

16 June 2014

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Ms Kate McGuckin
Research Director
Transport, Housing and Local Government Committee
Parliament House
George Street
Brisbane Qld 4000

Ms McGuckin,

Building and Construction Industry Payments Amendment Bill 2014

Thank you for the opportunity to provide further feedback on the *Building and Construction Industry Payments Amendment Bill 2014* (the Bill).

Since the release of the *Payment dispute resolution in the Queensland building and construction industry* discussion paper in 2012, the Property Council has worked closely with the Department of Housing and Public Works on the development of the Bill.

The Property Council acknowledges the importance of restoring common sense to the Bill and rebalancing the responsibility among all parties involved in the claim process.

Processes under the current legislation are heavily weighted against the respondent to a payment claim. The reforms included in the Bill adequately address a number of loopholes within the legislation that are exploited by some claimants.

Key areas of reform

This submission provides feedback on the following key areas of reform:

- Appointment of adjudicators and the adjudication process
- Amendment of timeframes for claimants and respondents
- Provision of additional information in adjudication response.

Appointment of adjudicators and the adjudication process

The Property Council strongly supports the establishment of a single adjudication registry within the Queensland Building and Construction Commission to appoint dispute resolution adjudicators.

The appointment of unbiased, experienced adjudicators will significantly improve the transparency of the payment dispute resolution process, will remove any perception of conflict of interest and will eliminate the practice of 'adjudicator shopping' by either party.

Amendment of Timeframes for Claimants and Respondents

Complex claims

Traditionally, there has been a standard timeframe required for a respondent to answer a claim, regardless of its complexity, or the length of time since the work was carried out.

This has created significant issues for respondents who are forced to compile lengthy and complex documents on works completed up to 12 months prior, in very short spaces of time.

The introduction of a dual model regime under the Bill, with provisions and timeframe extensions for complex claims is welcomed as common sense by the Property Council.

Separating claims into two separate dollar value categories will provide a more reasonable and achievable set of timeframes for industry to address complex claims.

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In addition the definition of a complex claim as any payment claim seeking payment of more than \$750,000 or that involves a latent condition, or is a time related cost under the contract is supported.



The Property Council supports the 15 business day extension for respondents responding to a complex payment claim. Additionally, the provision allowing 30 days to respond if a payment claim is served more than 90 days after the relevant reference date adequately acknowledges the extra time and resources that will be required by a respondent.



The extension to 15 business days for a respondent to provide an adjunction response to any claim is also welcomed, however the Property Council believes the provision for an additional 15 business days for complex claims should be standard under the Bill (adjusting the timeframe to 30 days), rather than an 'optional' increase.



The definition of 'business days'

Since 2012, the Property Council has strongly advocated for changes that would eliminate the practice of lodging 'ambush claims' over the Christmas holiday period, when many businesses are shutdown.



Changes made to the definition of business days under the Bill to exclude Saturday, Sunday or public holidays, as well as 22-24 and 27-31 December and 2-10 January will address an exploited ambiguity in the Bill.



Additional provisions regulating claims

The provisions regulating claims for construction work over 6 months after the final work has been carried out (unless an alternate date is set out under the contract) provide a common sense cut-off date for claimants, and further certainty for respondents.

Provision of additional information in an adjunction response



The Property Council supports the opportunity for a respondent to provide additional information in the adjudication response, including reasons for withholding payment regardless of whether or not those reasons were raised in the payment schedule.



Conclusion

The Property Council would like to thank the Committee for the opportunity to comment on the Paper.

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We note the 12 month review of the impacts of the Bill, as highlighted by the Minister for Housing and Public Works, Hon Tim Mander MP to Parliament. We look forward to working through these results with the Department at that time.

Should you have any questions regarding the Property Council or this submission, please do not hesitate to contact me on 07 3225 3000, or kmacdermott@propertyoz.com.au.

Yours sincerely



Kathy Mac Dermott
Executive Director

