

GOVERNMENT CONNECT



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INTRODUCTION

Welcome to our November 2025 edition of Government Connect.

In this issue, we address some of the most pressing legal developments shaping NSW government operations. Our team explores recent reforms to industrial relations, including expanded victimisation protections and the heightened burden on employers to justify workplace decisions.

We examine the evolving landscape of contract law, highlighting the limits of quantum meruit and the importance of clear, enforceable agreements - vital for government agencies navigating complex projects. Indemnity clauses and unfair contract terms are scrutinised, with practical guidance for ensuring fairness and compliance in public sector contracts.

Recent NSW Land and Environment Court decisions clarify the meaning of "public purpose" and reinforce the importance of factual context and negotiation integrity in compulsory land acquisition and Just Terms compensation.

Finally, we demystify the Contractors Debts Act, outlining steps for agencies to manage subcontractor claims and mitigate legal and reputational risks.

Each article is designed to provide practical strategies and insights, supporting your work in an increasingly complex regulatory environment. As always, our legal team is here to assist. Please reach out if you'd like to discuss any topic further.

Wishing you a safe and restful festive season, and we look forward to working with you in 2026.



Warm regards,
James Mattson

Partner,
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NSW Government Cluster
Partner – Health, Premier
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New IR Act amendments place greater burden on employers in victimisation cases

Authors: Linda Mackinlay & Andrew Yahl

The Industrial Relations and Other Legislation Amendment (Workplace Protections) Act 2025 (NSW), assented to in July this year, introduces significant reforms to workplace laws in New South Wales. Among the most significant are the amendments to the victimisation provisions of the Industrial Relations Act 1996 (NSW) (Act).

NEW EMPLOYEE PROTECTIONS AND A NEW APPROACH TO ENFORCEMENT

Under the Act, victimisation occurs when an employee (including a prospective employee) is subjected to a detriment because of a protected reason.

The amendments add matters for which an employee or prospective employee must not be victimised by an employer or industrial organisation. It is now unlawful to victimise an employee or prospective employee on new grounds, including because they:

- > make a complaint or inquiry about their employment
- > make a complaint or inquiry to a public authority about their employer, including about matters other than about their employment
- > engage or propose to engage in industrial organising activities
- > are entitled to a benefit or claim a benefit under the *Workers Compensation Act 1987* or the *Workplace Injury Management and Workers Compensation Act*

1998, or in relation to other entitlements for a workplace injury

- > have a characteristic that is protected from discrimination under the *Anti Discrimination Act 1977*
- > have a role or responsibility under industrial relations legislation or an industrial instrument.

The provisions relating to enforcement of victimisation provisions have also been amended and enhanced as follows:

- > for the presumption of victimisation to be rebutted, the Commission must be satisfied that, objectively, the alleged matter was not a substantial and operative reason of the detrimental action (dismissal, for example)
- > when determining if the alleged matter was not a substantial and operative cause of the detrimental action, the Commission may consider conscious and *unconscious* factors.

In the Second Reading speech, the reasons for the introduction of an objective test were explained as:

'in response to the 2012 decision of the High Court of Australia in Board of Bendigo Regional Institute of Technical and Further Education v Barclay. That decision related to the reverse onus of proof under general protections provisions of the Commonwealth's Fair

Work Act and overturned a previous decision made by the full Federal Court. Despite the decision made by the High Court, the proposed amendment clarifies that the reasoning of the majority of the full Federal Court handed down in 2011 is the preferred test when determining if the presumption has been rebutted under the Industrial Relations Act.'

CONSCIOUS AND UNCONSCIOUS FACTORS IN DECISION-MAKING

Under the new and expanded victimisation provisions, the role of the decision maker and the chain of decision making will be pivotal when the Commission determines whether detrimental action has been taken unlawfully.

When addressing victimisation claims, decision makers must be aware of both conscious and unconscious factors that may influence their decisions.

Demonstrating the conscious factors that have been taken into account will generally be straightforward, assuming factual information and a procedurally fair process (that ensures parties have an opportunity to make submissions and respond to matters) have been used.

Where it will be undoubtedly challenging is how employers can demonstrate what unconscious factors they have taken into account when decisions are made that may have a detrimental outcome for an employee.

