

HEALTH LEGISLATION AMENDMENT BILL 2014

Tim Mander
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Explanatory Notes for an amendment to be moved during consideration in detail by the Honourable Tim Mander MP, Minister for Housing and Public Works

Short title

The short title of the Bill is the Health Legislation Amendment Bill 2014

Objectives of the amendments

The amendments to be moved during consideration in detail include an amendment to the *Building and Construction Industry Payments Amendment Act 2014* (Amendment Act) to address some transitional issues which have been raised by the Queensland Law Society since the Amendment Act was passed by the Legislative Assembly.

The issues raised were:

1. The Amendment Act introduces an amended definition of “business day”, with the effect that the calculation of time for the taking of various steps under the *Building and Construction Industry Payments Act 2004* (BCIPA) during the Christmas shut down, which currently excludes 27 to 31 December, is extended so that it will exclude 22 December to 10 January. Section 115 of the Amendment Act provides for the existing recovery of progress payment provisions to continue to apply to construction contracts entered into before the commencement.
2. The Amendment Act is not clear as to whether the new definition of “business day” will apply to existing contracts entered into before the commencement of the Amendment Act and, as the Christmas and New Year period is approaching, this may become a significant issue for the construction industry and will impact principals, contractors and subcontractors alike.
3. Consideration may be given to clarifying whether new section 35B (express right for claimant to withdraw from adjudication) and section 100(4) (Treatment by court of a decision affected by jurisdictional error) in the Amendment Act apply to existing contracts.

Achievement of policy objectives

It is considered that the simplest and most effective way to deal with the identified transitional issues is to provide as follows:

- The new procedures of the Amendment Act, including new definition of “business day” will apply to all payment claims (and any subsequent adjudications) made after commencement of the Amendment Act, regardless of whether the contract was existing at the date of commencement. This will save the problem of dual systems for new and existing contracts and reduce red tape. It will also eliminate the problem of jumping between different definitions of business day for existing contracts.

- Where a payment claim was served on a respondent before commencement of the Amendment Act, a transitional version of BCIPA will apply to the recovery process for the payment claim. The transitional version will apply the unamended Act, but amended by the Amendment Act provisions concerning transfer of functions of authorised nominating authorities to the QBCC registrar and related matters, new section 35B, the amendment to section 100 and the new definition of “business day”.
- There will be an additional transitional provision applying to section 17A (which reduces the time for making a payment claim or a final payment claim from 12 months to 6 months). For existing contracts the period of 6 months will be extended to 12 months (the existing time for payment claims) for a period of 6 months after commencement. This will mean people who have an existing valid claim more than 6 months after the work was carried out will not be disadvantaged.
- A transitional provision will provide that a person whose right to a payment claim had expired at the commencement does not have this right revived by the application of section 17A(3)(b) (which allows payment claims 28 days after the expiry of the end of the last defects liability period), as this would disadvantage respondents who would otherwise be entitled to believe the right to a payment claim has extinguished.
- A further transitional provision will enable the making of a transitional regulation of a savings or transitional nature to allow or facilitate the change from the operation of the existing BCIPA to the operation of the amended Act. Any transitional regulation would expire one year after the commencement of the Amendment Act.

These changes mean that the new BCIPA procedures will apply from commencement for all new payment claims and very quickly eliminate the dual system of different time frames and procedures.

Alternative ways of achieving policy objectives

There is no alternative way to achieve these objectives other than by amending the Amendment Act through the amendments to be moved during consideration in detail.

Estimated cost for government implementation

There are no additional anticipated financial costs for Government arising from the amendments to be moved during consideration in detail.

Consistency with fundamental legislative principles

The amendments to be moved during consideration in detail are consistent with fundamental legislative principles.

Consultation

Consultation has been undertaken with the Queensland Law Society, which has advised that the proposed amendments to be moved during consideration in detail effectively deal with the concerns raised by the Society about the transitional provisions in the Amendment Act.

Notes on provisions

Amendment 1 inserts new clauses 15A and 15B into the Health Legislation Amendment Bill 2014. New clause 15A provides that Part 2A of the Health Legislation Amendment Bill 2014 amends the *Building and Construction Industry Payments Amendment Act 2014*. New clause 15B replaces section 44 of the *Building and Construction Industry Payments Amendment Act 2014* and inserts a new division 2 “Transitional provisions for Building and Construction Industry Payments Amendment Act 2014” containing new sections 113 to 120.

New section 113 sets out the definitions for the new division 2 of part 7.

New section 114 provides that the registration of an authorised nominating authority ends upon commencement of the Amendment Act. The section also provides for the refund of a proportional amount of the authorised nominating authority's registration fee once the registration has ended and also the refunding of any application fees for registrations or renewal to the authorised nominating authority. Section 114 also provides that an application for registration or renewal of registration made, but not decided, before the commencement is taken to be withdrawn.

New section 115 requires that an adjudication application made to an authorised nominating authority, but not yet referred to an adjudicator, under former section 21 before the commencement must be referred as soon as practicable to a person eligible to be an adjudicator under section 22.

New section 116 provides that where a payment claim was served on a respondent before the commencement of the Amendment Act a transitional version of the BCIPA is to apply to any outstanding matters under BCIPA relating to the payment claim. The section also gives examples of such matters.

New section 117 transitions new payment claims relating to a construction contract entered into before commencement to the new time requirements. As a result, for those contracts, the six month maximum period for serving the payment claim under section 17A(2)(b) or (3) (c) will be extended to twelve months, but only for a period of six months after commencement. The result being that a claimant having at the commencement an existing valid payment claim more than six months after the work was carried out will not be disadvantaged.

New section 118 provides that a person whose right to a payment claim had expired at the commencement does not have this right revived by the application of section 17A(3)(b).

New section 119 enables the making of a transitional regulation of a savings or transitional nature to allow or facilitate the change from the operation of BCIPA to the operation of the Act after it is amended by the Amendment Act. Any transitional regulation expires one year after commencement of the Amendment Act.

New section 120 provides that the registrar may impose a condition on the registration of an adjudicator that requires that adjudicator to complete the mandatory transition training prescribed by regulation and to pay the cost of the training prescribed by regulation. Section 120 expires six months after commencement of the Amendment Act. Section 120 is in the same terms as new section 116 introduced by the Amendment Act.

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