



CHANGES TO BCIPA: WHAT, WHEN AND HOW IT WILL AFFECT YOUR BUSINESS

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Proposed amendments to *Building and Construction Industry Payments Act 2004* (QLD) ("**BCIPA**") have been approved by Cabinet and are presently being debated by State Parliament. The changes are likely to come into effect on 1 September 2014.

All members of the building and construction industry should be aware of these proposed reforms, which will significantly change the recovery of payments process in building and construction projects if they are adopted.

The amendments relate to 3 key areas:

1. the appointment of adjudicators and the adjudication process;
2. timeframes for claimants and respondents to a payment claim; and
3. the ability to provide additional information during the adjudication.

The amendments aim to ensure a fair and equitable statutory recovery process for all parties involved in construction contracts and to "level the playing field". We summarise the key changes below.

ADJUDICATORS

Claimants will no longer be able to choose their adjudicators. Instead, a single Adjudication Registry will be established within the Queensland Building and Construction Commission ("**QBCC**"), who will appoint an

adjudicator after the QBCC has assessed the facts of each claim. This is to ensure that an adjudicator with appropriate skills is assigned to a claim to facilitate a fair outcome.

The adjudication registry will maintain a list of qualified adjudicators which includes information on the adjudicator's skills, experience and expertise.

Any adjudication application made after 1 September 2014 should be made to the QBCC for the appointment of an adjudicator.

Claimants will also now be able to withdraw adjudication applications if they wish. Previously, claimants could not withdraw their adjudication applications.

NEW TIMEFRAMES

The amendments to BCIPA alter the timeframes for the filing of payment claims, payment schedules, adjudication applications and adjudication responses. The amendments also introduce two categories of claims dependent upon quantum:

1. claims less than \$750,000; and
2. claims more than \$750,000 or a claim for a latent condition/time related cost.

The timeframes for the two categories of claim differ.

They are summarised at **Addendum A**.

Importantly, contracts entered into before 1 September 2014 will not be subject to these reforms and the old BCIPA time limits will apply. The new time limits will only apply to contracts entered into from 1 September 2014.

Another key (and welcome) change is that the definition of a business day now effectively excludes the period from 22 December to 10 January of each year to reflect the industry shutdown and to ensure respondents are not prejudiced. In other words, time stops running for the period of the Christmas and New Year closure.

The change is designed, in part, to prevent a practice adopted by some industry participants of serving a payment claim on Christmas Eve to limit a respondent's ability to effectively respond.

PROVISION OF ADDITIONAL MATERIAL IN ADJUDICATION RESPONSE

Respondents can now include in their adjudication response additional reasons and evidence not included in their Payment Schedule. Previously respondents were confined to grounds they raised in the Payment Schedule only.

This is an important reform which recognises that while claimants have had significant time to prepare a Payment Claim, respondents have had only 10 business days to prepare a Payment Schedule, so from time to time information is simply missed.

Whether a claimant should be allowed to respond to any new issues raised in an Adjudication Response is now subject to the discretion of the adjudicator.

CONCLUSION

The proposed changes level the playing field, particularly for Respondents, and will result in a fairer claims process.

Whilst the reforms have yet to pass Parliament, it is likely that they will. Note the changes and be ready for their likely introduction on 1 September 2014.

FOR MORE INFORMATION, PLEASE CONTACT:



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> ADDENDUM A: NEW BCIPA TIME FRAMES

	All Claims	Claim < \$750,000	Claim > \$750,000 or claim for a latent condition/time related cost
Payment of Claim			
Period for claimant to make payment claim after construction work last carried out/related goods and services last supplied.	12 months	6 months	6 months
Period for claimant to make payment claim after construction work last carried out or related goods and services last supplied if payment claim relates to the recovery of a final progress payment (including recovery of retention and/or return of security)	12 months	The later of the period prescribed in the contract, or 28 days after expiry of defects liability period. If above does not apply then within 6 months	The later of the period prescribed in the contract, or 28 days after expiry of defects liability period. If above does not apply then within 6 months
Payment Schedule			
Period for respondent to provide a payment schedule if progress payment is served less than 91 days after reference date	10 business days	10 business days	15 business days
Period for respondent to provide a payment schedule if progress payment is served more than 91 days after the reference date	10 business days	10 business days	30 business days
Adjudication Application			
Period for claimant to serve an adjudication application	10 business days	10 business days	10 business days
Adjudication Response			
Period for respondent to provide an adjudication response	5 business days	10 business days	15 business days (adjudicator can grant up to an additional 15 days)