Unconscious factors in decision making are mental processes that influence our choices without us being aware of them. These invisible forces can shape preferences, judgments, and actions without the decision maker realising it. Examples of these are unconscious biases related to gender, age, ethnicity, or other characteristics that can affect how evidence is interpreted or how parties are perceived. In addition, prevailing workplace cultures or societal norms might influence perceptions.

But lack of insight into one's motives is no defence. In the Barclay case cited above, the Court said of the employer's actions: *"the real reason may be conscious or unconscious, and where unconscious or not appreciated or understood, adverse action will not be excused simply because its perpetrator held a benevolent intent"*.

Therefore, the real reasons don't even need to be appreciated or understood by the decision maker. So short of getting a hypnotist to prove there were no unconscious factors influencing a decision, how can an organisation possibly address this in their decision making?

First, it should be deliberate about who makes decisions. To rebut the presumption and to address unconscious factors, the organisation may need to take a conflict of interest approach.

Let's look more closely at this.

IMPLICATIONS FOR STATE GOVERNMENT EMPLOYERS

The expanded victimisation provisions under the Act reflect a broader shift toward accountability in NSW workplaces. They offer stronger protections for employees and place a greater burden on employers to justify detrimental actions.

They also offer an enhanced pathway for employees to take, and we expect to see an increase in these types of claims.

For state government employers to defend such claims, we recommend proactive steps, including:

- > Always deal with, resolve and close out complaints as soon as possible.
- > Do not over-escalate a complaint or inquiry.
- > Limit knowledge of a complaint or inquiry to those who need to action it.
- > Structure decisions carefully:
 - > consider seeking recommendations from those who are not the final decision makers, or whether the decision should be left to the final decision maker
 - > avoid having conflicted managers involved in or making final calls.

- > Document reasons thoroughly: Ensure decision-making processes are transparent and well recorded. Keep detailed notes of meetings, communications, and rationale.
- > Train leaders: Help managers and HR professionals recognise protected conduct and understand the risks of unconscious bias.
- > Consider outsourcing the decision and having the service provider decide based on objective and documented facts.

Remember that the reverse onus provision means employers must be prepared to defend their actions with evidence, not just assertions.

Understanding these changes and implementing robust decision-making processes will be critical to managing risk and maintaining compliance. And when it comes to defending your decisions, be prepared for a rigorous process – because the Commission will want to know not just what you did, but what you were thinking (unconsciously or not) when you did it.



The case for indemnities – how they work in practice

Author: Rebecca Hegarty



Indemnity clauses are often used in contracts to define who bears risk. They are a promise by one party to cover the costs or loss incurred by the other party as a result of certain events.

It is important when wording or negotiating an indemnity to consider how wide the clause is, whether it will be effective, and even if one is needed at all.

DIFFERENT FORM, DIFFERENT WORDING

Indemnity clauses can take different forms. For example:

- > A indemnifies B against all losses that B may suffer except those arising out of B's own acts and omissions
- > A indemnifies B against any liabilities and claims made by a third party that is in any way related to the contract
- > A indemnifies B against any losses B may suffer if C fails to make payment
- > Each party indemnifies the other from any loss arising from a breach of contract by the indemnifying party.

COMMON PITFALLS

Indemnity clauses may come unstuck when they are drafted too widely and extend beyond ordinary breach of contract. For example:

- > a clause that has a party providing indemnification for things beyond their control such as the act, default or breach of a third party
- > an indemnity by A of loss suffered by B, regardless of whether B caused or contributed to that loss.

WHEN AN INDEMNITY CLAUSE MAY BE AN UNFAIR CONTRACT TERM

If your other contracting party is a consumer or small business¹ an indemnity in a standard form contract may be challenged as an unfair contract term under the Australian Consumer Law. A clause in a contract with a consumer or small business may be found to be unfair if it:

- > would cause a significant imbalance in the parties' rights and obligations
- > is not reasonably necessary to protect the legitimate interests of the party advantaged by the term
- > would cause detriment (financial or otherwise) if relied on.

