

Getting the Queensland security of payment regime right

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Further changes to security of payment in Queensland are on the horizon. The Queensland Department of Housing and Public Works recently released a discussion paper (**The Queensland Building Plan**) to help guide the development of a comprehensive and robust plan of reform and improvement to the building and construction industry in Queensland. Community and industry consultation is currently underway and a report is set to be presented to the Queensland Government for endorsement in the second half of 2017.

The Queensland Building Plan proposes reforms to a number of areas in the building industry. One of these is the proposal for significant changes to security of payment in Queensland, including:

- a requirement that project bank accounts (**PBAs**) be set up by the head contractor for all projects valued over \$1 million from January 2019. PBAs are trust accounts, to be set up by the head contractor with the head contractor and subcontractors as beneficiaries. The proposal is that these beneficiaries will be the subcontractors who contract directly with the head contractor. The aim of PBA's is to secure progress payments down the contractual chain from the head contractor to the subcontractor in the event of head contractor insolvency. It is suggested that the PBA scheme be trialled on all government projects valued between \$1 million and \$10 million from 1 January 2018. For projects smaller than \$1 million, the *Subcontractors Charges Act 1974* (SCC Act) will continue to protect subcontractors in the event that the head contractor enters into insolvency.
- proposed amendments to the *Building and Construction Industry Payments Act 2004* (**BCIPA**), such as:
 - the BCIPA is to automatically apply to all progress claims. It can be argued that the removal of the requirement to quote the 'magic words' marking a progress claim under the BCIPA will cause unnecessary regulatory burden. Principals (or head contractors, as the case may be) will be required to provide a payment schedule in response to every payment claim which must comply with the requirements of the BCIPA;
 - an extension of the timeframes to lodge an adjudication application (but not an adjudication response). This amendment would likely receive a warm welcome by claimants, given the volume of legal and factual submissions that are required to be made to support a successful adjudication application;
 - providing that if a contract is terminated for convenience, the date of termination will be a deemed reference date if the contract is silent on the provisions regarding payment that survives termination;
 - allowing an adjudicator to order that the claimant be reimbursed by a respondent for the cost of the application fee, in whole or in part; and
 - giving an adjudicator the discretion to order that the respondent pay interest on the amount backdated from the date of the payment claim.
- combining all of the Acts that deal with security of payment into one Act (the BCIPA, the SCC Act and any new provisions relating to the PBA scheme). While this makes sense conceptually, the effectiveness of this measure will depend solely upon the drafting of the proposed Act.

To see a full copy of the Queensland Department of Housing and Public Work's consultation paper, click [here](#).

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