

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with the Thirteenth Assembly Sessional Orders (Part 12.3) as adopted on 24 August 2017.

Construction Contracts (Security of Payments) Legislation Amendment Bill 2019

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

OVERVIEW OF THE BILL

This Bill amends the *Construction Contracts (Security and Payments) Act 2004*, the *Community Justice Centre Act 2005* and the *Construction Contracts (Security of Payments) Regulations 2005*.

The purpose of this Bill is to:

- (a) clarify when a payment dispute arises, when adjudication may occur, and how determinations may be enforced;
- (b) standardise the timeframes in which something must be done under the *Construction Contracts (Security and Payments) Act 2004* to that of working days and define the meaning of that term;
- (c) modify adjudication timeframes and revise the processes for appointing adjudicators;
- (d) provide for 'opting out' of adjudication under the *Construction Contracts (Security and Payments) Act 2004* for high value construction contracts;
- (e) provide a mechanism that will allow the monetary limit for adjudications that may be undertaken by the Director of the Community Justice Centre to be determined in regulations; and
- (f) transfer review jurisdiction under Part 5 of the *Construction Contracts (Security of Payments) Act 2004* from the Local Court to the Northern Territory Civil and Administrative Tribunal.

HUMAN RIGHTS IMPLICATIONS

This Bill does not adversely engage any of the applicable rights or freedoms. There is a generally understood notion of 'freedom of contract', whereby persons are considered free to enter into contractual relations on terms they see fit. This notion is one that has evolved through the development of the common law, rather than through international human rights treaties. The 'freedom of contract' is not, however, an all-encompassing right, rather it is treated by the common law as a general right that is subject to limitations where a perverse or unduly adverse result would occur to the detriment of one of the parties, such as where there is an absence of capacity (such as in the case of minors). The common law has, over time, acknowledged that it may be appropriate for the state to legislatively intervene in the ability to contract freely where it is in the public good to do so, perhaps most notably evident in the consumer protection field.

To the extent that international human rights treaties may apply to the 'freedom of contract' notion, Article 1.1 of the International Covenant on Civil and Political Rights (ICCPR) states that 'All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development'. Article 2.3 of the ICCPR further provides that 'Each State Party to the present Covenant undertakes:

- (a) to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) to ensure that the competent authorities shall enforce such remedies when granted.'

Article 5.1 of the ICCPR further provides that "Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant".

The *Construction Contracts (Security of Payments) Act 2004* does not interfere with or impinge on a person's ability to enter into contractual relations, other than by prohibiting detrimental provisions in contracts that slow, or halt the movement, of funds through the contracting chain. Nor does it prevent a person seeking to enforce (or challenge) a term (or terms) of the contract through the courts. Rather, the *Construction Contracts (Security of Payments) Act 2004* provides an alternative speedy, accessible process for parties to resolve disputes relating to payment of monies that may be due under a contract. The Construction Contracts (Security of Payments) Legislation Amendment Bill 2019 seeks to refine and improve the administrative procedures associated with the *Construction Contracts (Security of Payments) Act 2004* adjudication process.

CONCLUSION

This Bill is compatible with human rights as it does not raise any human rights issues.