In making such an assessment, a court or tribunal would consider the contract as a whole and the transparency of the term. Case law provides the following examples of where an indemnity clause in a standard form contract was considered to be too wide:

Example 1: *ACCC v JJ Richards & Sons Pty Ltd* [2017] FCA 1224

The customer had to indemnify the supplier for all liabilities, claims, damages, actions, costs and expenses (on a full indemnity basis and whether successful or not) as a result of, or arising out of, or otherwise in connection with the contract, including any breach of warranties, covenants and conditions. The effect of the clause was to require the customer to indemnify the supplier even if:

- > the loss was not the customer's fault
- > the loss could have been mitigated by the indemnified party
- > the customer enjoyed no reciprocal indemnity.

Example 2: *ASIC v Bendigo and Adelaide Bank Limited* [2020] FCA 716

A finance contract required the borrower to indemnify the bank for losses not caused by the borrower, and including losses caused by the bank's own mistake or negligence which could have been avoided or mitigated by the bank. The borrower had no corresponding rights. The bank accepted in this case that the indemnity should be narrowed in scope and agreed to a rewording.

1. A small business under the Australian Consumer Law relates to contracts for the supply of goods or services, where at the time of entering the contract at least one party employs fewer than 100 F/T equivalent employees or has an annual turnover of less than AU\$10 million.

MITIGATING THE RISK WHEN DEALING WITH A CONSUMER OR SMALL BUSINESS

When negotiating a contract with a consumer or small business, consider whether indemnity clauses are even necessary. Assuming a breach of contract occurs, you could still sue on that basis as long as you could prove each of the following:

- > there was a legally binding contract
- > there was a breach of the contract's terms by the other party
- > you suffered loss or damage as a result of the breach
- > you took steps to mitigate that loss.

If going ahead with an indemnity, consider these points:

- > Are you comfortable agreeing to a mutual indemnity clause? Note that in some circumstances a non-mutual indemnity may be appropriate, such as where you have provided materials to the other party that breaches a third party's intellectual property rights
- > Can you limit the application of the clause to specific kinds of loss, for example, to breach of contract?

- > Can you exclude from the indemnity unintended consequences such as the indemnity applying even if the indemnified party causes or contributes to the loss. Or if the loss results from a third party's acts or omissions over which the indemnifying party had no control?
- > Does your contract give rise to other consequences for breach, such as a right to terminate the contract with payment of liquidated damages (which is a pre-determined amount of damages considered reasonable for the loss that may be suffered)?

HOW LONG DO I HAVE TO BRING ACTION BASED ON AN INDEMNITY?

With a few exceptions, New South Wales law allows six years from the date the cause of action first arose to bring action against the other party. If the indemnity is contained in a deed, it will be 12 years. (Note that all states and territories have their own limitations legislation which may differ from the New South Wales position).

The cause of action arises at the time you make demand under the indemnity and the other party

refuses or fails to comply. This means that in practice, the right to commence action could extend well beyond 6 or 12 years. This is one of the advantages of having an indemnity.

KEY TAKEAWAYS

Indemnity clauses can be useful, but it is important to examine an indemnity clause with a critical eye – whether you are including it within a contract or are on the receiving end of one. This is because courts will interpret the clause narrowly and if there is any ambiguity in the clause, will interpret it in favour of the party giving the indemnity.

If including an indemnity in a contract, unless there is a reason it should be given only in favour of one party, consider how broadly the indemnity is worded. The better indemnity clauses are balanced and not of such breadth that it may be found to be unreasonable.



Quantum meruit to the rescue? Maybe, but don't count on it

Authors: Holly Tang & Nicholas Kallipolitis



In the building and construction industry, certainty in contracts is the foundation for successful projects. But what happens when work is done without a formal contract, or outside the agreed scope, and disagreement ensues?

In that case, quantum meruit may come into play. Quantum meruit, which in Latin means, “as much as is deserved”, is a principle that allows you or someone else to claim reasonable payment for services or work provided. This principle is particularly significant for government agencies due to several factors:

- > **Budget constraints:** Government projects often have fixed budgets, making it difficult to accommodate unexpected quantum meruit claims and agencies cannot often pay beyond allocated funds
- > **Transparency requirements:** Payments under quantum meruit claims must be justified, reasonable and transparent. If work has been performed to the benefit of the government agency, it must be well documented
- > **Limited discretion:** Officials in government agencies often lack authority to approve extra work retrospectively.

