

# Contractor's Seminar

## Asset Protection and Credit Control



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# Building Construction Industry Payment Act 2004 (Qld) “BCIPA”

- Enables contractors to recover progress payments
- Construction work
- Construction contract

## Construction work...

- Broadly defined
- Includes supply of related goods and services
- Does not include:
  - Drilling for oil/gas
  - Extraction of minerals

# Progress payment becomes payment claim by...

- Contractor
- Subcontractor
- Supplier
- Hirer
- Consultant

## Home owners are excluded unless...

- Owner/builder
- Not intending to reside

## Payment claim must...

- Describe the work or goods & services
- State the amount
- Be endorsed

*“this is a payment claim made under the Building Construction Industry Payment Act 2004 (Qld)”*

## Payment claim...

- Within 12 months
- One per reference date or
- Last day of the month

# Respondent to payment claim must, within 10 days...

- Pay; or
- Deliver a payment schedule  
*(reason for not paying)*

## Payment schedule must...

- State amount, if any, to be paid
- State reasons for not paying full amount

## If no payment schedule within 10 days...

- Suspension of work
- Adjudication
- Court judgment

# If payment schedule and less than full amount offered...

- Suspension of work
- Adjudication

# Adjudication...

- By an independent adjudicator
- As appointed by authorised nominating authority
- Increasing each year

# Adjudication process...

- Very quick (30 days)
- Final
- Equal contribution to cost

# Subcontractors Charges Act...

- Secures money payable by the principal to your contractor
- Three parties:
  - Principal/Developer/Contractor
  - Your contractor
  - You

## Charge can be over...

- Unpaid money
- Security

The work is broadly defined, but is not unlimited.

## Work includes...

- Construction
- Development of a mine
- Use of plant or machinery
- Includes supply of materials

## Work does not include...

- Mere delivery of goods under a contract for sale of goods
- Work under a contract of service
- Testing/taking measurements

## You...

- Must be licensed
- Must claim within 3 months
- On completion of work
- Of expiry of maintenance period
- Of expiry of release period (security)

# Your Notice of Charge...

- Must be certified
  - *Architect/Engineer etc*
- Must be supported by a Statutory Declaration

## If the charge is accepted...

- Payment by the principal
- Proportional payment if insufficient money for all

## If legal proceedings...

- Money held or paid into court
- Money paid by court order

## Company winding up...

- Minimum amount \$2,000
- 21 days to pay
- Must be for debt
- Demand served by post or delivery

## Effect of non-compliance...

- Presumption of insolvency
- Setting aside demand
- Within 21 days of service
- By application to the court

# Grounds for setting aside...

- Genuine dispute
- Offsetting claim
- Defect in notice
- Some other reason

## Genuine dispute...

- As to the nature of the debt
- As to the amount

## Winding up application...

- Within 3 months
- Can only be opposed with leave of the Court
- ATO debts cannot be disputed

# Voidable preferences...

- Bankruptcy of a person
- Winding up of a company

# Repay money received from the company...

- In at least 6 months
- Before the liquidation

# Why should you benefit at the expense of all other creditors?

## The Test ...

- Good faith
- No reasonable grounds for suspecting insolvency
- Reasonable person would not have either
- Valuable consideration provided

# QCAT (Queensland Civil and Administrative Tribunal)

## Debt Recovery...

- \$25,000 maximum
- Simple
- Economical

# Procedure...

- Application
- Response
- Mediation
- Hearing

## Generally...

- Paper trail
- Credit control
- Get advice early

# Questions...



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