

CONSTRUCTION ALERT

BUILDING AND CONSTRUCTION INDUSTRY PAYMENTS AMENDMENT BILL RELEASED

27 MAY 2014

THE BILL

On 9 April 2014, the Department of Housing and Public Works released a fact sheet which detailed significant amendments to the *Building and Construction Industry Payments Act 2004* (Qld) (**BCIP Act**). A summary is set out in our previous Construction Alert, available [here](#).

Last week, the Government introduced the relevant Bill into Parliament which specifically details the amendments. The introduction of the Bill eases much of the conjecture which has existed in the Queensland building and construction industry since the Government first announced the scope of the reforms earlier this year.

The changes to the BCIP Act which are set out in the Bill are closely in line with the changes recently foreshadowed by the Government.

THE AMENDMENTS TO THE ACT

Broadly speaking, the Bill will amend the Act in the following ways:

Tiered payment claim regime

- The Act will operate on a tiered regime by distinguishing between payment claims as either complex payment claims or standard payment claims.
- The Act will define complex payment claims as payment claims which claim for any of:
 - a payment of more than \$750,000;
 - a latent condition under the relevant construction contract; or
 - a time-related cost under the relevant construction contract.
- A standard claim will be defined as a payment claim which is not a complex payment claim.
- Claimants will be required to positively identify the payment claim as either a standard payment claim or a complex payment claim within the payment claim itself.

Amendment of time frames for claimants and respondents

- The time a claimant has in which to serve a payment claim will decrease from 12 months after the construction work was last carried out to 6 months.

- Payment claims which claim the final progress payment under the construction contract will be required to be served within the later of 28 days after the last of the defects liability periods under the construction contract or 6 months after the construction work was last carried out.
- Respondents responding to a complex payment claim will have 15 business days (from receipt of the payment claim) in which to provide a payment schedule (increased from 10 business days under the current regime).
- In addition, if a payment claim is served more than 90 days after the relevant reference date, respondents will have 30 business days in which to provide a payment schedule.
- The time to provide an adjudication response to an adjudication application will increase from 5 business days to 10 business days in respect of standard payment claims and 15 business days in respect of complex payment claims.
- The definition of business day under the BCIP Act will be changed to exclude a Saturday, Sunday or public holiday, as well as 22-24 December and, 27-31 December and 2-10 January.
- A flow chart which reflects the amendments to the time frames for claimants and respondents under the BCIP Act is available *here*.

[Additional opportunity for respondents to provide reasons for withholding payment](#)

- If a respondent receives an adjudication application for a complex payment claim, it will be entitled to raise any reasons for withholding payment in the adjudication response whether or not it raised those reasons in the payment schedule.
- If a respondent raises reasons for withholding payment in the adjudication response for the first time, the claimant will be entitled to reply to those reasons within 15 business days of receiving the adjudication response.

[Appointment of adjudicators and the adjudication process](#)

- Authorised Nominating Authorities will no longer exist under the new regime.
- All adjudication applications will be made to the Queensland Building and Construction Commission (**QBCC**).
- The QBCC will refer adjudications to individual adjudicators for determination.
- The QBCC will also monitor the performance of individual adjudicators.

[When will the changes come into force?](#)

The changes introduced by the Bill will come into force on a date to be fixed by the Government. As we advised in our previous Construction Alert, the changes were expected to come into force on 1 September 2014. In a media release made by the Government last week, it was advised that the changes will come into force in 'late 2014'. We will keep you updated with the precise dates when we know more.

WHAT NEXT?

The changes to the Act introduced by the Bill will significantly alter the landscape in which claimants and respondents participate in the adjudication process. It is absolutely critical that both claimants and respondents, and their employees on the ground, have a comprehensive understanding of the changes well before they come into force.

Thomson Geer will be rolling out a series of presentations which will cover the field in relation to the amendments, and explain the practical steps that you should take in order to protect yourself come 1 September 2014.

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