

16 June 2014

LET6189.gg.ti – 2014LetterMemo

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

By email : thigc@parliament.qld.gov.au

Dear Chair

On behalf of the Queensland construction industry, Master Builders supports the *Building and Construction Industry Payments Amendment Bill 2014*.

Master Builders is the peak industry association for the Building and Construction industry. Master Builders has over 8,700 members representing builders, trade contractors, manufacturers and suppliers in both the residential and commercial sectors of the industry. This broad representation of the industry with a Brisbane head office and 8 regional offices enables Master Builders to provide a unique contribution to the importance of this legislation. The Payments Act provides for a relatively simple adjudication process that enables payment disputes to be managed in a cost effective and timely manner. The amendments proposed are strongly and broadly supported by Master Builders.

Appointment of Adjudicators and the Adjudication Process

The Bill establishes a single adjudication registry within the Queensland Building and Construction Commission taking away the appointment of adjudicators from Authorised Nominating Authorities. While Master Builders supports this proposal there are a number of functions performed by ANA's that will need to be adopted by the Registry to ensure the adjudication process runs effectively. Master Builders is concerned with how claims will be lodged and whether the Registry intends to impose limitations that would inhibit the claims process. The security of information and multiple methods of service delivery need to be maintained in any new centralised system.

Master Builders also notes that ANA's acted as an intermediary between the parties and provided information as an aid in the dispute management process. The registry will need to ensure that general information is accessible to the industry parties as well as provide more detailed advice to the parties actually engaged in the formal adjudication process. How this advice and information is provided to the parties must be managed by the registry to provide confidence for the parties involved in the adjudication process. The management of claims, service of information (expert reports, contractual documentation, plans, drawing etc), conference arrangements and interaction between the registry, adjudication parties and the adjudicator needs to be carefully considered with the adoption of clearly thought through processes and systems.

Master Builders Head Office

417 Wickham Terrace, Brisbane Queensland 4000
p (07) 3225 6444 | f (07) 3225 6545 | e ask@masterbuilders.asn.au
www.masterbuilders.asn.au

Master Builders also notes that the Registry will appoint adjudicators. Master Builders contends that the appointment of a qualified adjudicator is not a “one size fits all” approach with individual adjudicators each having specialised skills and backgrounds that ought to be matched with the particulars and context of the disputed claim. Any new appointment process must be able to ensure appropriately trained and qualified adjudicators are appointed with the requisite background and experience to handle the particular matter. Master Builders would also like to know how the Registry intends to record the experience and qualifications of each adjudicator in order to properly match the adjudicator with the requirements of the dispute in question.

Master Builders is also concerned with the selection process of adjudicators and the need to maintain a sufficient number of duly qualified adjudicators to ensure a spread of experience, background, knowledge and skill. How will adjudicators be selected and what are the processes that will be adopted by the Registry to ensure transparency and fairness in the selection and nomination process. Master Builders also supports some compulsory minimum training for all potential adjudicators in order to maximise consistency of approach by all of the adjudicators and hopefully secure better outcomes from the adjudication process. The Registry needs to ensure adjudicators have all been sufficiently trained in order to operate at the highest level with the ability to set minimum criteria and training before being registered as an adjudicator.

Master Builders is also concerned with how fees will be charged and collected and how reports will be released and decisions reported and recorded. Any new system set up by the Registry will have to give effect to ensuring decisions are centrally recorded and available for everyone to see.

One of the advantages of the central registry model is the management of underperforming adjudicators who fail to administer the Act in the appropriate manner. The complaint process under the existing system has been deficient and Master Builders hopes the new proposed arrangement will ensure greater accountability of adjudicators and greater scrutiny by the Registry. The Registry will need to implement a monitoring process of all decisions to ensure greater consistency and application of the Act. An external panel of lawyers or appropriate people may need to be engaged to assist the registry in this monitoring process. Master Builders is also interested in discussing the complaint management process and the power (if any) to sanction underperforming adjudicators who fail to administer the legislation appropriately. The amendment show improve the accountability of adjudicator with greater consistency in adjudication decisions.

Amendment of Timeframes for Claimants and Respondents

Master Builders strongly supports the introduction of a dual model that enables “complex claims” the ability to secure more time and deliver fairer outcomes within the adjudication framework. Master Builders also supports the additional time for respondents when the claim is made more than 90 days after the date of the work. These new provisions directly address the issue of “ambush” claims and ensures respondents will not be high jacked by the adjudication process. Master Builders notes the three independent criteria in the definition of a “complex payment claim”. While the first two criteria are relatively straight forward the third criteria noting a “time-related cost” may need further explanation and elaboration.

Master Builders understand that this criterion is supposed to relate to contractual claims with respect to “liquidated damages” or claims in relation to damages and extensions of time. The current wording appears to be too broad in its literal meaning with nearly every possible claim having at least a time-related cost aspect associated with it. The current wording would almost ensure every claim is treated

as a “complex claim due to the fact that it would include a “time related cost” component of the claim. This is clearly not the intent of the amendments as it would delay every claim and create an environment in direct contravention to what the legislation is seeking to achieve. Master Builders would encourage the Government to include further explanations in the Bill qualifying the meaning of this section or run the risk of every claim being deemed to be a complex claim due to this broad definition.

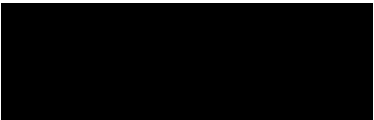
Master Builders also notes the reduction in the time available to make a claim has been reduced from 12 months to 6 months “after construction work was last carried out”. Master Builders have been advocating for this period to be reduced to 3 months from when construction work was last carried out but acknowledges the reduction and believe it will encourage legitimate claims and reduce ambush claims as outlined above.

Provision of Additional Information

The provision that enables further information to be provided by a respondent in a “complex claim” rather than have to rely solely on the information provided in the initial payment schedule is a master stroke and strongly supported by Master Builders. This amendment will eliminate red tape whereby contractors were previously forced to itemise every reason in a payment schedule that was less than the amount claimed just in case the matter proceeded to adjudication. The ability to include additional information and provide further reasons for withholding a payment is an excellent amendment and will minimise the current waste of resources associated with all of the information currently needed to be provided in a payment schedule. Allowing the claimant additional time when extra information is provided is also a fair outcome and supported by Master Builders.

Master Builders continues to support the BCIPA. The legislation was introduced to assist cash flow and minimise payment disputes with a dispute resolution process that is relatively cost effective and timely. The amendments proposed in this Bill are a substantial improvement on the current operation of the legislation. The changes will provide greater clarity and fairness to all parties in the contractual chain. Legitimate claims can still be made and matters resolved through the adjudication process. Master Builders congratulates the Queensland Government on this series of reforms that will assist all of the parties involved in the industry.

Yours sincerely



Grant Galvin
Executive Director
Master Builders