

Article Information

Authors: Andrew MacGillivray, Denise Burloff, Ted Williams
Service: Projects, Infrastructure & Construction
Sector: Infrastructure

Construction Payment Regimes To Change In Queensland

The Queensland Government's introduction of the Building Industry Fairness (Security of Payment) Bill 2017 (Bill) seeks to make significant changes to the mechanisms for payment in the construction industry, through establishing a new Act that incorporates a number of new and old regimes.

The Queensland Government's introduction of the [Building Industry Fairness \(Security of Payment\) Bill 2017 \(Bill\)](#) seeks to make significant changes to the mechanisms for payment in the construction industry, through establishing a new Act that incorporates a number of new and old regimes.

The significant changes are as follows:

Building and Construction Industry Payments Act 2004 (BCIP Act)

The current BCIP Act is intended to be repealed and introduced into the new Act, with a few significant amendments including that:

1. A reference date will arise on the date of termination for all termination contracts, which either do not contain a post-termination reference date or that purport to prevent a reference date arising after termination;
2. Payment claims will no longer need to be endorsed (to be more in line with the NSW SOP legislation);
3. Claimants will no longer need to provide a 'second chance' notice before proceeding to adjudication (this notice will still apply to a party seeking a summary judgment application in the Courts);
4. Claimants will be given extended time for making adjudication applications (30 Business Days for all applications, unless it relates to a respondent's failure to pay the scheduled amount, in which case claimants will be provided 40 Business Days);
5. The number and length of submissions will be limited, as prescribed by regulation.

Project Bank Accounts

Project Bank Accounts (PBAs) are trust accounts established by head contractors to a 'building contract' - a contract under which the State Government is the principal with a contract value of between \$1 million and \$10 million. The principal makes progress payments owing to the head contractor directly into the PBA, and the first tier subcontractors are paid progress payments (as well as retention and disputed amounts) from the PBA.

Tough penalties will be imposed on head contractors who fail to comply with PBA obligations (e.g. a head contractor may be liable for a penalty of up to 500 penalty units (\$63,075) if it fails to establish a PBA).

Subcontractors Charges Act 1974 (SCA)

The SCA will also be repealed and introduced into the new Act. The regime will be similar to the existing regime, however the Bill appears to rectify some of the archaic drafting that currently exist in the SCA.

Defects Liability Periods and Retention

A statutory defects liability period of 12 months from the date of practical completion will be introduced for contracts that do not contain a defects liability period.

Head contractors will be required to give subcontractors notice before the defects liability period expires where the head contractor holds retention money, or security for defect rectification. Failure to provide such notice may result in a penalty of up to 100 penalty units (\$12,615).

Failure to release retention money in accordance with a contract may result in a penalty of up to 200 penalty units (\$25,230) or 2 years imprisonment.

Penalty for unlicensed work

The Bill increases the penalty for carrying out unlicensed building work pursuant to the *Queensland Building and Construction Commission Act 2009*. The maximum penalty will depend on whether it is the first contravention and may be up to 350 penalty units (\$44,152.50) or 1 year imprisonment.

What is the likely effect on the construction industry?

The Bill is clearly intended to encourage swift and timely payments to contractors and subcontractors, however time will only tell whether it has the desired effect or whether it does the exact opposite. Whilst there some positives, there are also some clear issues which have been overlooked.

Although PBA's are intended to provide security against insolvency, practically there are a many concerns around their effectiveness. One being that the cost of setting up and administering a PBA is likely to be significant, that it only applies to limited projects and subcontractors, and that if you are a subbie who is more than once removed from the head contractor then the PBA will be of very little benefit to you.

The parties most prone to insolvency, due to slow or withheld payments will likely miss out on the safeguards that PBAs are intended to afford.

In terms of the changes to the BCIP Act, it seems that the extended time frames for submitting applications will likely slow down the fast and efficient method of payment to claimants that it once afforded.

What This Space!