Quantum meruit claims commonly arise in situations where:

- > A contract has been terminated before completion
- > Additional work was carried out

without formal approval of a variation

- > Services were provided under an informal or incomplete agreement
- > The government agency received and benefited from the work
- > The contract is void for any reason or there was no contract
- > There was an implied obligation to pay for the services rendered.

THE THREE PILLARS OF CONTRACT FORMATION

A valid contract in NSW is built on three foundational elements:

- > **Offer:** An offer is a clear proposal to enter into an agreement
- > **Acceptance:** The unconditional agreement to the terms of the offer
- > **Consideration:** Something of value exchanged between the parties, which is essential for a contract to be enforceable.

Additionally, the intention to create legal relations and the capacity to contract are critical components that ensure the contract's validity.

The three pillars have been considered in the following case law:

- > The NSW Court of Appeal in *Creative Academy Group Pty Ltd v White Pointer Investments Pty Ltd* [2024] NSWCA 133 was required to examine whether a new promise constituted valid consideration. The Court held that a promise to perform an existing duty does not amount to

consideration unless it is part of a bona fide compromise of a disputed claim.

- > In *Radovanovic v Stekovic* [2024] NSWCA 129, the Court clarified that acceptance of a Calderbank offer could form a binding contract only if there was a clear intention to be bound immediately.

EXPRESS VS IMPLIED TERMS IN CONTRACTS

Contracts consist of express terms, which are clearly articulated in writing, or even orally. Implied terms, on the other hand, are not written but are nonetheless understood to be part of the contract to ensure fairness or functionality.

Where implied terms are breached and a court becomes involved, it may act on the principle of quantum meruit.

Quantum meruit is a claim for reasonable payment for services when no formal contract exists, or when work is performed outside the contract's scope. It acts to prevent unjust enrichment and allows a party to claim reasonable payment for services rendered.

It is underpinned by the deeper principle of an implied duty of good faith in contractual performance, something NSW courts have long recognised. Key cases include *Renard Constructions (ME) Pty Ltd v Minister for Public Works* (1992) 26 NSWLR 234 and *Burger King Corporation v Hungry Jack's Pty Ltd* [2001] NSWCA 187.

Both cases affirmed that the scope and application of quantum meruit depend on the nature of the contract and the parties' conduct. They highlight the judiciary's balanced approach to ensuring fairness without undermining the parties' autonomy and emphasise that quantum meruit claims in NSW are subject to legal boundaries.

QUANTUM MERUIT: NOT A SILVER BULLET

The High Court case of *Pavey & Matthews Pty Ltd v Paul* (1987) 162 CLR 221 illustrated that quantum meruit is based on unjust enrichment rather than an implied contract. This pivotal case allowed recovery despite the absence of a written contract for building work required by statute.

A more recent decision in *Mann v Paterson Constructions Pty Ltd* [2019] HCA 32 narrowed the circumstances under which quantum meruit can be claimed, reinforcing the importance of respecting the original contractual bargain. The Court held that quantum meruit is not available where a contractual right to payment has already accrued, and that any restitutionary claim must be capped at the contract price.

JUDICIAL RELUCTANCE TO INTERVENE

NSW courts generally avoid interfering in commercial contracts, upholding the principle of freedom of contract. This is grounded in the view that parties to a commercial agreement are of equal bargaining power and should be free to negotiate terms. Intervention is reserved for exceptional cases involving unconscionable conduct, penalty clauses, or misrepresentation. The *Contracts Review Act 1980* (NSW) provides a statutory framework for intervention, but courts apply it sparingly in commercial contexts.

KEY TAKEAWAYS

- > **Certainty is king:** Despite the existence of quantum meruit, clear, enforceable contracts remain essential for allocating risk and ensuring payment. NSW contract law relies on the principle of certainty in contractual bargaining.
- > **Quantum meruit is a last resort:** This remedy is only available when no enforceable contract exists, or work is performed outside the contract's scope. The claim must be limited to the fair value of the work done without an accrued right and cannot exceed the contract price.

