

Contractors' Liens

Terms of Reference

In June 1974 the Commission was asked to advise on the practical effects of enacting liens and charges legislation to protect the interests of persons involved in the building and construction industry.

Background of Reference

The reference arose from sustained evidence of problems experienced by the building and construction industry primarily as a result of the practice of subcontracting. In a conventional building contract the client pays the head contractor, who engages other contractors (or subcontractors) to perform particular work or supply materials. Problems occur when there are insufficient funds available to pay subcontractors for work done or materials supplied, for example if the head contractor is declared insolvent. Liens legislation would permit subcontractors to register liens against the land on which building operations were being carried out, as security for payments due to them under their contracts. Charges legislation would enable subcontractors to charge money due from the owner to the builder, and the superior subcontractors.

Work on the reference proceeded swiftly and the Commission submitted an interim report setting out its tentative views in July 1974. This report was followed in August 1974 by a working paper which was released for public comment.

Nature and Extent of Consultation

The working paper attracted a number of submissions including responses from contractors and suppliers, industry associations, the Australian Finance Conference, regulatory boards, public utilities, the Federal Minister for Housing and Construction, legal agencies, the Perth Chamber of Commerce and a number of individuals. Two thirds of respondents advocated other forms of protection for subcontractors.

No Action Recommended

Following consideration of the submissions, the Commission recommended that no legislative action be taken to provide for registration of contractors' liens and charges. It did, however, suggest that alternative proposals for the protection of those engaged in the building and construction industry be examined by government.

In 1986 the Commission was asked to consider other alternatives to resolve the issue. The Commission subsequently made detailed recommendations for implementation of a legislative scheme to overcome these problems.¹

¹ Law Reform Commission of Western Australia, *Financial Protection in the Building and Construction Industry*, Project No 82 (1998).