

NEW OBLIGATIONS FOR PRINCIPAL CONTRACTORS—AND THAT MEANS YOU

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Two new NSW Acts, the *Workers Compensation Legislation Amendment Act* and the *Pay-Roll Tax Legislation Amendment (Avoidance) Act*, introduce important new obligations for companies which engage contractors.

For the purposes of the legislation, a company which enters into a contract for the carrying out of work by another person is a 'principal contractor'. 'Another person' is referred to in the legislation as the 'subcontractor'.

The definition of principal contractor is very broad and should not be confused with the definition of a principal contractor as contained in the Occupational Health and Safety legislation, which is confined to specific activities.

WORKERS COMPENSATION

The relevant provisions of the *Workers Compensation Legislation Amendment Act* concerning contractors are anticipated to come into effect on 1 July 2003. The provisions bring important new obligations for principal contractors, requiring them to pay much closer attention to the workers compensation arrangements of their subcontractors.

Most significantly, the provisions have the effect of making a principal contractor liable for the payment of any workers compensation insurance premiums payable by their subcontractor for work done under a contract.

The exception to this is where the principal contractor receives a written statement by the subcontractor stating:

(a) that all workers compensation insurance premiums payable by the subcontractor for the work done in connection with the contract have been paid (together with a copy of the subcontractors certificate of currency in respect of that insurance); and

(b) whether the subcontractor is also a principal contractor in connection with that work. If so, it must provide details as per (a) above.

The following points are important to note:

- the principal contractor is able to withhold payments due to the subcontractor until a written statement is received from the subcontractor, and any penalty under the contract of late payment does not apply in these circumstances;
- the written statement does not relieve the principal contractor of liability if it had reason to believe the statement was false when given;
- if a subcontractor provides a knowingly false statement, it is guilty of an offence with a maximum penalty of \$11,000;
- the principal contractor is entitled to recover any payment made as a consequence of its expanded liability as a debt from the subcontractor; and
- the new obligations do not apply in certain limited circumstances, namely where the subcontractor is in receivership, in the course of being wound up or is bankrupt and the payments are made to the receiver, liquidator or trustee in bankruptcy.

PAY-ROLL TAX

Similar amendments introduced to the *Pay-Roll Tax Act* by the *Pay-Roll Tax Legislation Amendment (Avoidance) Act*, which will also take effect on 1 July 2003, will make a principal contractor jointly and severally liable with the subcontractor for pay-roll tax payments, where employees of the subcontractor are engaged in carrying out work in connection with a business undertaking, if the pay-roll tax is unpaid at the end of 60 days after the relevant financial year.

As with the workers compensation amendments, the principal contractor will be relieved from such liability if the subcontractor has provided a written statement comprised of the following:

(a) a statement that the subcontractor is either registered, or is not required to be registered, as an employer under the *Pay-Roll Act*;

(b) a statement that all pay-roll tax payable by the subcontractor for relevant employees during the term of the contract has been paid;

(c) a statement by the subcontractor as to whether the subcontractor has in turn subcontracted out any of the work, making it a principal contractor; and

(d) if the subcontractor is also a principal contractor for that work, its statement must be accompanied by a similar pay-roll statement by its subcontractor.

The statement can also include statements required under section 127 of the *NSW Industrial Relations Act*, dealing with the remuneration payable to employees of subcontractors, or a similar provision under any other Act.

The amendments also introduce similar provisions as the *Workers Compensation Legislation Amended Act* regarding false statements, recovery of payments as debt, withholding payments due to the subcontractor and when the obligations don't apply (see bullet point list in the workers compensation section above).

Furthermore, the statement must be in the form approved by the Chief Commissioner. The Office of State Revenue (OSR) has indicated that a standard form will be issued, however, it is not expected to be ready until after 30 June 2003 (as the form will not be needed until that date). The OSR is also believed to be working with Workcover and

the ATO in drafting the appropriate form.

IMPLICATIONS FOR EMPLOYERS

- It will be necessary for companies engaging contractors to request and obtain a written statement from their contractors containing the particulars outlined above, for both workers compensation premiums and pay-roll tax. Certified proof of the contractor's workers compensation insurance policy must also be obtained.

- In light of the new requirements, companies which engage contractors should review the current arrangements they have in place with contractors, including any agreements or contracts that are provided to contractors at the time of engagement.

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