT1- 170A]

Sydney Jacobs has updated the service, highlights of which are below.

Alternative Dispute Resolution

- New commentary on Court processes in aid of mediation—see [810.147]

The Arbitrability of a Dispute

- New annotation on Some Australian decisions on arbitrability—see [CA24.150]

Arbitration Agreement

- New commentary on Principles relating to the construction of an arbitration clause—see [CA 21.10]
- New section on Applications for stays of curial proceedings and compulsory reference of domestic & international commercial disputes to arbitration—see [22.10] to [22.289]

Jurisdiction of Arbitral Tribunal

- New annotation on “... arbitral tribunal may rule on its own jurisdiction ...” – s 16(1)—see [CA30.20]

Making of Award and Termination of Proceedings

- New commentary on Costs of arbitration where claim and counter-claim—see [CA48.10.02]