- > **Courts favour party autonomy:** NSW courts rarely interfere in commercial contracts except in cases of ambiguity, unfairness, or illegality. Contracts are legally binding agreements with clear, mutually agreed terms and the courts will only intervene to prevent unjust enrichment, allowing parties to claim reasonable payment for services rendered.
- > **Proper drafting prevents disputes:** Good contract management is the best way to avoid uncertain claims and costly litigation. Contracts provide a structural framework that allows parties to allocate risks, define obligations, and plan performance.



Land acquisition in NSW – Court decisions on public purpose and Just Terms compensation explained

Authors: Dennis Loether & Peter Papapostolou

Recent decisions of the NSW Land and Environment Court highlight the evolving legal landscape of compulsory land acquisition in New South Wales.

Two cases in particular reinforce the importance of factual specificity when acquiring land, and the Court's continued commitment to the integrity of negotiation processes.

UPG 72 Pty Ltd v Blacktown City Council [2025] NSWLEC 29

In this case, the Land and Environment Court considered the scope and specificity of the "public purpose" for which land was acquired under the *Local Government Act 1993 (LG Act)*. The case arose from Blacktown City Council's compulsory acquisition of a property in December 2021 for the stated purposes of constructing drainage infrastructure and creating a habitat for the endangered green and golden bell frog.

At the time of acquisition, the land was zoned SP2 (drainage). The Valuer General assessed compensation at \$2,494,984.44, comprising \$2,460,000 for market value and the remainder for disturbance under the *Just Terms Act*.

Under section 55 of the *Just Terms Act*, compensation is assessed on the basis of market value, disregarding any change in value attributable to the public purpose.

The Applicant disputed the valuation and sought compensation of \$7,035,521.20. A central issue in the dispute was the meaning of the

phrase "public purpose" for which the land was acquired.

The Applicant argued that the land's underlying zoning should be R2 Low Density Residential, as it lay within a proposed residential development. An R2 zoning would significantly increase the land's market value.

This article highlights the Court's interpretation of "public purpose".

WHAT WAS THE SPECIFIC PURPOSE FOR WHICH THE LAND WAS BEING ACQUIRED?

The Council contended that the acquisition formed part of a broader public purpose; namely, a precinct-wide trunk drainage infrastructure for the planned residential development.

The Applicant argued that the public purpose was narrower and more specific than claimed by Council. Its position was that the purpose was, in fact, the construction of a localised drainage channel and creation of a habitat for the green and golden bell frog.

In making judgement, the Court referred to Section 186(1) of the *Local Government Act*, which states that when acquiring land, a council must determine the public purpose on the *factual context of the acquisition* [emphasis ours].

On that basis, the Court determined that the Council's assertion that the acquisition was part of a broader infrastructure or urban release strategy was not supported by the evidence.

HOW DID THE ENVIRONMENTAL CONTEXT OF THE LAND IMPACT THE VALUE?

The Court found that the acquisition was functionally distinct from the broader infrastructure requirements, and that it was targeted, as it arose from specific biodiversity obligations and localised drainage needs.

Furthermore, the land's zoning and environmental constraints, along with its proximity to an environmentally sensitive creek, limited its development potential and supported its designation for conservation and drainage purposes rather than residential development.

The Court therefore assessed that the land's highest and best use aligned with Council's E2 Environmental Conservation zoning. In so doing, the Court also rejected the Applicant's proposed R2 Low Density Residential valuation.

The net result was that the environmental context of the Land had significant implications for the valuation. This led to the Applicant arguing that had the initial SP2 zoning been disregarded (as required under the *Just Terms Act*), the land would have been rezoned R2 in line with the residential development.

The Court saw otherwise. By identifying a narrow public purpose, it was able to disregard broader planning assumptions and focus on the specific ecological and infrastructure functions driving the acquisition.

Although a small, flood-free portion of the site was deemed to be zoned R2, the Court's finding ultimately led to a lower market valuation than either the Applicant and the Valuer General had proposed.

SIGNIFICANCE OF THIS DECISION

Above all, this case confirms that the stated public purpose in a land acquisition must be based on the specific factual context of the acquisition, not in broad or generalised planning objectives.

