



E-alert: A Merry Christmas for Developers?

By ,

Christmas time is almost here and many people are now looking forward to 2017. As such, many developers become complacent about their contract management, with potentially disastrous consequences. In that regard we note that some standard contracts deem payment to be due and owing[1] (or admitted in the case of extension of time claim[2]) if claims are not responded to within a defined contractual timeframe.

In order to avoid problems, now is the time to perform a triage on your projects in order that you don't stub your toe this festive season.

First, carefully review your contracts to ensure that you know when you should be receiving claims from your contractors and, more importantly, how long you (or possibly the superintendent or principal's representative) will have to respond to claims. In undertaking that review, pay careful attention to the definition/s of 'day' and 'business day' contained in the contract. Whilst the amendment to the definition of 'business day' the *Building and Construction Industry Payments Act 2004* (Qld) (**Act**) may be relevant in some circumstances (for example working out when a contractor can make an adjudication application), it will not necessarily affect the date by which you are required to respond to payment claim made under the Act, nor will it necessarily affect the date by which you are required to respond to claims made exclusively under the contract and other types of claims (for example for extensions of time and variations)[3].

Second, establish a plan in relation to any anticipated claims. Are there steps which you can take now in order to avoid claims, for example, can your superintendent/principal's representative immediately issue a certificate which fixes your liability[4]? Can we start preparing the certificate now in anticipation of the claim? Will we actually dispute a claim if it is less than a certain value?

Third, ensure that you have sufficient human resources on standby in the event that a claim is made over the festive season. Ask yourself questions like, is my superintendent/principal's representative available to prepare a response to a claim that we might receive? Is my lawyer available to assist with a payment schedule/response to a claim?

Remember, proper preparation prevents poor performance (and ensures that you will have a restful Christmas break).

[1] For example clause 37.2 of AS4902-2000; clause 14(d) of Master Builders LSC2 Commercial Building Contract

[2] Clause 22 (d) of Master Builders LSC2 Commercial Building Contract

[3] For example, in the Master Builders suite of contracts, the term 'business day' does not exclude 2 – 10 January (which are excluded days under the Act)

[4] Clause 37.2 of AS4902-2000

Should you wish to discuss any matters arising out of this article, please contact the author:

Broadley Rees Hogan (BRH Lawyers) is an independent boutique firm, specialising in corporate, commercial, property, construction and litigation. Based in Brisbane, we act for clients across the country and internationally – **for an unassuming firm, we know how to deal big.**

For more information, please visit www.brhlawyers.com.au or **contact us** on (07) 3223 9100.