

Construction Alert

Preparing for a Christmas Payment Claim

December 2011

The *Building and Construction Industry Payments Act 2004* (BCIPA) restricts the service of payment claims at certain points throughout the Christmas period. However, claimants are known to take advantage of the holiday season by serving payment claims at a time when offices are typically empty and staff are more likely to be absent.

If a respondent fails to respond to a payment claim within 10 business days of service, the claimant can obtain judgement for the full amount claimed as a statutory debt. If a claimant attempts to ambush a respondent with a festive payment claim, we suggest that you employ the following strategies to ensure that you are not caught off guard.

1. Know when a payment claim can be served

Under the BCIPA, 'business day' is defined to exclude public holidays and 27, 28, 29, 30 and 31 December. If payment claims are expected in or around the Christmas period, respondents should be aware of the implications as they relate to the time in which a payment schedule must be provided in response.

For example, if a payment claim is served between Christmas Day and 2 January 2012, under the BCIPA it will have been taken to be served on 3 January 2012 and the 10 business day period in which respondents have to respond with a payment schedule will run from that date.

2. Be vigilant

Plan for the receipt of an ambush payment claim by educating your staff so that they:

- Are aware of the methods agreed between the parties as to the accepted forms of service of a payment claim. If claims are permitted to be served by email, ensure that someone is monitoring the correct email account (if payment claims are agreed to be sent to the inbox of an employee on leave, ensure that emails are forwarded to another account). If claims are permitted to be served by facsimile, ensure that someone keeps a record of all faxes received.
- Are able to identify a payment claim served under the BCIPA. Employees should be aware that a payment claim must contain the words '*This is a payment claim made under the Building and Construction Industry Payments Act 2004 (Qld)*' (or words to a similar effect). Staff should then be aware of the steps they should take upon identification of a payment claim, for example, an employee should be aware of the appropriate person to notify upon the receipt of the payment claim.

3. External registered offices

If your business has a registered office which is external to your own, such as an accountant's office, you should seek confirmation that the office has capacity to monitor its communications for the receipt of festive payment claims. In the same way that your own staff should be vigilant, the staff at your registered office should be aware of the implications of receiving a payment claim before Christmas Day.

Claimants will be aware that offices are typically under resourced during the Christmas period and may strategically serve a payment claim on a registered office during this time.

4. Deal with the issue upfront

You may seek to invite contractors to provide claims earlier in December if the relevant 'reference date' under the contract falls on or after Christmas Day. In that case, you will be able to deal effectively with payment claims (and payment) over the Christmas period. In addition, you may be able to direct contractors to the proper person who should receive the payment claim during the Christmas period. Further, you could direct the method of service, i.e. by way of email to a specific person, or service on a particular facsimile number.

Using such initiative should allow parties to feel comfortable that they will not be ambushed by payment claims (and subsequent adjudications) over the December-January Christmas period.

If you have concerns or require advice in relation to a payment claim, or a document that you suspect might be a payment claim, over the Christmas period, please contact us.

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