The Eddie Arnott Corporation Pty Ltd v Sydney Metro (No 4) [2025] NSWLEC 103

This case concerns a dispute over compensation following the compulsory acquisition by Sydney Metro of commercial premises in Hunter Arcade.

The case raised significant issues regarding the admissibility of evidence and the scope of the Court's jurisdiction in Class 3 proceedings. The matter was further complicated by the involvement of Dr Imad Arnaout, the sole Director of the Applicant, who was also joined as a second respondent due to his claimed leasehold interest in the acquired property.

In making its determination the Court explored the following issues:

ADMISSIBILITY SECTION 10A NEGOTIATIONS

A central issue was whether communications conducted under section 10A of the *Just Terms Act* could be admitted into evidence. The Applicant and its Director submitted several affidavits and expert reports which referenced without prejudice communications made during the negotiation period under section 10A.

Section 10A requires acquiring authorities to make a genuine attempt to acquire land by agreement for at least six months before issuing a proposed acquisition notice. However, section 10A(7) of the same Act is designed to protect the integrity of the pre-acquisition negotiations between landowners and acquiring authorities.

The Court confirmed that because the proceedings constituted a civil cause of action, any evidence relating to section 10A negotiations was inadmissible. This aligns with *Desane Properties Pty Ltd v State of New South Wales* [2018] NSWSC 553, where the Court held that section 10A negotiations cannot be used to challenge the validity of an acquisition.

ADMISSIBILITY OF WITHOUT PREJUDICE DISCUSSIONS

The affidavits tendered by the Applicant and its Director also made reference to without prejudice communications made during the section 34 conciliation process under section 34 of the *Land and Environment Court Act 1979*.

However, under r 35.9 of the *Uniform Civil Procedure Rules 2005* and section 61(3)(e) of the *Civil Procedure Act 2005*, that affidavit was also inadmissible as it contained references to without prejudice communications and negotiations under section 10A of the *Just Terms Act*.

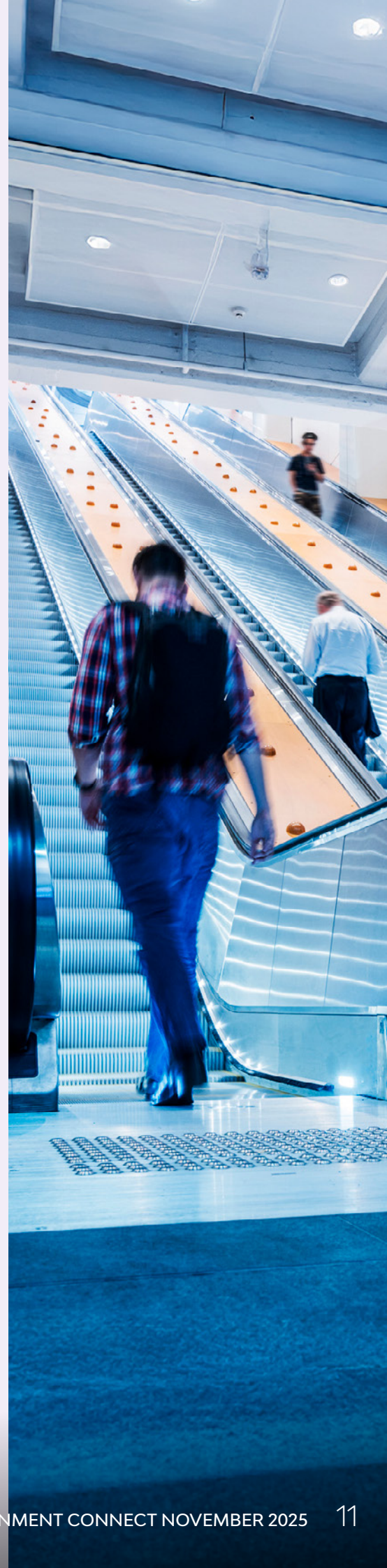
JURISDICTIONAL LIMITS IN CLASS 3 PROCEEDINGS AND COLLATERAL CHALLENGE

The Applicant and Dr Arnaout also attempted to raise issues regarding the validity of Sydney Metro's acquisition process. However, the Court's role under section 66 of the *Just Terms Act* is limited to determining compensation, not reviewing the legality of the acquisition itself.

