

Early Christmas present for subcontractors: How will the upcoming changes to the adjudication process in WA benefit you?

14 December 2016

3 min. read

Worthwhile read for: Subcontractors, Contractors, Principals

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It is that time of year again when subcontractors, contractors and principals should be aware of the time frames for a payment dispute under the *Construction Contracts Act 2004* (WA) (**Act**).

However, key changes to the Act introduced by the *Construction Contracts Amendment Bill 2016* may bring some relief to all parties to a construction contract, especially at this time of the year.

Key changes

Below are some of the key changes to the Act:

- **Measurement of time limits** – changes the time in a number of provisions from days to “business days”.
- **Definition of business days** – business days now not only excludes weekends, public holidays but also the traditional shut down period from 25 December to 7 January).
- **More time to make an application for adjudication of a payment dispute** – from 28 days to 90 business days.
- **Decreases the maximum time allowable under the contract for payment of payment claims** – from 50 days to 42 days (note still days not “business days”).
- **Clarification on when “time starts”** – removes confusion as to when a “payment dispute” arises.
- **Definition of “construction work”** – i.e. wholly artistic work is no longer excluded.
- **Claims can be “recycled”** – allowing claims previously made (including rejected claims) to be recycled.
- **Adjudicators’ powers** – ability to dismiss an adjudication application if given written notice from applicant and where the parties have reached a settlement, the adjudicator can make a determination giving effect to the settlement.
- **Easier to enforce determinations** – instead of seeking leave of the Court (which is discretionary), a party entitled to be paid in accordance with a determination can simply file the determination (and an accompanying affidavit) with the Court and it is taken to be an order of the Court.

Commencement and transitional periods

Most of the changes will commence this **Thursday, 15 December 2016** with the exception of the provision relating to the reduction in the time for payment of payment claims (which will apply to contracts entered into after 3 April 2017).

Importantly, where a party’s right to make an application for adjudication lapsed prior to 15 December 2016, that right is extended (so long as the 90 business days have not lapsed).

Practical effect

The proposed changes are designed to improve the operation and efficiency of the adjudication process for resolving payment disputes under construction contracts.

It is clear that most of the changes seem to favour claimants but it will remain to be seen whether the changes live up to expectations.

We will provide an update of the practical implications of the proposed changes in the New Year.

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