

BCIPA Reform to Impact Construction Industry

The Queensland government has recently announced a number of amendments to the *Building and Construction Industry Payments Act 2004* (Qld) (**BCIPA**). The proposed amendments will implement some of the 49 recommendations made in a review of the BCIPA by prominent barrister Andrew Wallace. The wide ranging changes are aimed at addressing some industry concerns and will likely impact the way claimants and respondents deal with payment claims.

The amendments will certainly change behaviours in the Queensland market from a commercial perspective. We've outlined some of the key amendments here and what they mean for both new and existing contracts and for claimants and respondents moving forward.

The amendments fall into four key areas of reform:

1. dual regime based on claim size;
2. different timeframes;
3. reliance on additional information; and
4. establishment of the Queensland Building and Construction Commission (**QBCC**) as a single adjudication registry.

The amendments will apply to construction contracts entered into after 1 September 2014. Contracts entered into before that date will be subject to the current legislation. An adjudication application made on or after 1 September 2014 must be made to the adjudication registry within the QBCC, rather than to an authorised nominating authority.

Dual regime

A central aspect of the amendments is the creation of a dual regime where payment claims are categorised as either standard or complex. Complex claims are those where the payment claim is for an amount exceeding \$750,000.00. A standard payment claim is any claim that is not a complex claim.

Different timeframes

Payment claim: if a payment claim is served more than 91 days after the reference date in the contract, respondents will have 30 business days to provide a payment schedule.

Payment schedule: for a complex claim, a payment schedule will have to be provided in 15 business days (extended from 10 business days).

Final payment claim: a payment claim can only be served within 6 months (reduced from 12 months) after the 'construction work' was last carried out.

Adjudication response: for a complex claim, a respondent is now allowed 15 business days (extended from 10 business days) to submit an adjudication response, with the ability to apply to the adjudicator for a further extension of 3 weeks. For a standard claim, a respondent is now allowed 10 business days (extended from 5 business days) to submit an adjudication response.

Business day: the definition of business day has been relaxed to address industry shutdown, by excluding the 3 business days leading up to Christmas and up to 10 business days following New Year's Eve.

Additional information

Under the current BCIPA, all relevant reasons for withholding payment must be raised in the payment schedule. If reasons were not addressed in the payment schedule, they cannot be raised in the subsequent adjudication response. Under the proposed amendments, the respondents will be able to introduce new reasons for withholding payment in the adjudication response in a complex claim. The claimant will then be afforded the opportunity to address these reasons, by way of a response, within the 3 weeks following receipt of the new reasons.

Queensland Building and Construction Commission

Under the current regime, claimants can lodge their adjudication application with a number of different registered authorised nominating authorities. The amendments will create a single adjudication registry within the QBCC which will be responsible for:

- a. maintaining a list of active adjudicators and appointing adjudicators based on their skills, knowledge and experience; and
- b. monitoring the adjudicators' performance and ensuring that they are appropriately qualified.

Implications

The implications of the amendments are wide and far spread. It is a significant attempt to address industry concerns surrounding a system that has been perceived to have constricted time limits and mainly favours claimants. From a claimant's perspective, the changes may not be welcomed as they reduce the timeframes in which a claim can be made, they give respondents more time to respond to claims and they give respondents the opportunity to raise new evidence regarding non-payment in a response.

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