This finding emphasised the Court's role as a judicial valuer, not a forum for administrative review, reinforcing the procedural boundaries of compensation disputes under the *Just Terms Act*.

SIGNIFICANCE

The Court confirmed that compensation proceedings under the *Just Terms Act* cannot be used to challenge the validity of an acquisition, and strictly excluded evidence relating to protected negotiations and conciliation discussions.



Why the Contractors Debts Act 1997 (NSW) matters for NSW Government Agencies

Author: David Creais

While contracts between government agencies and suppliers are often managed through robust procurement and governance frameworks, one piece of legislation sometimes overlooked is the *Contractors Debts Act 1997 (NSW) (Act)*.

This Act provides a means for subcontractors and suppliers to recover unpaid debts directly from the principal, bypassing the contractor who failed to pay. Understanding this process is critical for agencies acting as principals, as non-compliance can result in legal liability and reputational damage.

HOW THE DEBT RECOVERY PROCESS WORKS

The Act applies when a subcontractor or supplier (called the unpaid person) has not been paid by a contractor (the defaulting contractor) for work carried out or materials supplied under a contract.

In this situation, the unpaid person can obtain payment from the principal if (and only if) the work or materials comprise all or part of (or are incidental to) what the principal engaged the defaulting contractor to deliver.

These are the relevant steps:

1. Obtain a debt certificate

The unpaid person must apply to a court for a debt certificate under section 7 of the Act. This certificate confirms the amount owed by the defaulting contractor and is typically issued after a successful adjudication or court judgment against the contractor.

2. Serve a Notice of Claim

The unpaid person then serves a Notice of Claim on the principal, attaching the debt certificate, which operates as a statutory assignment of the debt. This notice must be in the approved form and include the following information:

- > name and address of the principal (the entity owing money to the contractor)
- > name and address of the contractor (the party who engaged the unpaid person)
- > statement that the contractor has failed to pay the unpaid person for work or materials supplied
- > reference to the agreement between the principal and the contractor under which the work or materials were provided
- > copy of the debt certificate issued by the court under section 7 of the Act
- > statement requiring the principal to pay the amount specified in the debt certificate out of any money payable to the contractor
- > signature of the unpaid person submitting the notice.

3. Principal's obligation to pay

Once the Notice of Claim is served, the principal is legally obliged to pay the debt directly to the unpaid person, provided funds are owing to the contractor. This obligation arises

seven days after receipt of the notice.

4. Discharge Notice

After the debt is paid, the unpaid person must issue a Discharge Notice to the principal, releasing them from further obligation under the claim.

5. Priority of claims

If multiple Notices of Claim are served, the principal must pay them in the order received. Notices received within seven days of each other are treated equally. Failure to manage this correctly can result in disputes and further liability.

CONSEQUENCES OF NON-COMPLIANCE

NSW government agencies acting as principals must take these obligations seriously. Failure to comply can result in:

1. Legal liability

If a principal fails to make any payment required by the Act, the unpaid person can initiate legal action to enforce the debt certificate. The court can order the principal to pay the certified amount directly to the unpaid person, regardless of whether the principal has already paid the contractor.

The principal's only real defence is if they have a valid reason not to pay the contractor – such as the contractor not completing the work properly or breaching the contract. If such a reason exists, the principal can use it as a defence against paying the unpaid person, just as they could

have used it against the contractor if the debt hadn't been assigned.

2. Operational disruption

Funds may be frozen unexpectedly, delaying payments to contractors and affecting project timelines. This can create administrative burdens and require urgent legal intervention.

3. Reputational risk

Non-compliance may be seen as a failure to support fair payment practices, especially in industries

like construction, where subcontractors are vulnerable to insolvency risks.

PRACTICAL STEPS FOR COMPLIANCE

To mitigate risk and ensure compliance, NSW government agencies should:

- > maintain clear records of all contractual relationships, including those with subcontractors
- > monitor payment obligations and

ensure funds are not disbursed to contractors when a valid Notice of Claim is received

- > seek legal advice promptly upon receiving a debt certificate or Notice of Claim
- > include protective clauses in contracts that anticipate potential claims under the Act
- > train procurement and finance staff on the implications of the Act and the correct response.



