

# Common laws needed as billions are tied up by bad debts

**B**AD and tardy debt in the building industry must be costing the country billions of dollars a year. There are parts of the industry that have a culture of tardy payment, paying scant regard to contractual terms.

Typically, building contracts provide that payments have to be made in anything from 10 to 30 days.

Wishful thinking indeed. People we know in the building industry frequently complain that the normal turnaround time can be 60 to 90 days.

This is a malaise in the construction industry.

To digress a little, I was at a famous old Madrid restaurant four years ago, and seated next to my wife and me was a distinguished German couple.

We exchanged pleasantries, the gentleman mentioned he was in engineering and did some business in Australia. But he planned to abort all business dealings here because it took six months to get paid.

"Don't be alarmed," I said. "That's not unusual. You don't need to close operations for that reason alone. In Australia a great many businesses pay late and only after considerable prompting. Just be a better prompter."

Whether one is dealing with builders, subcontractors or suppliers, a large percentage of bills are paid late. Tardy payment contaminates the entire construction food chain and can wreak havoc. The late-payment



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**Despite some improvements bad debts are still crippling the industry**

syndrome has also spawned a huge amount of debt-chasing infrastructure. Whether the company is large or small, the most critical operative is the financial controller who gets the bills out, then gets payment in.

Most companies have comprehensive money-chasing systems: seven-day, 14-day, 30-day letters; phone calls; repeat phone calls; dummy summonses; threats and more threats. Some of the systems are conventional and some are not (such as limb realignment).

Imagine the cost of stationery, postage, human resources, interest on overdue accounts, union intervention to exact payment, lawyers, debtor agencies and the write-offs. It would be well into billions of dollars annually.

The magnitude of the problem is such that it has become more than endemic; it has become systemic.

Hence the disquiet harboured by the German engineer. He thought there was something so wrong that he felt compelled to close his operations. But it depends whether you are looking through German or antipodean lenses.

The legal profession is not immune from the tardy or bad-debt syndrome, but it can protect itself by the operation of trust accounts. Pay the money into an account before we can act.

The building industry has not to date been able to do

this. This being the case an environment has been established where last-resort measures such as aggressive union activity and the threats and enactment of black banning on building sites can be found.

The most ominous downside of all this is that when there is an economic contraction in the industry, such as now, the longer a client takes to pay, the further exposed the creditor is.

A good contractor, doing good work, who is owed money, still has to pay creditors and employees, even if he is subject to the "drip feed". The drip feed, or the 90 per cent factor, is well known in the building industry.

These expressions were coined when payments were late and/or when only part-payment made.

Sometimes, it's when the job is finished and the final payment is withheld, along with the reassurance that if you want the money, we'll see you in court.

When the payment delays increase, the contractor's risk of insolvency becomes real, not just for that party but also for those in the chain depending on that contractor. So what's the cure?

There have been attempts, most notably security-for-payment legislation enacted in a number of Australian jurisdictions. In NSW new legislation appears to be working well and there have been more than 300

determinations. Anecdotally, the NSW experience is improving the tardy-payment culture.

Compare this with Victoria, where there have only been a handful of determinations.

The problem there seems to be the difficulty with enforceability of applications for security for payment.

As the Victorian legislation has in large part proved to be benign, there is reluctance on the part of contractors to resort to the legislation, hence the uptake is low.

There are, however, amendments going through the Victorian Parliament that, hopefully, will cure some of the legislative impediments.

It would help if there was a harmonised approach to security-for-payment legislation, where best-practice laws are applied. The differences between the state acts are anything but useful.

With one construction industry serving 20 million people, the country can ill afford the luxury of different state acts dealing with a common problem. Some laws are clearly working and some are spluttering.

In an ideal world a uniform approach would exist to deal with a crippling problem that does not respect borders.

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