

**From:** Tim Sullivan [REDACTED]  
**Sent:** Sunday, 15 June 2014 12:52 PM  
**To:** Transport Housing and Local Government Committee  
**Cc:** Michael Chesterman  
**Subject:** Submission re Building and Construction Industry Payments Bill 2014

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

Dear Mme, Sir

Thank you for the opportunity to make this submission. I am an adjudicator in Queensland, NSW, Victoria, South Australia and the Australian Capital Territory. I have conducted over 200 adjudications. I am impressed by the changes that the Building and Construction Industry Payments Bill 2014 will make to the present legislation if passed. There are a number of areas which are worthy of comment but I will limit my submission to one provision of the Bill and Act as this issue has impacted hundreds of adjudications and roughly 120 Court decisions in Queensland and other jurisdictions. The issue is SERVICE OF DOCUMENTS which is addressed in section 103 of the present Act. The Bill has not indicated any changes.

The legislation operates on very strict timelines for parties and adjudicators. Time of service and method of service are often in issue. Some of the significant Court cases that deal with service are listed below. All jurisdictions in Australia (except Federal) have construction industry payments legislation in some form. The only jurisdiction which satisfactorily addresses service of documents under legislation is the Australian Capital Territory (ACT). In the ACT the issues are significantly minimised because of the *Legislation Act 2001*, Part 19.5. This clarifies service better than any other legislation of which I am aware and importantly it removes doubts about electronic service.

Service is presently a problem in many adjudications and with possible changes to delivery arrangements through Australia Post the problems may escalate. Most business work using electronic service of documents including email service and online services. Significantly most banking services are able to be carried out electronically. Vehicle registration, insurances, bill payments for authorities, invoicing and even submissions to Parliamentary Committees can be made by email or electronically.

It should be a simple matter to adopt most of Part 19.5 of the *Legislation Act 2001* ACT if you see merit in this.

Date and time of service or method of service have been dealt with in many cases, a smattering of which are:

***Conveyor & General Engineering Pty Ltd v Basetec Services Pty Ltd and Anor* [2014] QSC 030 Philip McMurdo J**  
***Taylor Projects Group Pty Limited v Brick Dept Pty Limited & Ors* [2005] NSWSC 439**  
***Hickory Developments Pty Ltd v Schiavello (Vic) Pty Ltd & Anor* [2009] VSC 156 (24 April 2009)**  
***Chase Oyster Bar v Hamo Industries* [2010] NSWCA 190**

***Brodyn Pty. Ltd. t/as Time Cost and Quality v. Davenport & Anor. [2004] NSWCA 394 (3 November 2004)***

Other references which may assist are as follows:

*Acts Interpretation Act 1954* (Qld), s 39

*Acts Interpretation Act 1901* (Cth), s 28A

*Building and Construction Industry Payments Act 2004* (Qld), s 17, s 18, s 21(3), s 21(5), s 24(1), s 103

*Corporations Act 2001* (Cth), s 459G

*Electronic Transactions (Queensland) Act 2001* (Qld), s 11, s 24

*Austar Finance Group Pty Ltd v Campbell* (2007) 215 FLR 464

*Bauen Constructions Pty Ltd v Sky General Services Pty Ltd & Anor* [2012] NSWSC 1123

*Capper v Thorpe* (1998) 194 CLR 342

*Falgat Constructions Pty Ltd v Equity Australia Corporation Pty Ltd* [2006] NSWCA 259

*Howship Holdings Pty Ltd v Leslie* (1996) 41 NSWLR 542

*Metacorp Australia Pty Ltd v Andeco Construction Group Pty Ltd* (2010) 30 VR 141

*Penfolds Projects Pty Ltd v Securcorp Limited* [2011] QDC 77

Sincerely

Tim Sullivan

Queensland Adjudicator Registration # [REDACTED]