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SUB PANEL 5

ADMINISTRATIVE LAW, GOVERNMENT AND REGULATORY

- > Administrative law, statutory interpretation and governance advice
- > Statutory Applications
- > Enforcement, regulation and prosecution



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Other services include liability litigation, general litigation, dispute resolution and debt recovery, inquiries.

CLUSTER	CLUSTER RELATIONSHIP PARTNER
Climate Change, Energy and the Environment	Dennis Loether
Communities and Justice	James Mattson
Customer Service	Rebecca Hegarty
Education	David Creais
Health	James Mattson
Jobs and Tourism	Rebecca Hegarty
Planning	Dennis Loether
Premier and Cabinet	James Mattson
Regional NSW	Dennis Loether
Transport	Darren Gardner
Treasury	Darren Gardner

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VALUE ADDED SERVICES

Bartier Perry is committed to a partnership approach with NSW Government. We believe the way to provide best value add services is to work with agencies to identify opportunities and initiatives that best meet your needs. We invite you to reach out to any of our cluster partners to discuss these offerings or to discuss areas where we can add value. We will also ensure we contact you with suggestions (that are outside of the below offerings) as they arise.

Our value add offerings include:

ADVICE HOT-DESK

NSW Government agencies can, without charge, contact us to obtain brief advice. Our clients tell us that they value this service which often allows them to address potential issues early.

ATTENDING TEAM MEETINGS

For example, we would welcome attending team meetings to not only learn about what is occurring but to be available to answer questions for 15-30 minutes to provide guidance. Similar to a 'hot-desk' but structured to be face-to-face and engaging.

MENTORING PROGRAM

Agency staff have told us they value the informal mentoring program we have in place. Lawyers, often employed by NSW Government agencies, may be working without a supervising lawyer and require hours of supervision to obtain their unrestricted practising certificate. We assist by meeting weekly or fortnightly to review their caseload and make suggestions on strategies and approaches. We align our mentoring approach to the Law Society of NSW's structured mentoring program.

CPD, TRAINING AND EDUCATION

We provide our clients with tailored seminars, workshops and executive briefings for senior management on current legislative changes and regulatory issues.

E-UPDATES ON LEGAL REFORM

We distribute electronic articles on a weekly basis which detail legislative and case law changes and industry developments as they occur, and often before they occur. We encourage our clients to re-publish our articles across their internal communication platforms, as appropriate.

PROVISION OF PRECEDENTS, LIBRARY AND RESEARCH FACILITIES

We can provide precedent documents and templates from our library on request. We have an extensive library and subscribe to the three major online resource providers (Thomson Reuters, CCH and LexisNexis). NSW Government agencies may have access to our physical library resources at any time and can conduct research using our online services together with 20 hours per year of complimentary paralegal support.

SECONDMENTS AND REVERSE SECONDMENTS

We understand the provision of secondees is particularly valued and we welcome the opportunity to continue to provide legal secondments to NSW Government agencies. We would also welcome the opportunity for a reverse secondment for NSW Government agency staff who may benefit from spending a week (or similar) working in our office alongside one of our senior lawyers.

All articles, upcoming events and past videos can be found under the Insights tab at – www.bartier.com.au

ABOUT BARTIER PERRY

Bartier Perry is, and has always been, a NSW based law firm committed to serving the needs of our clients in NSW.

Our practice has corporate clients from a wide range of industry sectors, and appointments to all levels of government including statutory bodies. With over 140 lawyers, we offer personalised legal services delivered within the following divisional practice areas:

- > Corporate & Commercial and Financial Services
- > Dispute Resolution and Advisory
- > Estate Planning & Litigation, Taxation and Business Succession
- > Insurance Litigation
- > Property, Planning and Construction
- > Workplace Law & Culture

YOUR THOUGHTS AND FEEDBACK

Thank you for taking the time to read our Government Connect publication. We hope you found it informative.

If you have any comments on this issue, or suggestions for our next issue, we'd love to hear from you.

Please email info@bartier.com.au

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