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Practice Group(s):
Real Estate -
Construction

Overhaul of the *Building and Construction Industry Payments Act 2004 (Qld)*: How the Changes Will Impact You

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Introduction

The amendments to the *Building and Construction Industry Payments Act 2004 (Qld)* (BCIP Act) were passed on 11 September 2014 and received assent on 26 September 2014. The changes contained in the *Building and Construction Industry Payments Amendment Act 2014 (Qld)* (BCIPA Act) are extensive and will impact most participants in the building and construction industry in Queensland.

The commencement date is expected in the coming weeks.

Key Points

Outlined below are the key changes to the BCIP Act.

- New timeframes for payment claims.
- New classifications for payment claims – either standard or complex, which will impact timing for payment schedules and adjudication responses.
- The additional right for a respondent to raise new reasons for withholding payment in the adjudication response which were not raised in the payment schedule and the additional right for a claimant to submit a reply to those new reasons.
- Extended exclusion of days from the definition of business days between 22 December - 10 January.
- All Authorised Nominating Authorities (ANAs) are abolished, resulting in all adjudication applications being referred to the Queensland Building and Construction Commission (QBCC).

Changes to the BCIP Act

New time periods for payment claims

The BCIPA Act has proposed new time periods for payment claims. The time period for a payment claim to be made by the claimant still remains to be the later of the contractual period, or the time set out in the BCIP Act. The time set out in the BCIP Act has been reduced from 12 months to six months after the construction work to which the claim relates was last carried out.

The BCIPA Act includes a separate time period for final payment claims, which is the later of the time period in the contract, or 28 days after the end of the last defects liability period, or six months from completion of the works.

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Classification of payment claims

The claimant will now need to identify a payment claim as either standard or complex. A 'complex payment claim' means a payment claim for an amount greater than AUD750,000 (exclusive of GST). The following provisions apply to a 'complex payment claim'.

- Increasing the time period for the respondent to serve a payment schedule from 10 business days, to either 15 business days if the payment claim is served on the respondent within 90 days of the reference date, or 30 business days if the payment claim is served on the respondent after 90 days of the reference date.
- Increasing the time for the respondent to serve an adjudication response by an additional 10 business days, to either the later of 15 business days after receiving the adjudication application, or 12 business days after receiving notice of the adjudicator's acceptance of the adjudication application.
- Allowing the respondent to apply to the adjudicator for an extension of time of up to 15 business days to provide an adjudication response.
- Increasing the time the adjudicator has to determine an adjudication to 15 business days (with an automatic extension to 20 business days, if required).

Right to raise new reasons for withholding payment in the adjudication response and the right for the claimant to submit a reply to those new reasons

If the adjudication application is classified as a complex payment claim, the respondent now has a right to raise additional reasons for withholding payment in its adjudication response, which were not raised in its payment schedule. As a result, the claimant is entitled to provide the adjudicator with a reply to those new reasons. The claimant has 15 business days to provide a reply and is entitled to apply for a further 15 business days to provide the reply.

The definition of 'business day'

The current definition of 'business day' excludes public holidays and 27-31 December. The definition has been amended to exclude the additional periods of 22-24 December and 2-10 January.

ANAs being replaced by an adjudication registry

All ANAs will be abolished and replaced with a centralised government run adjudication registry, which is to be contained in the QBCC. Claimants will no longer be able to choose which ANA to refer the adjudication application to.

Transitional provisions

For contracts entered into prior to the commencement of the BCIPA Act, the existing recovery of progress payment provisions (including payment claims, payment schedules, adjudication applications and responses) will continue to apply, other than those which relate to the changes to the ANA's. All contracts entered into after the commencement of the BCIPA Act must comply with the new regime in the BCIPA Act.

Any adjudication application made to an ANA prior to the commencement of the amendments to the BCIP Act will continue under the previous regime.

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What this means for you

Principals

The amendments which will have the greatest impact on principals are as follows.

- The abolition of the ANAs.
- The additional timeframes for 'complex payment claims'.
- The additional time over the Christmas and New Year period to prepare a payment schedule or adjudication response.

Contractors

The amendments which will have the greatest impact on contractors are as follows.

- The additional right for the claimant to submit a reply to the respondent's adjudication response if it contains additional reasons to those reasons provided in the payment schedule.
- The additional requirement for a payment claim to state whether the payment claim is a standard payment claim or a complex payment claim.
- The change in timeframes for 'complex payment claims', which will reduce the immediacy of the cash flow from principal to contractor or from the contractor to the subcontractor.

All participants

Participants in the building and construction industry should take note of the extensive amendments to the BCIP Act as the amendments will impact routine administrative procedures and cash flow.

The amendments to the BCIP Act will add further complexity and time to a process which was originally developed to be an efficient and inexpensive process to increase cash flow from principals to contractors.

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