



## BCIPA UPDATE FURTHER AMENDMENTS & TIME CONSIDERATIONS

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The *Building and Construction Industry Payments Act 2004* (“**BCIPA**”) underwent significant amendments which were passed by Parliament on 11 September 2014.

### FURTHER AMENDMENTS

Since we last reported on the amendments to the BCIPA, the Queensland Government has passed further amendments in answer to concerns raised by stakeholders regarding timeframes and their application to construction contracts existing prior to the amendments coming into force.

The latest changes are as follows:

1. **DEFINITION OF “BUSINESS DAY”:**  
The 2014 amendments included a new definition of “Business Day” to the effect that the period between 22 December and 10 January are not “Business Days” for the purpose of calculating the timeframes under the BCIPA. The BCIPA now makes it clear that the definition of Business Day applies to all payment claims (and subsequent adjudications) issued after 15 December 2014, regardless of the date of the construction contract.
2. **TIMEFRAMES FOR ISSUING PAYMENT CLAIMS:**  
The amending Act reduced the timeframe within which a payment claim could be issued under a construction contract from 12 months to a maximum of 6 months after construction works to which the claim relates are completed or, for

a final payment claim, 6 months (previously 12 months) from the date of practical completion. However, the additional amendments to the BCIPA, have the following provisions which **apply from 15 June 2015** (irrespective of the date of the construction contract):

- For payment claims (other than a final claim): They may only be issued for a period of six months after the work to which the payment claim relates was carried out.
- For a final payment claim: They may only be issued within the later of:
  - the period worked out under the construction contract;
  - 28 days after the last defects liability period worked out under the construction contract; or
  - 6 months of completion of all construction works under the construction contract or complete supply of the related goods and services.
- The timeframes from 15 June 2015 therefore are as indicated in the table at **ATTACHMENT A**.

Importantly, the old regime continues to apply for any

payment claim issued before 15 December 2014 and for which there are outstanding steps to take (eg commencement of proceedings to recover the payment claim as a debt). In all other respects however, the new amendments will mean that from 15 June 2015, there will be in place one set of timeframes and one set of procedures for payment claims issued under construction contracts, irrespective of when the contract was entered into.

### EXTEND YOUR TIMEFRAMES

All timeframes in the BCIPA for serving or responding to payment claims are expressed to be the "earlier of" or the "later of" the time required by the construction contract or the timeframe provided for in

the BCIPA. It is therefore possible for the parties to agree on the times within which payment claims and payment schedules are to be served. This may be particularly important to any contractor who may potentially be in a position of having to respond to complex payment claims (ie payment claims seeking payment of more than \$750,000).

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> **ANNEXURE A:**  
TIMEFRAMES AS OF 15 JUNE 2015

	Payment claims served before 15 December 2014 Contracts	Claim < \$750,000 (Standard payment claim)	Claim > \$750,000 (Complex payment claim)
<b>Payment of Claim</b>			
Period for claimant to make payment claim after construction work last carried out/related goods and services last supplied.	N/A	6 months	6 months
Period for claimant to make payment claim after construction work last carried out or related goods and services last supplied <b>if payment claim relates to the recovery of a final progress payment</b> (including recovery of retention and/or return of security)	N/A	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
<b>Payment Schedule</b>			
Period for respondent to provide a payment schedule if progress payment is served <b>less than 91 days after reference date</b>	10 business days	10 business days	15 business days
Period for respondent to provide a payment schedule if progress payment is served <b>more than 91 days after the reference date</b>	10 business days	10 business days	30 business days
<b>Adjudication Application</b>			
Period for claimant to serve an adjudication application	10 business days	10 business days	10 business days
<b>Adjudication Response</b>			
Period for respondent to provide an adjudication response	5 business days (or 2 business days after adjudicator confirms acceptance of application)	10 business days	15 business days (+ adjudicator can grant up to an additional 15 days)
<b>Claimant Reply to Response</b>			
Time for claimant to provide reply to adjudication response	N/A	N/A – no right to reply	15 business days (+ adjudicator can grant up to an additional 15 days)