

The Society of Construction Law Australia

Australian Legislation Reform Sub-Committee of the Society of Construction Law, Australia

We are pleased to introduce to the members our newly inaugurated Australian Legislation Reform Sub-Committee, which replaces the previous Domestic Legislation Sub-Committee.

The aim of the ALRS is to represent the collective views of our Society of Construction Law Australia members in furthering and progressing worthwhile discussion, debate and legislative reform relevant to the construction industry.

The Australian security of payment legislative framework

As our first major initiative, the ALRS has been tasked by the Executive Committee to consider the security of payment legislation in Australia. As part of this process, the ALRS will be considering what areas, including potential reform, may be necessary to improve the operation of the security of payment legislative framework. The ALRS aims to reflect our members' interests and views and to raise awareness of the issues with the current regime.

Potential for reform

Currently, the security of payment regime in Australia is generally divided into what are colloquially known as the West Coast and the East Coast Models. The East Coast Model has been the most widely adopted model to date, with New South Wales, Queensland, Victoria, South Australia and Tasmania implementing broadly similar versions of this model. The West Coast Model has been implemented in Western Australia and Northern Territory.

Despite support for their worthwhile objectives of ensuring efficient and cost effective adjudication of payment disputes to assist the movement of cash flow within the construction industry, both models have also had their share of criticisms. The East Coast Model has been criticised as having aspects which are cumbersome and restrictive, whereas the West Coast Model is said to be less regulated.

Further, within each model, there are significant disparities between the schemes between each State and Territory which create inefficiencies and potentially new and unnecessary complexities for the construction industry. Whilst nationalisation of the security of payment regime was first raised in 2001 by the Cole Commission, it may now have a renewed currency given the recent enactment of security of payment legislation in South Australia, Tasmania and Australian Capital Territory.



The ALRS is not promoting any particular model of reform but believes that national uniformity in security of payment legislation, whether in the form of nationally consistent legislation or uniform legislation, may be one solution in improving the efficiency of dispute resolution and progress payment claim procedures in the construction industry.



In the coming months, the ALRS will be seeking submissions and comments from our members on this issue and aims to identify a consensus on whether and what reform may be appropriate or required in Australia.

As part of this consideration, the ALRS will also be examining international models, such as the regimes in the United Kingdom, Singapore and New Zealand.

Urgent but considered attention is needed to identify issues that would make the security of payment regimes in Australia work more effectively.

Views from SoCLA members

Accordingly, in the coming months, the ALRS will be circulating a survey calling for submissions and views from our members in relation to the current security of payment legislative framework and potential avenues for reform.

As the perennial saying goes, please "watch this space."

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