

Article Information

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'Tis the season - service of documents during festive period

The Building Industry Fairness (Security of Payment) Act 2017 (Qld) (BIF Act) came into force almost a year ago. Like its predecessor, it creates challenges for claimants and respondents in the service of documents during the traditional Christmas shutdown period.

On 17 December 2018 the BIF Act came into effect. We have [previously discussed](#) the key changes. Relevant to the Christmas period is how the Act applies to the usual timeframes for submitting documents, payment schedules, adjudication applications and responses.

Business Days

Whilst the BIF Act provides for the calculation of time periods for a payment schedule, adjudication application and adjudication response in terms of "business days", those time periods do not include weekends, public holidays, special holidays or bank holidays and days occurring within any of the following periods:

- 22 to 24 December;
- 27 to 31 December;
- 2 to 10 January;

Christmas Freeze

Accordingly, if a payment claim is issued in late December, the respondent will need to consider the timeframe within which it has to provide its payment schedule. Taking into account the above dates and the mix of weekends and public holidays over the Christmas and New Year period, 21 December to 12 January (inclusive) is a dead zone in terms of the calculation of time. That period cannot be taken into account in calculating whether actions required, including the service of documents, lodging of applications, responses and decisions, occur within the times required by the Act. Over this traditional shut-down period, BIF Act time stands still.

Strategic Considerations

In these circumstances, strategic considerations come into play, for instance as to whether a claimant may wish to avoid serving a claim prior to this time, so as to avoid giving a respondent an extended period to consider and respond to a claim.

Consequences of getting it wrong

Failure to calculate the time periods correctly may render a party unable to issue a payment schedule or an adjudication application. A further consequence of failing to issue a payment schedule in relation to each payment claim is that it can result in the imposition of a fine and may also be grounds for disciplinary action under the *Queensland Building and Construction Commission Act 1991* (Qld).

Conclusion

Given payment claims are no longer required to be endorsed as a payment claim, parties ought to be more vigilant when receiving 'invoices' from contractors and subcontractors during the Christmas period and ensure that they respond to each and every payment claim if the amount is in dispute.

Parties must apply the provisions and timeframes of the BIF Act correctly in circumstances where a failure to meet a timeframe can have severe consequences such as rendering a party out of time to issue a payment schedule or adjudication application, liable to pay a fine or subject to disciplinary action.

Key Takeaways

The calculation of timeframes may have severe consequences for claimants and respondents including being out of time to issue a payment schedule or adjudication application, the imposition of a fine, or disciplinary action. Claimants and respondents ought to pay particular attention to timeframes and “business days” during the Christmas period.